

;ARTICLE 43

CHINATOWN DISTRICT

(;Article inserted on June 14, 1990*)

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**As amended through November 6, 2008.

*Date of public notice: May 19, 1990 (see St. 1956, c. 665, s. 5).

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 43-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Chinatown District as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this Code. The goals and objectives of this Article and the Chinatown Community Plan are to upgrade the quality of life and ensure the long-term viability of Chinatown as a historic residential neighborhood and a unique cultural, business, and service center; to create housing which is affordable to all segments of the community; to encourage community businesses and trades; to diversify the economy and improve employment opportunities for neighborhood residents; to protect the historic and cultural resources of the district; to improve the environment through the establishment of open space subdistricts; to manage institutional growth in an open process and to establish boundaries for institutional uses; to promote the most desirable use of land in accordance with the Chinatown Community Plan; and to promote the public safety, health, and welfare of the people of Boston.

SECTION 43-2. Recognition of the Chinatown Community Plan. In accordance with Section 27D-18 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the Chinatown District (Special Study Area No. 7), the Zoning Commission hereby recognizes the Chinatown Community Plan as the general plan for Chinatown. The Chinatown Community Plan also serves as the portion of the general plan for the City of Boston applicable to the Chinatown District. This Article is one of the means of implementing the Chinatown Community Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 43-3. Physical Boundaries. The provisions of this Article are applicable only in the Chinatown District. The boundaries of the Chinatown District are as shown on a map entitled "Map 1G Chinatown District (supplemental to 'Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 43-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Chinatown District, and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Exceptions to the provisions of these regulations, pursuant to Article 6A, shall not be available, except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27D to the Chinatown District is rescinded, and the Chinatown District is deleted from the Downtown Interim Planning Overlay District as of the effective date of this Article, except as provided below. Where conflicts between this Article and the rest of this Code exist, the provisions of this article shall govern. Except where specifically indicated in this Article, the provisions of this Article supersede Article 8 (except

Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 24, inclusive, of this Code for the Chinatown District. However, the exceptions to building height limitations provided for in Section 16-2 shall apply to building height limitations established in this Article, unless otherwise expressly provided. Further, the provisions of this Article are not applicable to the following Proposed Projects, which are governed by the rest of this Code, including Article 27D:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

SECTION 43-5. Establishment of Protection Areas. This Section establishes three "protection areas" within the Chinatown District. The three protection areas are established in order to protect the existing scale, the quality of the pedestrian environment, the character of the residential/commercial mixed-use neighborhoods, and concentrations of historic buildings within and abutting the protection areas. The three protection areas are designated on Map 1G of this Code and are referred to herein as "Liberty Tree Protection Area," "Beach/Knapp Protection Area," and "Historic Chinatown Protection Area." Any other provision of this Article or this Code notwithstanding, Proposed Projects within a protection area are limited to the building height and FAR specified for such protection area as follows:

1. Liberty Tree Protection Area. Within that portion of the Chinatown District depicted on Map 1G of this Code as the "Liberty Tree Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of six (6) are allowed.
2. Beach/Knapp Protection Area. Within that portion of the Chinatown District depicted on Map 1G of this Code as the "Beach/Knapp Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of six (6) are allowed.
3. Historic Chinatown Protection Area. Within that portion of the Chinatown District depicted on Map 1G of this Code as the "Historic Chinatown Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of six (6) are allowed.

The foregoing provisions of this section notwithstanding, a Proposed Project within a protection area shall have a maximum allowed building height of eighty

(80) feet and a maximum allowed FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(;As amended on May 9, 1996.)

;SECTION 43-6. **Establishment of Subdistricts.** This Section establishes the following subdistricts within the Chinatown District, each as designated on Map 1G of this Code:

1. Commercial Chinatown Subdistrict. Within the Commercial Chinatown Subdistrict, a maximum building height of eighty (80) feet and FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
2. Residential Chinatown Subdistrict. Within the Residential Chinatown Subdistrict, a maximum building height of eighty (80) feet and a maximum FAR of four (4) are allowed; provided that any proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of six (6) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
3. Institutional Subdistrict. Within the Institutional Subdistrict, a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
4. Health Sciences Subdistrict. This Subdistrict constitutes an Institutional Master Plan Area pursuant to subsection 43-18.2 of this Code, and comprises Areas A, B and C, as designated on Map 1G of this Code. Within the Health Sciences Subdistrict, a maximum building height of eighty (80) feet and FAR of six (6) are allowed; provided that, if any Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6, then such Proposed Project shall be allowed maximum building heights and maximum FARs as follows:

- (a) Within that portion of the Health Sciences Subdistrict depicted on Map 1G as Area A, a maximum building height of one hundred forty (140) feet and a maximum FAR of nine (9).
- (b) Within that portion of the Health Sciences Subdistrict depicted on Map 1G as Area B, a maximum building height of one hundred seventy (170) feet and a maximum FAR of eleven (11).
- (c) Within that portion of the Health Sciences Subdistrict depicted on Map 1G as Area C, a maximum building height of two hundred (200) feet and a maximum FAR of fourteen (14).

(;As amended on March 6, 1995 and May 9, 1996.)

;SECTION 43-7. Establishment of the Turnpike Air-Rights Special Study Area. This Section establishes the "Turnpike Air-Rights Special Study Area" within the Chinatown District, as designated on Map 1G of this Code. Within the Turnpike Air-Rights Special Study Area, a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

In accordance with the Chinatown Community Plan, a comprehensive plan for the Turnpike Air-Rights Special Study Area shall be developed and shall address, at a minimum, the following: (a) specific measures to expand the existing residential areas, community services, and open spaces that will benefit the abutting communities, including Chinatown, the South End, and Bay Village; (b) appropriate urban design guidelines to govern and facilitate the proper development of the Turnpike Air-Rights Special Study Area; (c) appropriate means to encourage the creation of housing, including Affordable housing; (d) measures to assure an appropriate relationship and transition between the scale and density of new residential development and the scale and density of existing residential areas in surrounding neighborhoods; (e) an open space plan for the Turnpike Air-Rights Special Study Area, providing for urban parks and usable recreation areas; (f) appropriate means to encourage a mix of retail uses serving neighborhood employment and consumer needs; (g) the appropriate mix of land uses to accomplish these objectives; and (h) land use regulations necessary to implement the comprehensive plan. No development plan approval shall be granted pursuant to Section 80C-4 (Standards for Planned Development Area Review Approval) for a PDA

in the Turnpike Air-Rights Special Study Area, until such comprehensive plan is completed.

(;As amended on May 9, 1996.)

;SECTION 43-8. Establishment of the Chinatown Gateway Special Study Area. This Section establishes the "Chinatown Gateway Special Study Area" within the Chinatown District, as designated on Map 1G of this Code. Within the Chinatown Gateway Special Study Area, a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

In accordance with the Chinatown Community Plan, a comprehensive plan for the Chinatown Gateway Special Study Area shall be developed and shall address, at a minimum, the following: (a) specific measures to balance the different needs for housing resources, economic diversification, entrepreneurial development, and open space; (b) appropriate urban design guidelines to govern and facilitate the proper development of the Chinatown Gateway Special Study Area, including the creation of an effective transition between residential areas and development at South Station; (c) appropriate means to encourage the creation of housing, including Affordable housing; (d) a plan to encourage the diversification and expansion of the neighborhood economy, employment opportunities, and local business ownership; (e) an open space plan for the Chinatown Gateway Special Study Area, providing for urban parks and usable recreation areas; (f) appropriate means to encourage a mix of retail uses serving neighborhood employment and consumer needs; (g) the appropriate mix of land uses to accomplish these objectives; and (h) land use regulations necessary to implement the comprehensive plan's proposals. No development plan approval shall be granted pursuant to Section 80C-4 (Standards for Planned Development Area Review Approval) for a PDA in the Chinatown Gateway Special Study Area until such comprehensive plan is completed.

(;As amended on May 9, 1996.)

;SECTION 43-9. Establishment of the Tyler Street Special Study Area. This Section establishes the "Tyler Street Special Study Area" within the Chinatown District, as designated on Map 1G of this Code. Within the Tyler Street Special Study Area, a maximum of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

In accordance with the Chinatown Community Plan, a comprehensive plan for the Tyler Street Special Study Area shall be developed and shall address, at a minimum, the following: (a) specific measures to balance and integrate institutional development, housing, community services, and businesses; (b) appropriate urban design guidelines to govern and facilitate the proper development of the Tyler Street Special Study Area, including urban parks and usable recreation space; (c) appropriate means to encourage the creation of housing, including Affordable housing; (d) appropriate means to encourage the establishment of community facilities serving neighborhood needs; (e) an open space plan for the Tyler Street Special Study Area, providing for urban parks and usable recreation areas; (f) appropriate means to encourage a mix of retail uses serving neighborhood employment and consumer needs; (g) the appropriate mix of land uses to accomplish these objectives; and (h) land use regulations necessary to implement the comprehensive plan's proposals.

(;As amended on May 9, 1996.)

SECTION 43-10. Establishment of Open Space Subdistricts. This Section establishes within the Chinatown District Open Space Subdistricts as listed in Table A of this Article and designated on Map 1G of this Code. Regulations applicable to uses in such subdistricts are set forth in Article 33 of this Code, as indicated in Table A of this Article.

TABLE A

Open Space Subdistricts

<u>Name</u>	<u>Designation</u>
Gateway Park and Expansion Area	Recreation (OS-RC)*
Pagoda Park	Recreation (OS-RC)*
Tai Tung Park	Urban Plaza (OS-UP)**

* Recreation open space subdistricts consist of land appropriate for and limited to active or passive recreational uses. See Section 33-10.

** Urban Plaza open space subdistricts consist of land appropriate for and limited to passive recreational uses. See Section 33-15.

;SECTION 43-11. **Increased FAR for Community Service Organizations.** Under the provisions of Article 6A and this Section, the Board of Appeal may grant an exception to the maximum allowed FAR for a Proposed Project in the Chinatown District in the following manner. The Board of Appeal shall grant such an exception for increased FAR only if it finds that: (a) a portion

of the floor area of the Proposed Project shall be limited to Community Uses as further provided in Subsection 1 below; (b) the Proposed Project and its massing are architecturally compatible with the surrounding area, in accordance with the Urban Design Component of Large Project Review; (c) such an exception is in harmony with the general purpose and intent of this Code; (d) the Proposed Project is consistent with the Chinatown Community Plan and the general plan for the city as a whole; and (e) if such exception relates to a Development Impact Project as defined in Section 80B-7 (Development Impact Project Exactions), the Applicant shall have complied with the requirements set forth in said Section 80B-7. The increased FAR available pursuant to this Section is up to one (1) ratio point. The procedure for granting such exceptions shall be in accordance with the provisions of Section 6A-2, governing the granting of exceptions; provided that a four-fifths majority of the Boston Redevelopment Authority shall have recommended approval of the exception for increased FAR prior to the Board of Appeal's consideration of the application.

1. Uses Qualifying a Proposed Project for Increased FAR. The Board of Appeal may grant an exception for increased FAR corresponding to additional gross floor area of up to the amount of floor area to be reserved permanently for Community Uses, as described in Appendix B to this Article, and, in any event, not exceeding one (1) ratio point. The Board of Appeal may require the Applicant to provide evidence of a long-term commitment by the Applicant itself or a third party either: (a) to use the floor area for such Community Uses; or (b) to lease or otherwise transfer such floor area for such Community Uses (which may include a lease or transfer to the City of Boston or its designee).
2. Use of the Floor Area Qualifying Proposed Projects for Increased FAR. The use of the amount of floor area of a Proposed Project which qualifies the Proposed Project for an exception for increased FAR in accordance with the provisions of this Section 43-11 shall be limited to the Community Uses, and any other use of such an amount of floor area shall be forbidden. The nonuse of floor area which qualifies a Proposed Project for increased FAR shall not affect the validity of such exception.

(;As amended on May 9, 1996.)

;SECTION 43-12. Establishment of Areas Within Which Planned Development Areas May Be Permitted. This section establishes three areas within which Planned Development Areas ("PDAs"), as described in Section 3-1A.a, may be permitted within the Chinatown District. The purposes for establishment of the areas within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private development on underutilized sites in the Chinatown District while insuring high-quality design by providing planning and design controls; to build affordable housing; to encourage

the creation of affordable housing and open space; to create community facilities; to provide for neighborhood economic development and commercial expansion which is compatible with adjacent uses; to provide connections from Chinatown to adjacent areas of the city; and to direct institutional expansion outside the core of Chinatown. The three areas within which PDAs may be permitted are shown on Map 1G of this Code, and are otherwise referred to herein as the "Residential Chinatown PDA Area," the "Turnpike Air-Rights PDA Area," and the "Chinatown Gateway PDA Area." No PDA is permitted within the Chinatown District except within these areas.

1. Consistency with Section 3-1A; Review and Approval Requirements. Any application for Development Plan approval for a Proposed Project within the Chinatown District is subject to the provisions of this Section and Sections 43-13 through 43-17, in addition to the provisions of Section 3-1A.a. See Article 80 concerning the applicability of Planned Development Area Review.
2. Amendment of Development Plan. No Proposed Project in a PDA shall proceed, no change in use category of any public benefit qualifying a Proposed Project for Development Plan approval shall proceed, and no exterior alteration or change in use category of a rehabilitated Landmark, Historic Building, or Theater qualifying a Proposed Project for Development Plan approval shall proceed, unless the Boston Redevelopment Authority has certified to the Commissioner of Inspectional Services that the Proposed Project is consistent with the approved Development Plan, as amended from time to time, for such PDA or the portion thereof to which said work relates. See Section 80C-7 (PDA Review: Amendment of PDA Plans) for the procedure for amendment of a Development Plan.

(;As amended on May 9, 1996 and July 31, 1997.)

;SECTION 43-13. Planned Development Areas: Use and Dimensional Regulations. The land use and dimensional regulations for PDAs in the Chinatown District are established by this section.

1. Use Regulations. Any Proposed Project within a PDA is subject to the use regulations set forth in Section 43-19.
2. Building Height and FAR Regulations. The building height for any Proposed Project within a PDA shall be in substantial accord with the building height specified in the applicable Development Plan, which specified building height shall not exceed the maximum building height stated in Table B of this Article. The FAR for any Proposed Project within a PDA shall not exceed the FAR specified in the applicable Development Plan, which specified FAR shall not exceed

the applicable maximum FAR stated in said Table B, subject to the allowance of up to one (1) ratio point pursuant to the provisions of Section 43-11.

TABLE B

**Chinatown District
Planned Development Areas
Dimensional Regulations**

	<u>Maximum Building Height/ FAR Standards</u>
Chinatown Gateway PDA Area	300'/10
Residential Chinatown PDA Area	
Area I	175'/6
Area II	230'/7
Turnpike Air-Rights PDA Area	250'/6

(;As amended on November 6, 2008.)

;SECTION 43-14. **Planned Development Areas: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(;As amended on May 9, 1996 and July 31, 1997.)

SECTION 43-15. [Planned Development Areas; Authorization for Exceptions.] Deleted on May 9, 1996 by Text Amendment No. 228.

;SECTION 43-16. **Planned Development Areas: Public Benefit Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this Article if the Development Plan proposes a plan for public benefits, consistent with the Chinatown Community Plan, including one or more of the following: (a) the provision of Affordable housing, in accordance with the provisions of Subsection 1, below, of this Section; (b) the creation of neighborhood economic development opportunities, in accordance with the provisions of Subsection 2, below, of this Section; (c) the construction of community facilities, in accordance with the provisions of Subsection 3, below, of this Section; (d) the development of cultural facilities, in accordance with the provisions of Subsection 4, below, of this Section; or (e) the substantial

rehabilitation of an eligible Theater, Historic Building, and Landmark, in accordance with the provisions of Subsection 5, below, of this Section. On the basis of provision of these mitigating public benefits under this Section, the Boston Redevelopment Authority may approve a Development Plan providing for a building height and FAR deviating from the standards set forth in Section 43-7, 43-8, or 43-9, as the case may be, provided that such building height and FAR shall not exceed the limits provided for in Section 43-13.

1. Development Plan Approval for Creation of Affordable Housing. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or cause the construction of housing if: (a) at least fifty percent (50%) of the gross floor area of the Proposed Project is devoted to Residential Uses; (b) either (i) at least fifty percent (50%) of the dwelling units proposed in the Development Plan on site are Affordable; or (ii) the Applicant creates or causes the creation of the same number of Affordable units off site in the Chinatown District; and (c) a minimum of 0.7 off-street parking space is provided for each dwelling unit or, if a lesser number of spaces is permitted to be provided for such dwelling units pursuant to the terms of any applicable state or federal parking freeze or similar law, the greatest number of spaces permitted for such dwelling units under such parking freeze or similar law.

Notwithstanding the above, the percentage of affordable dwelling units and the off-street parking ratio for planned development areas within the Residential Chinatown PDA Area II shall be determined through Article 80 Large Project Review.

2. Development Plan Approval for Creation of Neighborhood Economic Development Opportunities. The Boston Redevelopment Authority may approve a Development Plan for a Proposed Project to be constructed on a site owned by a Public Agency if the Development Plan proposes the creation of neighborhood economic development opportunities through the provision of: (a) entrepreneurial assistance measures, such as (i) informational, outreach, and educational programs concerning new business development; (ii) general business planning and management counseling; (iii) technical assistance; and (iv) the establishment of general financing options; (b) a set-aside of space for neighborhood businesses or assistance with commercial site improvement; (c) an opportunity for equity participation in business opportunities by Chinatown residents and community development corporations; or (d) franchise training programs or other job-training programs which include employment opportunities upon completion.

3. Development Plan Approval for Construction of Community Facilities. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or to cause the construction or expansion of community facilities if: (a) the community facilities are fully finished and equipped and are of a size and type which are appropriate, under the circumstances pertaining at the time of the application for Development Plan approval, to the needs of the Chinatown community, as identified by the Community Service Needs Assessment and Feasibility Study in the Chinatown Community Plan; and (b) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the community facilities in accordance with the Chinatown Community Plan or (ii) to lease or otherwise transfer such community facilities for such use (which may include a lease or transfer to the City of Boston or its designee). The use of any community facility which is developed for qualification as a public benefit for Development Plan approval under this Article shall be limited to the uses specified in the Development Plan. Such uses shall be consistent with the uses specified in the Chinatown Community Plan. To guarantee the continuation of such uses, the Applicant may, but shall not be required to, lease or otherwise transfer any right, title, and interest in the community facility to the City of Boston or its designee. No change in the use of any public benefit providing a basis for Development Plan approval shall proceed unless there has been an amendment to the Development Plan.

4. Development Plan Approval for Development of Cultural Facility. The Boston Redevelopment Authority may approve a Development Plan proposing to develop or to cause the development of a new Theater or other cultural facility if: (a) the new Theater or other cultural facility is of a useful condition, size, and type which is appropriate, under the circumstances pertaining at the time of the application for Development Plan approval, to contribute to the balance of cultural facilities responsive to the needs of the Chinatown District and the City of Boston, as identified in the Chinatown Community Plan, with consideration being given to the Theaters and cultural facilities being provided or rehabilitated in the Midtown Cultural District and to the provisions of the Midtown Cultural District Plan; (b) the Development Plan provides sufficient assurance of the successful operation of the Theater or cultural facility, through provision for necessary ancillary or accessory facilities such as administrative offices, rehearsal/studio space, dressing room/green room space, storage space, or other facilities; and (c) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the Theater or cultural facility in accordance with the Chinatown Community Plan or (ii) to lease or otherwise transfer such Theater or

cultural facility for such use (which may include a lease or transfer to the City of Boston or its designee).

5. Development Plan Approval for Substantial Rehabilitation of Existing Theaters, Historic Buildings, or Landmarks. The Boston Redevelopment Authority may approve a Development Plan proposing substantial rehabilitation of an eligible Theater, Historic Building, or Landmark if: (a) the Development Plan proposes substantial rehabilitation of an eligible Theater, Historic Building, or Landmark, which the Applicant owns or will own at the time set for commencement of construction, in accordance with the provisions of paragraphs (x) and (y) of this Subsection; or (b) the Applicant and the fee simple owner (or agent thereof) (the "Owner") of an eligible Theater, Historic Building, or Landmark enter into an agreement which agreement shall provide that a substantial rehabilitation of such a building shall be performed in accordance with the provisions of paragraphs (x) and (y) of this Subsection, and the Development Plan reflects the provisions of such agreement and the Applicant's undertaking to be bound by them. Under clause (b) above, an agreement shall be entered into which shall conform to the provisions of Section 38-25. In the case of existing Theaters, Development Plan approval shall also be subject to the provisions of Subsection 38-14.1. In the case of Landmarks, the substantial rehabilitation must also be approved by the Boston Landmarks Commission in accordance with Chapter 772 of the Acts of 1975, as amended from time to time. A Theater, Historic Building, or Landmark shall be "eligible" for the purpose of this Subsection 5 if it is listed in Appendix C to this Article.

- (x) Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an eligible Theater qualifying as a public benefit for Development Plan approval consists of: (i) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use, including an equipment level commensurate with its proposed use, or (ii) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a facade restoration, may also be included in the qualification as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, raking the orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of an original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, painting, or improvements to mechanical systems alone.

- (y) Qualification of Substantial Rehabilitation of Landmark or Historic Building. Substantial rehabilitation of an eligible Landmark or Historic Building qualifying as a public benefit for Development Plan approval consists of alterations or repairs made to a building or structure, costing in excess of fifty percent (50%) of the physical value of the building or structure, in accordance with the Boston Landmarks Commission's standards and criteria for landmark rehabilitation, if any. The physical value of a structure or structures shall be deemed to be the assessed value of the structure, as recorded on the assessment rolls of the City as of the January 1 preceding the date of the application for Development Plan approval.

- 6. Use of Theaters and Cultural Facilities. The use of any Theater or cultural facility which is developed or substantially rehabilitated for qualification as a public benefit for Development Plan approval under this Article shall be limited to the uses specified in the Development Plan. Such uses shall be consistent with the uses specified in the Chinatown Community Plan. To guarantee the continuation of such uses, the Applicant may, but shall not be required to, lease or otherwise transfer any right, title, and interest in the Theater or cultural facility to the City of Boston or its designee.

(;As amended on May 9, 1996 and November 6, 2008.)

;SECTION 43-17. **Planned Development Areas: General Design and Environmental Impact Standards.** In addition to the Large Project Review requirements set forth in Article 80 of this code, Proposed Projects submitted for approval as part of a Development Plan application under Planned Development Area Review shall comply with the Chinatown General Design and Environmental Impact Standards described herein. The purpose of these additional standards is to maintain and improve the quality of life in the Chinatown area, with particular regard to the Landmarks and buildings listed on the Massachusetts Register of Historic Places.

- 1. Open Space. A Proposed Project must provide open space which has landscaping features, a management plan, and a shape, dimension, character, and location suitable to assure its use for park, recreation, conservation, or garden purposes.

- 2. Shadow Criteria. Each Proposed Project shall be arranged and designed in a way to assure that it does not cast shadows for more than two hours from 10:00 a.m. through 2:30 p.m., on any day from March 21 through September 21, in any calendar year, on Gateway Park, Pagoda Park, or Tai Tung Park.

3. Wind. Buildings shall be designed to avoid excessive and uncomfortable downdrafts on pedestrians. Each Proposed Project shall be shaped, or other wind-baffling measures shall be adopted, so that the Proposed Project will not cause ground-level ambient wind speeds to exceed the standards in Table C of this Article, provided that a site that does not conform to such standards on the effective date of this Article shall not become more non-conforming as the result of a Proposed Project and that acceptable wind standards for such Proposed Project shall be determined through Article 80 Large Project Review or Small Project Review.

TABLE C

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity (egv*)</u>	<u>Permitted Annual Occurrence Frequency</u>
Limit for Safety- All Pedestrian Areas	13.8 m/sec (31 mph)	1.0%
Major Walkways- Especially Principal Egress Path for High-Rise Buildings	13.8 m/sec (31 mph)	1.0%
Other Pedestrian Walkways- Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas Walking, Strolling Activities	6.3 m/sec (14.1 mph)	15%
Open Plazas and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

* The effective gust velocity (egv) is defined as $egv = U + 1.5 fvc$, where U is the mean windspeed at a particular location and fvc is the root mean square of the fluctuating velocity component measured at the same location over the same time interval.

4. Traffic Mitigation Measures. Each Proposed Project in a PDA that is subject to Large Project Review shall be subject to a Transportation Access Plan consistent with the Chinatown Transportation Improvement Plan (which Plan is included in the Chinatown Community Plan) and providing for effective transportation access to the Proposed Project and mitigation measures designed to minimize adverse traffic impacts on the Chinatown District and the South Cove, Bay Village, and South End neighborhoods. Such Transportation Access Plan shall also provide for effective parking management measures to minimize adverse parking effects within the Chinatown District and said neighborhoods. The Transportation Access Plan shall demonstrate that the location of the Proposed Project with respect to vehicular access and circulation and proximity to other

transportation systems is suitable for increased floor area. By its design and management, the Proposed Project shall emphasize use of mass transit and feasible measures to be undertaken to limit the impact of the Proposed Project on traffic congestion.

5. Parking Capacity Standards. Notwithstanding any contrary requirement of Section 43-23, each Proposed Project shall include no more than one (1) parking space per fifteen hundred (1,500) square feet of office development. Parking spaces reserved exclusively for retail, residential, or other non office uses within a Proposed Project shall not be considered in such computation.
6. Landmarks and Historic Buildings. Each Proposed Project shall be generally designed and arranged in such a way as to limit the reduction of light and air surrounding, and physical isolation of or intrusion on, Landmarks and Historic Buildings, and to minimize the shadow impact on their facades.
7. Boston Civic Design Commission Review. Each Proposed Project shall be subject to review by the Boston Civic Design Commission, in accordance with the provisions of Article 28.
8. Pedestrian Connections. In the Chinatown Gateway Special Study Area and the Turnpike Air-Rights Special Study Area, each Proposed Project shall establish safe and convenient pedestrian connections with the existing Chinatown commercial and residential areas through building scale, character, uses, and, where applicable, pedestrian access along Hudson Street, Kneeland Street, and Marginal Street.

(;As amended on May 9, 1996 and November 6, 2008.)

;SECTION 43-18. Institutional Master Plan Review Requirement.

Requirements for the review and approval of Institutional Master Plans are set forth in Article 80 (Development Review and Approval) for Institutional Master Plan Review. See Section 80D-2 (Applicability of Institutional Master Plan Review) concerning the applicability of such requirements, regulations applicable to exempt projects, exemptions for small institutions, and election to include exempt projects in an Institutional Master Plan.

1. Applicability of Requirement. A Proposed Project which includes one or more Institutional Uses, as identified in Appendix B hereto, shall be consistent with an approved Institutional Master Plan, within the meaning of paragraph 2(a) (Institutional Master Plan Review: Review Requirement) of Section 80D-2, unless such Proposed Project is exempt from such requirement, pursuant to subsection 2 (Exempt Projects) of this Section 43- 18.

2. Exempt Projects. A Proposed Project that would otherwise be subject to the Institutional Master Plan Review requirement set forth in subsection 1 of this Section 43-18 is exempt from such requirement if such Proposed Project is described in paragraph (a) (Certain Interior Alterations) or paragraph (b) (Special Provision for Conditional Approval of Certain Projects in Absence of Institutional Master Plan) of this Section 43-18.2.
- (a) Certain Interior Alterations. The provisions of this Section 43-18 shall not, in any event, apply to a Proposed Project limited to interior alterations affecting a gross floor area of fifty thousand (50,000) square feet or less and not involving a change of use or increase in FAR; provided, however, that the provisions of this Section 43-18 shall apply to a Proposed Project involving any interior alterations located on the ground floor materially affecting pedestrian access routes provided for in the Institutional Master Plan or materially affecting then existing space devoted to Retail, Service, Restaurant, Cultural, or Community Uses. For the limited purpose of applying the gross floor area threshold of the preceding sentence, a series of Proposed Projects on the same or contiguous lots, undertaken by the Applicant or affiliates of the Applicant pursuant to building permits issued within any period of twenty-four (24) consecutive months, shall be deemed to be a single Proposed Project.
- (b) Special Provision for Conditional Approval of Certain Projects in Absence of Institutional Master Plan. If no applicable current Institutional Master Plan has been approved, a Proposed Project containing less than five thousand (5,000) square feet of gross floor area devoted to one or more Institutional Uses otherwise allowed for the location, pursuant to Section 43-19, may be conditionally permitted, in accordance with the provisions of Article 6, but if an applicable current Institutional Master Plan has been approved, then such a Proposed Project must be in conformity with said current Institutional Master Plan. For the purpose hereof, a "current" Institutional Master Plan shall mean an Institutional Master Plan approved, either originally or in amended form, by the Boston Redevelopment Authority and the Zoning Commission, in accordance with this Section 43-18, not more than four (4) years prior to the date on which a Certification of Consistency under Institutional Master Plan Review has been issued for such Proposed Project, pursuant to Section 80D-10.

3. Content of Institutional Master Plan: Additional Elements. Pursuant to subsection 10 (Additional Elements) of Section 80D-3 (Scope of Institutional Master Plan Review; Content of Institutional Master Plans), the additional elements required in an Institutional Master Plan may include, but need not be limited to, the elements set forth in this subsection 3 of Section 43-18 to the extent that the Boston Redevelopment Authority determines that such elements are necessary, for city planning purposes, to judge the impact on the surrounding neighborhoods of the Institution's current and future Proposed Projects together with other development reasonably anticipated to occur.

- (a) Alternative Development Scenarios

An identification and analysis of alternative development scenarios and their impacts, including alternative sites for proposed future projects, and sites not currently owned by the institution. The Plan should define functions and services which could possibly be decentralized to minimize impacts upon the most intensely utilized areas of the institution's campus and surrounding geographical area.

- (b) Schedule of Proposed Projects

A schedule and estimated timetable for current and future proposed projects, and associated mitigation measures to alleviate project impacts, particularly regarding transportation impacts.

- (c) Institutional Transportation and Parking Management and Mitigation Plan

In the Institutional Transportation and Parking Management and Mitigation Plan, described in Section 80D-3.5:

- i. An analysis of the cumulative impacts of all projects proposed in the Institutional Master Plan on the transportation network, taking into account the cumulative impacts of other foreseeable projects, and a statement of measures proposed to mitigate, limit, or minimize, to the extent economically feasible, any adverse impact on the transportation network reasonably attributable to the projects proposed in the Institutional Master Plan; and
- ii. An analysis identifying the demand created by projects proposed in the Institutional Master Plan for tenant,

commuter, and short- and long-term visitor parking, nontenant parking, and evening and weekend parking, the impact of such parking needs on the available parking supply in Chinatown and adjacent neighborhoods, and the manner in which the institution proposes to meet demand reasonably attributable to the projects proposed in the Institutional Master Plan, taking into account the City's policy of encouraging use of transportation modes other than single-occupant private automobiles.

(d) Pedestrian Access

A definition of the pedestrian circulation system to be provided through the campus of the institution, including access to public facilities, including but not limited to public open spaces. Such pedestrian access system shall include appropriate signage, benches, and other amenities to indicate the public nature of the system.

(e) Housing Analysis

An identification of the impacts of the proposed future projects on city and neighborhood housing, and an analysis of possible mitigative measures to address these impacts upon the neighborhood housing supply.

(f) Environmental Analysis

An identification of the impact of proposed future projects on the environment, and an analysis of mitigative measures to be undertaken to address such environmental impacts.

(g) Urban Design Analysis

An analysis of the urban design aspects and impacts of proposed future projects. Said analysis shall include a definition of the major design elements of new or renovated buildings and associated landscaping, open space, and pedestrian access improvements, and their compatibility with existing buildings and improvements.

(h) Child Care Analysis

An analysis of child care needs created by proposed future projects, and a description of mitigative steps to be taken to address such newly created needs.

(i) Job Training Analysis

A description of the permanent employment to be created by proposed future projects, an analysis of the job skills necessary for such employment opportunities, and a definition of steps to be taken to work with Boston schools to train Boston students to achieve these skills.

(j) Impacts of Other Projects

An analysis of the impacts of other known, proposed future projects within the neighborhood within which the institution is located. Such analysis shall include projects identified by the Boston Redevelopment Authority and other projects which the institution is or reasonably should be aware of. Such analysis shall include a definition of the cumulative impacts of all known projects proposed for the surrounding neighborhood from all of the aforementioned perspectives of concern.

(k) Community Benefits Plan

An identification of measures to minimize or mitigate detrimental and adverse impacts of proposed future projects on communities and neighborhoods within which proposed future projects are located.

(l) Community Review

A description of the proposed process and timetable for community review of each proposed future project, including a statement of written information to be provided to the neighborhood group as that term is defined in Subsection 2 below and other citizen group, in connection with the review process.

4. Time for Renewal of Institutional Master Plan. An Institutional Master Plan Notification Form (IMPNF) seeking renewal of an Institutional Master Plan pursuant to Section 80D-8 (Renewal of Institutional Master Plan) shall be filed on or before the fourth (4th) anniversary of the date of the later of: (a) the Zoning Commission's approval of the original Institutional Master Plan, or (b) the most recent renewal thereof by the Zoning Commission (or by the Boston Redevelopment Authority, if no Zoning Commission review was required).

(;As amended on May 9, 1996.)

;SECTION 43-19. **Chinatown District Use Regulations.** In the Chinatown District the use of land and structures is hereby regulated as provided in this Section. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 43-19.

1. Neighborhood Business Opportunities. An Applicant for any Proposed Project with fifty thousand (50,000) or more square feet of floor area available for lease, other than for residential purposes, shall use Best Efforts, as hereinafter defined, to market space within the Proposed Project to Neighborhood Business Establishments from Chinatown, on terms comparable to those for other potential users of such space, as detailed in the remainder of this paragraph, for a period of not less than ten (10) years. Such Best Efforts shall be detailed in a Neighborhood Business Opportunity Plan, prepared in accordance with regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing, and approved by the Boston Redevelopment Authority. The Neighborhood Business Opportunity Plan shall take into account the size of the Proposed Project; the minimum user size (i.e., the number of square feet of each type of space) to which the Applicant contemplates leasing at identified stages of its marketing effort; and the uses permitted by the Applicant's leasing plan for office and retail space.

For the purpose of this Subsection 1, "Best Efforts" means reliance on traditional methods of leasing; and, whenever those traditional methods prove insufficient to afford a meaningful opportunity to Neighborhood Business Establishments to lease space within the Proposed Project, subject to the provisions of this Subsection, the Applicant shall take other affirmative measures to afford such an opportunity. The measures to be taken to satisfy the "Best Efforts" standard shall be in conformity with written regulations, referenced in the immediately preceding paragraph, and consistent with the applicable Neighborhood Business Opportunity Plan as approved by the Boston Redevelopment Authority. A Neighborhood Business Opportunity Plan shall not require that Applicant lease space to Neighborhood Business Establishments under any terms or conditions that are in any respect inconsistent with those terms and conditions generally applicable to other lessees in the Proposed Project.

2. Inclusion of Day Care Facilities. The provisions of this Subsection 2 apply only to Proposed Projects to exceed a building height of eighty (80) feet, or an FAR of six (6), or both. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential

Uses or Cultural Uses, which equals or exceeds one hundred thousand (100,000) square feet, shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table D of this Section, except that the day care facilities requirement for that portion of any Proposed Project consisting of Institutional Uses located in the Institutional Subdistrict and subject to an approved Institutional Master Plan shall be as set forth in said Institutional Master Plan. For the purposes of this Subsection 2 and Table D only, floor area devoted exclusively to hotel or motel uses shall be multiplied by 0.5 before being used in any calculation of required day care facilities. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this Subsection by either (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created elsewhere in the City. The provision of day care facilities in accordance with this Subsection shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this Subsection, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE D

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Square Feet)</u>	<u>Minimum Day Care Facilities (Gross Square Feet)</u>
100,000 up to 200,000	2% of gross floor area
200,000 up to 500,000	4,000
500,000 up to 1,000,000	8,000
More than 1,000,000	12,000

3. Expansion of Existing Businesses in Protection Areas and Commercial Chinatown Subdistrict. Any Proposed Project for the expansion of an existing use in the Historic Chinatown Protection Area, Liberty Tree Protection Area, Beach-Knapp Protection Area, or Commercial Chinatown Subdistrict, which use has an existing gross floor area of four thousand (4,000) square feet or less and is identified as allowed in Table E below, may be expanded to more than four thousand (4,000) square feet notwithstanding that such use, as thus expanded, is identified as conditional or forbidden in Table E. If such use, as thus expanded, is identified as forbidden in Table E, then after

such expansion, such use shall be treated as a nonconforming use, subject to the provisions of Article 9. Further, any such expansion shall be subject to the dimensional requirements of this Article and Code, including without limitation Section 13-3.

4. General Use Restrictions. Within the Chinatown District, the uses, described in greater detail in Appendix B, are allowed, conditional, or forbidden as set forth in Table E and Table F of this Article. (See Appendix D for Table E and Table F.) Certain uses are regulated by floor, and are set forth in Table E. Certain uses are not regulated by floor and are set forth in Table F. Uses identified in Table E and located in the basement of a building are regulated as provided in Table E for first floor uses. Uses identified in Table E and located on the fourth and higher floors are regulated as provided in Table E for third floor uses. No land or structure in the Chinatown District shall be erected, used, or arranged or designed to be used, in whole or in part, unless, for the proposed location of such use, the use is identified as "A" (allowed) in Table E or Table F or, subject to the provisions of Article 6, such use is identified as "C" (conditional) in Table E or F. Any use identified as "F" (forbidden) in Table F for the proposed location of such use is forbidden in such location. Any use not included in Table E or F is forbidden for the Chinatown District.

5. Allowed Accessory Uses. The following uses are allowed as accessory uses subject to the limitations and restrictions of Article 10:
 - (a) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use, or a group care residence, limited;
 - (b) a swimming pool or tennis court;
 - (c) the storage of flammable liquids and gases incidental to a lawful use;
 - (d) the keeping of animals, other than household pets, provided that every enclosure is sufficient to prevent a nuisance to any adjacent residences or eleemosynary institutions;
 - (e) an office, within a main building, of a professional person who resides in such building;
 - (f) an occupation for profit customarily carried on in a dwelling unit by a person residing within;
 - (g) the maintenance and operation of not more than four (4) amusement game machines accessory to eating and drinking establishments;
 - (h) in hospitals with more than fifty (50) beds, and in educational institutions with more than four hundred (400) full-time students, incidental uses and services ordinarily found in connection therewith and primarily for the patients and staff or students and faculty, when conducted wholly within a building and entered solely from within the building where there is but one (1) building on the lot or from an entrance not directly facing a street or lot line where there is more than one (1) building on the lot;
 - (i) the storage of flammable liquids and gases incidental to a lawful use;
 - (j) any use ancillary to, and ordinarily incident to, a lawful

main use, provided that any such use is not a use expressly forbidden in such location and subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory; (k) the maintenance and operation of an indoor payphone, provided that such use shall be forbidden unless located within a building at least ten (10) feet from an entrance..

6. Conditional Accessory Uses. The following uses are conditional accessory uses, subject to the provisions of Article 6 and Article 10: (a) a garage or parking space for occupants, employees, customers, students, and visitors, if such use is not accessory to a residential use, or a group care residence, limited; (b) a dormitory, provided that such use is accessory to an allowed or conditional institutional use; (c) the keeping of laboratory animals incidental to an allowed or conditional institutional use, provided that all resulting noise, dust, fumes, gases, odors, and refuse matter are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to health or safety; and (d) the manufacture, assembly, or packaging of products sold on the lot.

(;As amended on September 30, 1993, October 6, 1994, March 6, 1995, and September 20 and November 21, 1996, May 30, 2000, February 16 and April 9, 2001, March 15, 2006.)

;SECTION 43-20. **Specific Design Requirements.** All Proposed Projects within the Chinatown District shall comply with the specific design requirements established in this Section, subject to the provisions of Article 6A.

1. Street Wall Continuity. A Street Wall of any Proposed Project shall be built to be coextensive with the building line, as defined in clause (7A) of Section 2-1, of the block on which the Street Wall faces. If there is no determinable building line of said block, then said Street Wall shall be built at a depth from the curb line equal to that of the building line farthest from the curb line of the two (2) blocks adjacent to said block, facing onto the same street. If there is no determinable building line of either of said adjacent blocks, then (a) if the Proposed Project is subject to or has elected to comply with Large Project Review, an appropriate Street Wall location shall be determined through such review; (b) otherwise, the Proposed Project shall be deemed subject to the Design Component of Small Project Review for the limited purpose of determining an appropriate Street Wall location. The foregoing notwithstanding, within a PDA, a Street Wall of any Proposed Project shall be built at the depth from the curb line provided for in the applicable Development Plan. A Proposed Project shall comply with the requirements of this Subsection 1 with respect

to each facade facing a public street, but excluding alleys and private ways.

Except as otherwise provided in this Subsection 1, Street Walls shall be continuous across a lot. However, design articulation involving deviations from the Street Wall Plane of two (2) feet or less shall be permitted across the Street Wall. Further, larger recesses and bays in Street Walls shall be permitted as follows. For Proposed Projects not subject to nor electing to comply with Large Project Review, recesses in Street Walls shall be permitted as set forth in Table G and bay windows shall be permitted to extend from the Street Wall Plane above the ground-floor ceiling height, provided that such bay windows do not affect more than forty percent (40%) of the Street Wall Plane. For Proposed Projects that are subject to or have elected to comply with Large Project Review, recesses and bays may be permitted if appropriate to the creation of visually interesting designs or the accommodation of a specific ground level function, provided that the facade remains compatible with its historical and architectural surroundings and visual continuity in the block front is preserved, as determined by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.

The linear frontage of any single use of the first floor of any building on a street, excluding alleys, shall not exceed forty (40) feet in the Historic Chinatown Protection Area, Liberty Tree Protection Area, and Beach/Knapp Protection Area and fifty (50) feet in the Commercial Chinatown Subdistrict. For the purposes of the preceding sentence, separate business operations shall be deemed distinct uses notwithstanding that they may be classified under the same use category. The maximum allowed linear frontage on a street of any individual entrance to an off-street parking or loading area of a Proposed Project in the Chinatown District is thirty (30) feet. The maximum allowed linear frontage on a street of any office, hotel, motel, or residential lobby of a Proposed Project in the Chinatown District, excluding areas within which PDAs are allowed and excluding the Institutional Subdistrict, is fifteen (15) feet.

TABLE G

Permitted Street Wall Recesses*

<u>Location</u>	<u>Maximum Depth from the Street Wall Plane</u>	<u>Maximum Aggregate Surface Area</u>
Below ground floor ceiling height	Two (2) feet	Fifty percent (50%)
	Four (4) feet	Thirty percent (30%)
Above ground floor ceiling height	Ten (10) feet	Fifty percent (50%)
	Fifteen (15) feet	Thirty percent (30%)

* The "ground floor ceiling height" means the height of the underside of the floor structure of the second floor. The "maximum aggregate surface area" means the portion, expressed as a percentage, of the surface area of the specified part of the Street Wall Plane (i.e., above the ground floor ceiling height or below) affected by recesses. The areas within which recesses are permitted are not cumulative; e.g., above the ground floor ceiling height, the maximum aggregate surface area that may be affected by recesses, whether of 10 or 15 feet, is 50%.

2. Street Wall Height. The Street Wall Height of Proposed Projects within the Chinatown District shall not exceed the limits set forth in Table H, except that within a PDA the Street Wall Height shall be as set forth in the approved Development Plan. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 43-20.

TABLE H

Maximum Street Wall Heights

<u>Location</u>	<u>Maximum Street Wall Height</u>
<u>North of Kneeland Street</u>	
Facade on north side of Kneeland Street	80'
Facade on south side of Essex Street	80'
Facade on east side of Washington Street	80'
Facade on west side of Central Artery Corridor	80'
Facade on east or west side of Harrison Street	80'
Elsewhere north of Kneeland Street	65'
<u>South of Kneeland Street</u>	
Facade on south side of Kneeland Street	125'
Elsewhere south of Kneeland Street	125'

3. Street Wall Transparency Regulations. The provisions of this Subsection 3 shall apply only to any Proposed Project with a gross floor area of five thousand (5,000) or more square feet or and only to Street Walls facing onto Beach Street and Harrison Avenue in the Historic Chinatown Protection Area, Liberty Tree Protection Area, Beach/Knapp Protection Area and Commercial Chinatown Subdistrict. Not less than sixty percent (60%) of the Display Window Area of a Proposed Project, excluding any portion of the Display Window Area occupied by a pedestrian entrance or entrance/exit to an off-street parking or loading area shall be glazed and transparent, provided that if the Proposed Project is subject to or has elected to comply with Large Project Review, the numerical standard may be waived if the extent and design of glazing and pedestrian entrances is such as will encourage active pedestrian use of the street and promote visual interest in the facade, as determined by the Boston Redevelopment Authority in such review pursuant to Article 80. Lettering and designs painted on not more than forty percent (40%) of the required glazed surface area shall not be deemed to be inconsistent with the aforesaid glazing and transparency requirement. The foregoing shall not, however, affect or limit the applicability of Article 11, Signs, to such painted lettering or designs.

4. Setback Requirements.

- (a) Sky Plane Setbacks. Other than decorative cornices and other surface ornamentation, every portion of a Proposed Project (including, but not limited to, mechanical equipment) above the Street Wall Height of such Proposed Project shall be set back by not less than five (5) feet at the Street Wall Heights set forth in Subsection 2 of this Section 43-20 except that sky plane setbacks in a PDA shall be as set forth in the approved Development Plan. Portions of a Proposed Project more than one hundred fifty-five (155) feet high should be treated in a manner to create a visually distinctive roof or other termination of the facade of the Proposed Project. The Sky Plane Setback provisions established in this paragraph shall not be applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than nine thousand (9,000) square feet.

- (b) Entrance Elements. In order to permit the creation of a distinctive entrance element, and notwithstanding any contrary provision of paragraph (a) of this subsection 4, a portion of the front facade of a building may be built to the one hundred fifty-five (155) foot level (but, in any event, not more than the applicable maximum permitted building height) without setbacks provided that such portion has a maximum horizontal dimension of 35 feet.

(;As amended on May 9, 1996.)

;SECTION 43-21. **Design Review and District Design Guidelines for Beach/Knapp and Liberty Tree Protection Areas.** Within the protection areas depicted on Map 1G of this Code as the Beach/Knapp Protection Area and the Liberty Tree Protection Area, any Proposed Project for exterior alteration or construction shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component). Notwithstanding any contrary provision of Section 80E-2.1, such review shall be applicable whether or not any such Proposed Project is subject to the jurisdiction of the Boston Landmarks Commission or any other architectural board or commission having design review authority and established pursuant to a general or special law of the Commonwealth of Massachusetts.

To be consistent with the design guidelines established in this Section 43-21, a Proposed Project shall be designed such that the exterior proportions, scale, massing, window treatment, materials, colors, and architectural detailing are compatible with the observable historical and architectural character of other

buildings in the area within which the Proposed Project is located, and with streets and open spaces to which it is visually related, as identified in the Chinatown Community Plan. To preserve a lot-by-lot appearance, facade ornamentation should be varied, and facades should be divided into modules or bays to reflect the lot width established by historic buildings within each area and to continue the established bay rhythm of each block.

1. Special Facade Considerations. In reaching its decision, pursuant to Section 80E-4.1 (Standards for Small Project Review Approval: Design Component), the Boston Redevelopment Authority shall consider whether the Proposed Project will have an adverse effect on: (a) the character of the Beach/Knapp Protection Area as an area within which brick facades predominate; (b) the character of the Liberty Tree Protection Area as an area within which ornate facades and hip, gabled, and mansard roofs are distinctive elements; or (c) the lot-by-lot appearance of the district.

(;As amended on May 9, 1996.)

SECTION 43-22. Restrictions on Change of Use or Occupancy of Theaters. The Commissioner of the Inspectional Services Department shall not issue a change of use or occupancy permit for any Theater within the Chinatown District, as identified in the Chinatown Community Plan, except in accordance with the provisions of this Section.

1. Demolition of Unsafe Theaters. The Commissioner of the Inspectional Services Department may issue a demolition permit where the Theater or building is unsafe and demolition is required pursuant to the provisions of the Commonwealth of Massachusetts State Building Code.
2. Authorized Change of Use or Occupancy of Theaters. Excepting the provisions of Subsection 1 of this Section, the Commissioner of the Inspectional Services Department shall issue a change of use or occupancy permit for any Theater within the Chinatown District under the provisions of Article 6 only if the Board of Appeal finds, after reviewing the recommendations, if any, of appropriate City departments and agencies, and appropriate community and neighborhood organizations in the Midtown and Chinatown areas, and in addition to all other conditions required under Section 6-3, Section 6-3A, and Section 6-4, where applicable, that: (a) change of use or occupancy of the Theater structure will not unduly diminish the historic character of the Washington Street as a cultural, entertainment, and theatrical showcase, taking into consideration: (i) current physical characteristics of the Theater that affect its suitability for use as a Theater, including but not limited to seating

capacity, interior configuration, and location; (ii) history of its use as a Theater; (iii) the likelihood of its future use for Theater production; and (iv) the Applicant's plans for replacement of the Theater structure with performing arts facilities supportive of the objectives and specifications of the Chinatown Community Plan and the Midtown Cultural District Plan. In its approval of a conditional use under this Subsection 2, the Board of Appeal shall attach as conditions and safeguards, at a minimum, that: (b) the Applicant for any Proposed Project on the lot containing a portion or all of the former site of the Theater either (i) replace that Theater with a fully equipped new Theater or other cultural facility of a condition, size, and type which is appropriate, under the circumstances pertaining at the time of the permit application, to contribute to the balance of cultural facilities responsive to the needs of the Chinatown District and Midtown Cultural District, as identified in the Chinatown Community Plan and Midtown Cultural District Plan; or (ii) substantially rehabilitate or cause the substantial rehabilitation of an existing Theater, in accordance with the provisions of Subsection 3 of this Section 43-22; and (c) the Applicant provide evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the Theater or cultural facility in accordance with the Chinatown Community Plan and Midtown Cultural District Plan or (ii) to lease or otherwise transfer such Theater or cultural facility for such use (which may include a lease or transfer to the City of Boston or its designee). In the case of a new Theater, the new Theater must provide for sufficient facilities to support Theater operations, such as administrative offices, rehearsal studio space, dressing room/green room space, and storage space, as identified in the Midtown Cultural District Plan. In the case of a Theater in a building or an interior designated as a Landmark, such permit must also be authorized by the Boston Landmarks Commission, in accordance with Chapter 772 of the Acts of 1975, as amended from time to time. The Applicant shall also enter into an agreement for substantial rehabilitation of an existing Theater, as detailed in Section 38-25, where applicable.

3. Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying for approval under this Section 43-22 consists of: (a) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use, including an equipment level commensurate with its anticipated use, as set forth in the Chinatown Community Plan; or (b) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a facade restoration, may also be included in qualifying as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, raking the

orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of a original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, parking, or improvements to mechanical systems alone.

SECTION 43-23. **Off-Street Parking.** The provisions of Article 23, Off-Street Parking, shall govern any Proposed Project in the Chinatown District, except a Proposed Project in a PDA for which off-street parking shall be provided as required in the applicable Development Plan. The off-street parking requirements stated as applicable to a specific floor area ratio set forth in Table B of Section 13-1, including the exemption from the off-street parking requirement set forth in Section 23-6(a), shall also apply to the same floor area ratio set forth in this Article. Where a use provided for in this Article is not included in any use item number listed in Article 23, off-street parking facilities shall be provided in accordance with the requirements for the use item number listed in Article 23 which is most similar to such use. The foregoing notwithstanding, in no event shall any Proposed Project be required to provide parking in excess of that permitted under any applicable state or federal parking freeze or similar law.

SECTION 43-24. **Adult Entertainment District.** Within the Adult Entertainment District, Adult Entertainment Uses, identified in Appendix B, are allowed, and the prohibition of moving or flashing signs in Section 11-2 does not apply.

;SECTION 43-25. **Off-Street Loading.** Article 24 provides the regulations governing the provision and design of off-street loading facilities for the use of any structure or land in the Chinatown District not subject to Large Project Review. Where a use provided for in this Article is not included in any use item number listed in Article 24, off-street loading facilities shall be provided in accordance with the requirements for the use item number listed in Article 24 which is most similar to such use. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review.

(;As amended on May 9, 1996.)

SECTION 43-26. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 43-27. **Severability.** The provisions of this Article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

SECTION 43-28. **Appendices.** The following appendices to this Article are incorporated herein:

1. Appendix A - Definitions
2. Appendix B - Use Categories
3. Appendix C - Eligible Theaters, Historic Buildings, and Landmarks
4. Appendix D - General Use Restrictions
 - a. Table E- Uses Regulated by Floor
 - b. Table F- Uses Not Regulated by Floor

APPENDIX A to ARTICLE 43

Definitions

For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Adjusted Income" is defined as it is in 24 CFR 813.102, as amended, or as set forth in regulations adopted in accordance with Section 43-24.
2. "Affordable" means, in the case of an owner-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, and, in the case of a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate--Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income to occupy the unit.
3. "Annual Income" is defined as it is in 24 CFR 813.106, as amended, or as set forth in regulations adopted in accordance with Section 43-24.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 43-4, or the authorized agent of any such person or entity.
5. "Best Efforts" has the meaning ascribed in Section 43-19.1.
6. "Chinatown" or "Chinatown District" means the area depicted on a map entitled "Map 1G Chinatown District" of the series of maps entitled "Zoning Districts - City of Boston" as amended.

(;As amended on July 31, 1997.)
7. "Chinatown Community Plan" means the plan of the same name, adopted by the Boston Redevelopment Authority on March 29, 1990.
8. "Chinatown District Zoning Plan" means the regulations imposed by this article.
9. "Display Window Area" means that portion of the Street Wall between (i) a height of two (2) feet above the ground floor and (ii) the height of the underside of the floor structure of the second floor, or fourteen (14) feet, whichever is less.

APPENDIX A to ARTICLE 43 (continued)

10. "FAR" means Floor Area Ratio, as defined in clause (20) of Section 2-1.
11. "Ground Level Uses" has the meaning ascribed in Section 43-19.3.
12. "Historic Building" means a building listed on the Massachusetts Register of Historic Places.
13. "Landmark" means any building or structure designated a landmark pursuant to Chapter 772 of the Acts of 1975, as amended.
14. "Level of Service" means the functional capacity of a traffic intersection as measured by the ratio between the volume of vehicles passing through the intersection and the capacity of the intersection.
15. "Low-Income Household" means any household whose Annual Income does not exceed 50% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
16. "Map 1G" means Map 1G Chinatown District (supplemental to 'Map 1 Boston Proper') of the series of maps entitled "Zoning Districts - City of Boston," as amended.
17. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Section 43-16.
18. "Moderate-Income Household" means any household whose Annual Income does not exceed 80% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
19. "Neighborhood Business Establishments" means a business firm with fixed offices or distribution points located within the boundaries of the Chinatown District and with a business address within such boundaries. A residential address may be used to establish status as a "Neighborhood Business Establishment."
20. "Peak Hours" means the periods from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday.
21. "Proposed Project" means the demolition, erection, reconstruction, structural alteration, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to

APPENDIX A to ARTICLE 43 (continued)

obtain a building or use permit. A Proposed Project may proceed in phases and may include more than one building, structure, or use.

22. "Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the Commonwealth of Massachusetts, or one or more political subdivisions of the Commonwealth, or of the United States.
23. "State Building Code" means the state building code and amendments and rules and regulations thereto as promulgated by the board of building regulations under sections ninety-three, ninety-four, and ninety-five of Chapter One Hundred Forty Three of the General Laws.
24. "Street Wall" means the portion of the exterior wall (including recesses, bays, windows, doors, and other features) of a Proposed Project that fronts on a public street (excluding public alleys) and is below the Street Wall Height, determined pursuant to Section 43-20.
25. "Street Wall Plane" means the planar surface of the Street Wall (disregarding recesses, bays, windows, doors, etc.) required pursuant to Section 43-20.
26. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor shall not exceed the specified height limit for the applicable district or subdistrict by more than the lesser of (i) ten (10) feet or (ii) two-thirds of the average floor-to-floor height of the building, excluding the ground floor. "Substantial Accord" shall not be interpreted as allowing a Proposed Project to exceed the maximum permitted FAR.
27. "Theater" means a facility equipped for the production and presentation of performing and visual arts events.
28. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code
29. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

;APPENDIX B to ARTICLE 43

Use Categories

The following uses are regulated pursuant to Section 43-19.

Adult Entertainment Uses. As set forth in Use Item No. 34A and No. 38A of Table A of Section 8-7, adult entertainment uses shall be allowed only within the Adult Entertainment District, established pursuant to Section 3-1A by Map Amendment No. 130.

Community Retail Uses. Store primarily serving the retail business needs of the Chinatown Community, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, packaged alcoholic beverages, prescription drugs, health and beauty products, tobacco products, clothing, drygoods, books, flowers, paint, hardware and minor household appliances.

Community Uses. A facility which provides educational, recreational, advocacy, informational, consulting, or support services on a non-profit basis to the community, in areas such as housing, employment, job training, law, health care, child care, and senior care.

Cultural Uses. Art galleries (both commercial and non-profit); music, dancing, visual arts, performance or theatrical studios.

Day Care Uses. Day care facility.

Educational Uses. Nursery school; kindergarten; or elementary or secondary school; trade, professional, or other school; adult education facility.

Entertainment Uses. Auditorium; theater, including a motion picture theater but not a drive-in theater; concert hall; dance hall; bowling alley; skating rink; pool room; billiard parlor; or any commercial establishment maintaining and operating any amusement game machine, other than as an accessory use.

General Retail Uses. Department store; furniture store; pawnshops; general merchandise mart; or other store serving the general retail business needs of a major part of the city, including accessory storage.

(As amended on February 16, 2001.)

Group Care Residence, General. General group care residence, as defined by Section 2-1(22A).

APPENDIX B to ARTICLE 43 (continued)

Group Residence, Limited. Limited group care residence, as defined by clause (22B) of Section 2-1.

(;As amended on February 22, 1991.)

Institutional Uses. College or university granting degrees by authority of the Commonwealth of Massachusetts; hospital or sanatorium; clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot; clinic not accessory to a main use; scientific research and teaching laboratory; and the creation, assembly, production, and sale of prototypes (including equipment, apparatus, machines, and other devices for research and development), pharmaceuticals, and other products of an Institutional Use, including research and development in the medical, dental, veterinary, and biotechnology fields, whether non-profit or for-profit, or a combination thereof.

(;As amended on March 6, 1995 and September 20, 1996.)

Light Manufacturing Uses. The design, development, manufacture, compounding, packaging, processing, fabrication, altering, assembly, repairing, servicing, renting, testing, handling, or transfer of products including electronic and communication products, metal and wood products, office equipment or machinery, pharmaceutical products, or textile products.

Office Uses. Office of professional persons; real estate, insurance, or other agency or government office; post office; bank (other than drive-in bank or similar establishment); offices of cultural groups; or display or sales space of a wholesale, jobbing, or distributing house.

(;As amended on September 20, 1996.)

Open Space Uses. Open space in public ownership dedicated to or appropriated for active or passive recreational use or to the conservation of natural resources; or open space in private ownership for active or passive recreational use or for the conservation of natural resources; open space recreational building; or private grounds for games and sports not conducted for profit.

Private Club Uses. Private club operated for members only; quarters of fraternal organizations.

↔Public Service Uses. Public service pumping station; public service sub-station; automatic telephone exchange, telecommunications data distribution center; fire station; police station; or outdoor payphone; provided that the requirements of St. 1956, c.665 s.2, where apt, are met.

(↔As Amended on October 20, 2000; March 15, 2006.)

APPENDIX B to ARTICLE 43 (continued)

Religious Uses. Place of worship; monastery; convent; or parish house.

Residential Conversion. Any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.

Residential Uses. Detached dwelling occupied by not more than two families; semi-detached dwelling occupied by not more than two families on each side of a party wall; attached or row house occupied by not more than two families in each structure between fire walls; multi-family dwellings; any dwelling converted for more families, where structures after conversion will conform to the code; lodging or boarding house; apartment hotel; artists' mixed-use; convalescent, nursing or rest home; orphanage.

Residential uses include any Affordable dwelling units, including but not limited to Affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.

Restaurant Uses. Lunchroom, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, and the sale over the counter, wholly incidental to such restaurant use, of food or dishes prepared on premises for on-or off-premises consumption, ready for take out.

Service Uses. Barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry cleaner; tailor shop; hand laundry; dry cleaning shop; check cashing business; body art establishment; or similar use.

(;As amended on October 6, 1994, and April 9, 2001)

Special Service Uses. Funeral home; undertaker's establishment; mortuary; animal hospital or clinic; kennel; pound; and poultry shop.

Take-Out Restaurant Uses. Sale over the counter, not wholly incidental to a local retail business or restaurant use, of on-premises prepared food or drink for on- off-premises consumption, if, as so sold, such food or drink is ready for take-out.

Theater Conversion. Change of use or occupancy of a Theater.

Trade Uses. A retail use which provides custom-crafted goods and/or services for sale directly to the consumer, reserving some storefront space for display and retail service, such as a caterer's establishment; food processing establishment; printing shop; taxidermist's shop; upholster's shop; carpenter's shop; electrician's

APPENDIX B to ARTICLE 43 (continued)

shop; crafts' shop; jeweler's shop; novelty products shop; art metal craft shop; art needle work shop; sewing shop; dressmaking shop; fabric or yarn shop; gift shop; clock or watch shop, or repair shop; antique store; appliance repair shop; wallpaper shop; musical instruments repair shop; shoe repair shop; radio and television repair shop; or plumber's shop; or similar use.

Transportation Uses. Bus terminal; bus station; railroad passenger station; motor freight terminal; yard for storing or servicing trucks or buses; rail freight terminal; or storage yard accessory to railroad operation, except such transportation uses are conditional in the Chinatown Gateway Special Study Area.

Vehicular Uses. Repair garage; gasoline service station; car wash; sale of automobiles and trucks where operation is carried on within a structure; outdoor sale or display for sale of new or used motor vehicles; automobile rental agency; or establishment for sale and installation within a building of batteries, seat covers, tires, and similar automotive parts and accessories, except such vehicular uses are conditional in the Chinatown Gateway Special Study Area.

Wholesale Uses. Wholesale business, including accessory storage (other than of flammable liquids, gases and explosives) in roofed structures, except such uses are allowed in the Chinatown Gateway Special Study Area.

Ancillary Uses. Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that, any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.

APPENDIX C to ARTICLE 43

Eligible Theaters, Historic Buildings, and Landmarks

	<u>Buildings</u>	<u>Address</u>
1.	Liberty Tree	628, 636, 638, 644 Washington
2.	Pilgrim Theatre	658 Washington
3.	Stuart Theatre	696-702 Washington
4.	Center Theatre (Globe Theatre)	688-692 Washington
5.	11-31 Essex Street	11-31 Essex Street
6.	Kingston Building	105-107 Essex Street
7.	Chinese Merchant Association	20 Hudson Street
8.	Auchmuty Building	104-122 Kingston Street
9.	121-127 Kingston Street	121-127 Kingston Street
10.	129-131 Kingston Street	129-131 Kingston Street
11.	4-11 Oxford Place	4-11 Oxford Place
12.	17-23 Beach Street	17-23 Beach Street
13.	25-29 Beach Street	25-29 Beach Street
14.	5 Knapp Street	5 Knapp Street
15.	7 Knapp Street	7 Knapp Street
16.	9-23 Knapp Street	9-23 Knapp Street

APPENDIX D to ARTICLE 43

General Use Restrictions

Appendix D to Article 43 consists of the following tables:

1. TABLE E - Uses Regulated by Floor
2. TABLE F - Uses Not Regulated by Floor

See also Section 43-19.4, General Use Restrictions.