

^ARTICLE 38

MIDTOWN CULTURAL DISTRICT
(^Article inserted on March 20, 1989*)

TABLE OF CONTENTS

	<u>Page</u>
Section 38-1	Statement of Purpose, Goals, and Objectives 5
38-2	Recognition of the Midtown Cultural District Plan 5
38-3	Physical Boundaries 5
38-4	Applicability..... 6
 REGULATIONS APPLICABLE IN PROTECTION AREAS	
Section 38-5	Establishment of Protection Areas..... 6
	1. Boston Common and Public Garden
	2. Bay Village
	3. Newspaper Row/Old South
	4. Ladder Blocks and Washington Street Theater
	5. Tremont Street
	6. Boylston Street
	7. Hayden Building
	8. Jacob Wirth
	9. Stuart Street/Washington Street
38-6	Rooftop Additions Within Protection Areas 8
	1. As-of-Right
	2. As Conditional Uses
 REGULATIONS CONCERNING BUILDING HEIGHT AND FLOOR AREA RATIO (FAR)	
Section 38-7	As-of-Right Building Height and Floor Area Ratio..... 8
	1. Exceptions in Housing Priority Areas
	2. Substantial Accord

*Date of public notice: February 17, 1989 (see St. 1956, c. 665, s. 5).

** As amended through August 1, 2012.

38-8 Increased FAR for Certain Uses..... 9

1. Uses Qualifying for Increased FAR
2. Qualification as Substantial Rehabilitation of a Theater
3. Use of Qualifying Floor Area

REGULATIONS APPLICABLE IN SPECIAL STUDY AREAS

Section 38-9 Deleted

REGULATIONS APPLICABLE IN PLANNED DEVELOPMENT AREAS

Section 38-10 Establishment of Areas Within Which Planned Development Areas May be Permitted 11

1. Consistency with Section 3-1A; Review and Approval Requirements

38-11 Planned Development Areas: Use and Dimensional Regulations..... 12

1. Use Regulations
2. Dimensional Regulations

38-12 Planned Development Areas: Standards for Development Plan Approval 13

38-13 Deleted

38-14 Planned Development Areas: Public Benefit Criteria 14

1. Development of New Theater or Other Cultural Facility
2. Substantial Rehabilitation of Existing Theaters, Historic Buildings, and Landmarks
3. Creation of Affordable Housing
4. Use of Theaters and Cultural Facilities
5. Priority in Development Plan Approval for Substantial Rehabilitation of Existing Theaters, Landmarks, and Historic Buildings
6. Amendment of Development Plan

	7.	Development Plan Approval for Development of New Usable Open Space in the Hinge Block (PDA-IV)	
38-15		Planned Development Areas: Recommendations from Community Groups and City Departments	18
38-16		Planned Development Areas: General Design and Environmental Impact Standards	18
	1.	Shadow Criteria	
	2.	Wind	
	3.	Transportation Access	
	4.	Skyline Plan	
	5.	Landmarks and Historic Buildings	
	6.	Enhancement of Pedestrian Environment	
	7.	Boston Civic Design Commission Review	
38-17		Planned Development Areas: Relocation Assistance	21

USE REGULATIONS

Section	38-18	Midtown Cultural District Use Regulations.....	21
	1.	Ground Level and Cultural Uses	
	2.	Housing Priority Areas	
	3.	Neighborhood Business Opportunities	
	4.	Inclusion of Day Care Facilities	
	5.	Allowed Uses	
	6.	Conditional Uses	
	7.	Forbidden Uses	

REGULATIONS GOVERNING DESIGN

Section	38-19	Specific Design Requirements.....	28
	1.	Street Wall Continuity	
	2.	Street Wall Height	
	3.	Display Window Area Regulations	
	4.	Setback Requirements	
	5.	Small Business Expansion Area	

38-20	Design Review and District Design Guidelines for Protection Areas	33
1.	Special Facade Considerations	

MISCELLANEOUS PROVISIONS

Section	38-21	Restrictions on Change of Use or Occupancy of Theaters.....	34
	1.	Demolition of Unsafe Theaters	
	2.	Authorized Change of Use or Occupancy of Theaters	
	3.	Qualification of Substantial Rehabilitation of a Theater	
	38-22	Off-Street Parking Not Required.....	35
	38-23	Adult Entertainment District	35
	38-24	Off-Street Loading	36
	38-25	Agreement for Substantial Rehabilitation of Existing Theater, Landmark, or Historic Building	36
	1.	Parties to the Agreement	
	2.	Enforceability of Covenants and Conditions	
	3.	Completion of Substantial Rehabilitation	
	4.	Recording of Agreement	
	38-26	Regulations.....	37
	38-27	Severability	37
	38-38	Appendices.....	37
		A - Deleted	
		B - Ground Level Uses and Cultural Uses	
		C - Deleted	
		D - Deleted	
		E - Definitions	

(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 38-1. Statement of Purpose, Goals, and Objectives. The purpose of this article is to establish the zoning regulations for the comprehensive plan for the Midtown Cultural 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 Midtown Cultural District Plan are to direct downtown development in a way that promotes balanced growth for Boston; to prevent overdevelopment of the Financial District and the Back Bay by promoting mixed-use development in Midtown; to revitalize Midtown as the region's center for performing and visual arts by rehabilitating historic theaters and creating new cultural facilities for the city's nonprofit arts community; to protect the quality of life and provide for expansion of the thriving Chinatown neighborhood by creating affordable housing and business opportunities, and by controlling institutional expansion in the area; to preserve Boston's historic resources and public open spaces, which provide enjoyment to all residents and visitors and which increase land values in their proximity, by virtue of historic, aesthetic, and environmentally beneficial qualities; to provide new and expanded facilities for community services; and to create a new residential neighborhood downtown by encouraging the development of housing which is affordable to all segments of the community.

SECTION 38-2. Recognition of the Midtown Cultural District 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 Midtown Cultural District (Special Study Area No. 2), the commission hereby recognizes the Midtown Cultural District Plan (adopted by the Boston Redevelopment Authority on January 12, 1989, and as amended from time to time) as the general plan for the Midtown Cultural District. The Midtown Cultural District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Midtown Cultural District. The district includes several distinct areas, such as but not limited to Downtown Crossing and Park Square. This article is one of the means of implementing the Midtown Cultural District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Chapter 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 38-3. Physical Boundaries. The provisions of this article are applicable only in the Midtown Cultural District, which includes portions of Downtown Crossing south of School Street, the Essex Street Corridor and Chinatown, the historic Cultural District, and Park Square. The boundaries of the Midtown Cultural District are as shown on a map entitled, "Map 1A Midtown Cultural District (supplemental to `Map 1 Boston Proper')" of the series of maps entitled "Zoning Districts - City of Boston," as amended.

(^As amended on March 15, 1993)

SECTION 38-4. **Applicability.** This article together with the rest of this code constitutes the zoning regulation for the Midtown Cultural District and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Application of the provisions of Article 27D to the Midtown Cultural District is rescinded, and the Midtown Cultural District is deleted from the Downtown Interim Planning Overlay District on the effective date of this article. 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 Sections 13-1, 13-2, and 13-4, and Articles 8 and 14 through 24, of this code for the Midtown Cultural District. The provisions of this article, however, are not applicable to the following Proposed Projects, which are governed by the rest of this code.

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 38-5. **Establishment of Protection Areas.** This section establishes "protection areas" within the Midtown Cultural District. The protection areas are established in order to protect public open spaces or residential neighborhoods abutting the protection areas, or the concentration of historic buildings within the protection areas. The protection areas are shown on Map 1A of this code. Any other provision of this article or this code notwithstanding, Proposed Projects within a protection area are limited to the building height or floor area ratio (FAR) specified for such protection area as follows. The setback provisions set forth in Section 38-19 apply to Proposed Projects within protection areas. The following protection areas are established:

1. Boston Common and Public Garden Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Boston Common and Public Garden Protection Area," any portion of a Proposed Project within 100 feet of the nearest street line of any street described below are limited to the building height specified for such street as follows:
 - (a) Tremont Street from Bromfield Street to West Street: 125 feet maximum height.
 - (b) Tremont Street from West Street to Boylston Street: 155 feet maximum height.

- (c) Boylston Street from Tamworth Street to Park Square: 130 feet maximum height.
- (d) Boylston Street from Park Square to the westerly sideline of Hadassah Way, to a depth of 75 feet from Boylston Street: 130 feet maximum height; beyond said depth of 75 feet: 155 feet maximum height.
- (e) South side of Boylston Street from the westerly sideline of Hadassah Way to Arlington Street to a depth of 50 feet from Boylston Street: 85 feet maximum height; beyond said depth of 50 feet: 130 feet maximum height. See also Section 16-6(f).

Any portion of a Proposed Project within the Boston Common and Public Garden Protection Area is limited to FARs of eight (8); provided that such a Proposed Project shall have an as-of-right FAR of ten (10), if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

2. Bay Village Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Bay Village Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
3. Newspaper Row/Old South Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Newspaper Row/Old South Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) are allowed.
4. Ladder Blocks and Washington Street Theater Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Ladder Blocks and Washington Street Theater Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) are allowed.
5. Tremont Street Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Tremont Street Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) are allowed.
6. Boylston Street Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Boylston Street Protection Area," a maximum building height of eighty (80) feet and a maximum FAR of seven (7) are allowed.

7. Hayden Building Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Hayden Building Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
8. Jacob Wirth Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Jacob Wirth Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
9. Stuart Street/Washington Street Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Stuart Street/Washington Street Protection Area," a maximum building height of one hundred (100) feet and a maximum FAR of eight (8) are allowed.

(;As amended on March 15, 1993 and May 9, 1996.)

SECTION 38-6. Rooftop Additions within Protection Areas. Rooftop additions within any protection area are governed by the provisions of paragraphs 1 and 2 of this section.

1. As-of-Right Rooftop Additions. A rooftop addition within any protection area is allowed as of right only if such a rooftop addition is below sixty-five (65) feet in height measured from grade.
2. Rooftop Additions Permitted as Conditional Uses. No roofed structure designed or used for human occupancy, access, or storage shall be erected or enlarged on the roof of an existing building if such construction is not allowed as of right pursuant to paragraph 1 of this section, unless after public notice and hearing and subject to Sections 6-2, 6-3, and 6-4 the Board of Appeal grants permission therefor. In reaching its decision, said Board shall consider whether such roof structure is architecturally consistent with the distinctive historical and architectural character of the protection area. The Inspectional Services Department shall transmit a copy of the appeal for the conditional use to the Boston Landmarks Commission. The Boston Landmarks Commission may, within thirty days after the date of such transmittal, file with the Board of Appeal a recommendation, provided that if no such recommendation is received within said thirty days, the Board of Appeal may render its decision without such recommendation.

SECTION 38-7. As-of-Right Building Height and Floor Area Ratio. Except as provided in Section 38-5 pertaining to protection areas, a Proposed Project within the Midtown Cultural District is allowed an as-of-right building height of one hundred twenty-five (125) feet and an as-of-right FAR of eight (8); provided that any Proposed Project shall have an as-of-right building height of one hundred fifty-five (155) feet and an as-of-

right FAR of ten (10) if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6. The setback provisions set forth in Section 38-19 apply to Proposed Projects for as-of-right building height and FAR.

1. Exceptions in Certain Housing Priority Areas. Notwithstanding the foregoing provision, the building height and FAR permitted by exception, as provided in Article 6A, within a Housing Priority Area which is not also within a protection area established pursuant to Section 38-5 are two hundred fifty (250) feet and twelve (12), respectively, subject to the provisions of Section 38-18.2.
2. Building Height and FAR in Substantial Accord with As-of-Right Building Height and FAR. The Board of Appeal may, by exception to this code as provided in Article 6A and this paragraph, grant exceptions for FAR and, in a Planned Development Area or in the area north of Bromfield Street, for building height, in excess of the as-of-right building height and FAR established in this Section 38-7. The Board of Appeal shall grant such an exception for building height or FAR under this paragraph only if it finds that: (a) such an exception (i) is related to variations in the ground level of the lot; (ii) is in furtherance of the creation or protection of significant historical or architectural features, including but not limited to decorative cornices, ornamental features, and the like; or (iii) is related to unique characteristics of the lot or buildings on the lot, and not the Midtown Cultural District as a whole; (b) the proposed height and FAR are in Substantial Accord with the as-of-right building height and FAR for the Proposed Project established in this Section 38-7; (c) the Proposed Project and its height and massing are compatible with the surrounding area, in accordance with the Urban Design Component of Large Project Review; (d) such an exception is consistent with the Midtown Cultural District Plan and the general plan for the city as a whole; (e) such an exception is in harmony with the general purpose and intent of this code; and (f) 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.

(^As amended on August 17, 1989, June 14, 1990, and May 9, 1996.)

^SECTION 38-8. Increased FAR for Certain Ground Level Space, Neighborhood Businesses, On-Site Day Care Facilities, Community Service Organizations, Community Health Centers or Clinics, Substantially Rehabilitated Theaters, Temporary Housing Shelters, and Nonprofit Cultural Uses. Under the provisions of Article 6A and this section, the Board of Appeal may grant an exception to the maximum as-of-right FAR in the following manner. The Board of Appeal shall grant

such an exception for increased FAR only if it finds that: (a) the Proposed Project and its massing are architecturally compatible with the surrounding area, in accordance with the Urban Design Component of Large Project Review; (b) such an exception is in harmony with the general purpose and intent of this code; (c) the Proposed Project is consistent with the Midtown Cultural District Plan and the general plan for the city as a whole; and (d) 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 which may be granted for the uses described in clauses (a), (b), and (c) of paragraph 1, below, of this section is up to one (1) ratio point. An increased FAR of up to one (1) ratio point may be granted for the use described in clause (d) of paragraph 1, below, of this section, in addition to the increased FAR granted for the uses described in clauses (a), (b), and (c) of paragraph 1, below, of this section. 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 appeal. The setback provisions set forth in Section 38-19 apply to Proposed Projects for increased FAR.

1. Uses Qualifying a Proposed Project for Increased FAR. The Board of Appeal may grant an exception for increased FAR for: (a) the amount of floor area with street frontage devoted to retail Ground Level Uses and located on the ground level or entered from a sidewalk by stairs traversing less than one full level, except for lobbies and any single use occupying more than 10,000 square feet of floor area on the ground level or entered from a sidewalk by stairs traversing less than one full level; (b) the amount of floor area agreed to be leased for a minimum of three (3) years pursuant to the Neighborhood Business Opportunities Plan adopted pursuant to Section 38-18.3; (c) the amount of floor area to be devoted to on-site day care facilities, community service organizations, community health centers or clinics, substantially rehabilitated Theaters, temporary housing shelters, or nonprofit Cultural Uses; and (d) garage space existing prior to the effective date of this article, at least one floor of which is accessory to the Proposed Project. The amount of increased FAR which the Board of Appeal may grant under this section may not exceed the floor area to be devoted to the uses listed in this section as qualifying a Proposed Project for an exception for increased FAR. In the case of a substantially rehabilitated theater qualifying a Proposed Project for increased FAR, the Applicant shall also enter into an agreement for the substantial rehabilitation, as detailed in Section 38-25, where applicable. Any such substantial rehabilitation shall be performed in accordance with the provisions of paragraph 2 of this Section 38-8.
2. Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying for approval of increased FAR 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 anticipated use, as detailed in the Midtown Cultural District Plan; 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, reraising 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.

3. Use of the Floor Area Qualifying Proposed Projects for Increased FAR. The use of the amount of floor area which qualifies a Proposed Project for an exception for increased FAR in accordance with the provisions of this Section 38-8 shall be limited to the uses qualifying the Proposed Project for such an exception, and any other use of such amount of floor area is forbidden. The non-use of floor area which qualifies a Proposed Project for increased FAR shall not affect the validity of such exception. In the case of Theaters to be rehabilitated substantially, the Applicant shall provide to the Board of Appeal evidence of a long-term commitment by the Applicant itself or a third party either: (a) to use the floor area for such uses; or (b) to lease or otherwise transfer such floor area for such use (which may include a lease or transfer to the City of Boston or its designee).

(^As amended on May 9, 1996.)

SECTION 38-9. [Hinge Block Special Study Area.] Deleted on March 15, 1993 by Text Amendment No. 189.

Historical Note: Section 38-9 of this Article 38, as originally adopted in Text Amendment No. 117A, designated the area bounded by Boylston, Washington, Stuart, and Tremont Streets as the "Hinge Block Special Study Area" and called for the development of new zoning regulations for that area. Text Amendment No. 189 adopted such zoning regulations, which established certain protection areas and a PDA-permitted area, all replacing the designation "Hinge Block Special Study Area."

^SECTION 38-10. **Establishment of Areas Within Which Planned Development Areas May be Permitted.** This section establishes five areas within which Planned Development Areas (PDAs) may be permitted within the Midtown Cultural 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 Midtown Cultural District while insuring

quality design by providing planning and design controls; to protect and rehabilitate Boston's historic entertainment center as its cultural district, and to achieve the plan for the area as a vibrant regional arts district; to preserve and create the facilities necessary to house and showcase the resident artists and non-profit arts groups; to create new day care facilities; to protect and provide for expansion of housing and community facilities for the Chinatown community; to create public gathering places that will enliven and complement the historic buildings and streets which the Hinge Block comprises; and to preserve and protect the historic resources of Midtown.

1. Consistency with Section 3-1A; Review and Approval Requirements. In accordance with the provisions of Section 3-1A.a, the Midtown Cultural District Plan is the master plan for the areas within which PDAs may be permitted. The five areas within which PDAs may be permitted are shown on Map 1A of this code and Appendix A hereto, and are otherwise referred to herein, as "PDA-I," "PDA-II," "PDA-III," "PDA-IV," and "PDA-V." No PDA is permitted within the Midtown Cultural District except within these areas. Any application for Development Plan approval for a Proposed Project within the Midtown Cultural District is subject to the provisions of this section and Sections 38-11 through 38-16, in addition to the provisions of Article 3-1A. See Article 80 concerning the applicability of Planned Development Area Review.

(^As amended on March 15, 1993, May 9, 1996 and December 7, 2006.)

^SECTION 38-11. Planned Development Areas: Use and Dimensional Regulations. The land use and dimensional regulations for PDAs are established by this section and in Table A to this article.

1. Use Regulations. Proposed Projects within PDAs are subject to the use regulations set forth in Section 38-18; provided that: (a) in Proposed Projects within PDA-III, not more than fifty percent (50%) of the floor area above a height of one hundred fifty-five feet may be devoted to Office Uses, as described in Section 38-18.5(c), or Institutional Uses, as described in Section 38-18.5(n). Proposed Projects within PDA-II are encouraged to provide ground level frontage for small business enterprises; and (b) in Proposed Projects within PDA-V, the applicable Development Plan may waive or alter the requirements of Section 38-18.4.
2. Dimensional Regulations. Proposed Projects within PDAs shall be in Substantial Accord with the building height and FAR standards set forth in Table A of this article and as follows: (a) within PDA-I, a maximum building height range of one hundred fifty-five (155) feet to three hundred eighty-eight (388) feet, and FARs of ten (10) to fourteen (14); (b) within PDA-II, a maximum building height range of one hundred fifty-five (155) feet to four hundred (400) feet, and FARs of ten (10) to fourteen (14), provided that, in a

PDA which exceeds three (3) acres, one building, or a portion thereof, may have a building height in Substantial Accord with four hundred sixty-five (465) feet if (i) the maximum shadow standard set forth in Section 38-16.1 is met, and (ii) such building or portion thereof above a height of one hundred fifty-five (155) feet is set back from Washington Street one (1) foot for each foot of building height in excess of four hundred (400) feet in addition to the minimum setback of thirty-five (35) feet required by Section 38-19.4; (c) within PDA-III, a maximum building height range of one hundred fifty-five (155) feet to three hundred (300) feet, and FARs of 10 to 14; (d) within PDA-IV, a maximum building height range of one hundred fifty-five (155) feet to two hundred seventy-five (275) feet, and FARs of 10 to 14; and (e) within PDA-V, a maximum building height of one hundred fifty-five (155') feet to six hundred twenty-five (625) feet, and FARs of 10 to 20.

(^As amended on August 17, 1989, August 12, 1991, March 15, 1993, May 9, 1996, July 31, 1997, December 7, 2006, and August 1, 2012.)

^SECTION 38-12. 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).

TABLE A

**Dimensional Regulations
Planned Development Areas
Midtown Cultural District**

	<u>Maximum Height Standards</u>	<u>Maximum FAR Standards</u>
PDA-I	155'-388'	10-14
PDA-II	155'-400'+	10-14
PDA-III	155'-300'	10-14*
PDA-IV	155'-275'	10-14
PDA-V	155'-625'	10-20

+ Provided that in a PDA which exceeds three (3) acres, one building, or a portion thereof, may have a building height in Substantial Accord with four hundred sixty-five (465) feet. See Section 38-11.2(b).

* In Proposed Projects to exceed a building height of 155', at least fifty percent (50%) of the gross floor area above the height of one hundred fifty-five feet must consist of uses other than office uses or institutional uses. See Section 38-11.1.

(^As amended on August 17, 1989, August 12, 1991, March 15, 1993, May 9, 1996, July 31, 1997, December 7, 2006, and August 1, 2012.)

SECTION 38-13. [Planned Development Areas; Authorization for Exceptions.] Deleted on May 9, 1996 by Text Amendment No. 228.

^SECTION 38-14. **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 Midtown Cultural District Plan, including one or more of the following: (a) the development of a theater or other cultural facility, in accordance with the provisions of paragraph 1, below, of this section; (b) the substantial rehabilitation of a Landmark, Historic Building, or an existing Theater, in accordance with the provisions of paragraph 2 of this section; (c) the provision of Affordable housing, in accordance with

the provisions of paragraph 3 of this section; or (d) within PDA-IV, the provision of open space, in accordance with the provisions of paragraph 7 of this section. The total amount of gross floor area available for provision of mitigating public benefits under this section shall not exceed the maximum floor area permissible under the provisions of Section 38-11 and Table A of this article.

1. Development Plan Approval for Development of New Theater or Other 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) either (i) 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 Midtown Cultural District, as identified in the Midtown Cultural District Plan; or (ii) the Development Plan details provision of sufficient assistance for successful development of a Theater or cultural facility, including ancillary or accessory facilities such as administrative offices, rehearsal/studio space, dressing room/green room space, storage space, or other assistance, as identified in the Midtown Cultural District 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 Theater or cultural facility in accordance with the 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).

2. Development Plan Approval for Substantial Rehabilitation of Existing Theaters, Historic Buildings, and Landmarks. The Boston Redevelopment Authority may approve a Development Plan proposing substantial rehabilitation of an existing Theater, Historic Building, or Landmark if: (a) the Development Plan proposes substantial rehabilitation of an existing 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 (i) and (ii) of this section; or (b) the Applicant and the fee simple owner (or agent thereof) (the "Owner") of an existing 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 (i) and (ii) of this section, 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 Section 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.

- (i) Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying as a public benefit for Development Plan approval 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 detailed in the Midtown Cultural District 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 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.
 - (ii) Qualification of Substantial Rehabilitation of Landmark or Historic Building. Substantial rehabilitation of a 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.
3. 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 seventy-five percent (75%) of the gross floor area of the Proposed Project is devoted to Residential Uses; (b) either (i) at least ten percent (10%) of the dwelling units proposed in the Development Plan on site are Affordable; or (ii) the Applicant creates or causes the creation of Affordable dwelling units by making a dollar contribution to the Neighborhood Housing Trust or another entity acceptable to Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Proposed Project by 0.2, and multiplying the result by the average per unit assistance granted by the Neighborhood Housing Trust for the twelve months prior to the effective date of this article, at the then present value; and (c) a minimum of 0.7 off-street parking space is provided for each dwelling unit. On-site Affordable units shall be comparable in size, appearance, and quality to other dwelling units

within the Proposed Project. Any dollar contribution to be made pursuant to this paragraph 3 shall be made at the time that a building permit is issued for the applicable phase of the Proposed Project.

4. 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 Midtown Cultural District 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.
5. Priority in Development Plan Approval for Substantial Rehabilitation of Existing Theaters, Landmarks, and Historic Buildings. In its weighing of the benefits of a Development Plan proposing substantial rehabilitation of an existing Theater, Landmark, or Historic Building, the Boston Redevelopment Authority shall give priority to the substantial rehabilitation of existing Theaters; second priority to the substantial rehabilitation of Landmarks; and third priority to the substantial rehabilitation of Historic Buildings which are not existing Theaters or Landmarks.
6. Amendment of Development Plan. No addition of floor area to a Proposed Project in a PDA, and no change in the use category of any public benefit qualifying a Proposed Project for Development Plan approval, and no exterior alteration of a rehabilitated Landmark, Historic Building, or Theater qualifying a Proposed Project for Development Plan approval, shall proceed unless either (i) there has been an amendment to the Development Plan; or (ii) the Boston Redevelopment Authority has certified to the Commissioner of Inspectional Services that the addition of floor area, the change in use category, or exterior alteration is consistent with the approved Development Plan 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.
7. Development Plan Approval for Development of New Usable Open Space in the Hinge Block (PDA-IV). The Boston Redevelopment Authority may approve a Development Plan proposing to develop or to cause the development of a usable open space if: (a) either (i) the new usable open space is appropriate in condition, size, and type to be useful, under the circumstances pertaining at the time of the application for Development Plan approval, to contribute to the balance of built and open space responsive to the needs of the Midtown Cultural District, as identified in the Midtown Cultural District Plan; or (ii) the Development Plan details provision of sufficient assistance for successful development of usable open space,

including provision of assistance for maintenance, programming, or other assistance, as identified in the Midtown Cultural District Plan; and (b) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to maintain the open space in accordance with the Midtown Cultural District Plan, or (ii) to lease or otherwise transfer such open space for such use and maintenance (which may include a lease or transfer to the City of Boston or its designee).

(^As amended on March 15, 1993, May 9, 1996, and July 31, 1997.)

^SECTION 38-15. Planned Development Areas: Recommendations from Community Groups and City Departments. See Section 80C-5.3 (BRA Procedures for PDA Review: Public Notice and Comment) concerning procedures for public notice and comment in the review of a Development Plan.

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

^SECTION 38-16. 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 an application for Development Plan approval under Planned Development Area Review shall be in substantial accord with the 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 Midtown area, with particular regard to Chinatown, the Midtown Cultural District, Bay Village, the Boston Common and the Public Garden, and Landmarks and Historic Buildings.

1. 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 8:00 a.m. through 2:30 p.m., on any day from March 21 through October 21, in any calendar year, on any single Shadow Impact Area, depicted on Map 1A of this code, that either (a) is not cast in shadow during such period on such days by structures existing as of the effective date of this article; or (b) would not be cast in shadow during such period on such days by structures built to the as-of-right limits allowed by this article, whichever structures cast the greater shadow, provided that an area of the Boston Common not to exceed one acre may be shaded beyond the two-hour period, such area to be calculated as the sum of the areas shaded at the two-hour limit by the Proposed Project and all structures constructed after the effective date of this article exceeding the building sizes described in clauses (a) and (b), above. Any Proposed Project casting any net new shadow on the Boston Common by reason of its exceeding the building sizes described in clauses (a) and (b), above, shall be required to mitigate the impact by contributing to turf, tree, statuary, park furniture, and path maintenance and capital improvements that are designed to promote the passive or active enjoyment

of the Boston Common. The contribution, as determined in consultation with the City of Boston acting through its Parks and Recreation Department and appropriate community and neighborhood groups, and in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing, shall be based on the following factors: (i) the amount and duration of the shadow as it diminishes the sunlit area of the Boston Common; (ii) the costs of mitigating the shadow impact on sunlit areas; and (iii) such other factors as are related to preserving the qualities of the Boston Common affected by the Proposed Project, including but not limited to the decreased enjoyment of the Boston Common as a result of additional shadow.

2. 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 B of this section, as follows:

TABLE B

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity</u>	<u>Permitted Occurrence Frequency</u>
Limit for All Pedestrian Areas	13.8 m/sec (31 mph)	1.0%
Major Walkways- Especially Principal Egress Paths 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 Plaza and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

For the purposes of the above standards, "effective gust velocity" is defined as meaning hourly wind speeds + 1.5 root-mean-square of the fluctuating velocity component measured at the same locations over the same time interval.

3. Transportation Access. The Transportation Access Plan, if required for Large Project Review, 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.

4. Skyline Plan. Each Proposed Project shall be generally consistent in height and form with the modified high spine/cluster skyline plan described in the text of the Midtown Cultural District Plan. With the exception of Proposed Projects within PDA-V, the minimum distance between separate building elements of more than one hundred fifty-five (155) feet in height is one

hundred twenty-five (125) feet; provided that this provision is not applicable where two or more public ways lie between such building elements, or no public way lies between such building elements. In its review of the application for Development Plan approval, the Boston Redevelopment Authority shall take into consideration existing structures, and structures for which Zoning Relief has been granted by the Board of Appeal, or structures for which Development Plan approval has been granted by the Boston Redevelopment Authority.

5. 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.
6. Enhancement of Pedestrian Environment. Each Proposed Project shall enhance the pedestrian environment, by means such as: (a) pedestrian pathways connecting to mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) materials, landscaping, public art, lighting, and furniture that enhance the pedestrian environment; (d) shopping or entertainment opportunities, including interior retail uses; (e) pedestrian systems that encourage more trips on foot; and (f) other attributes that improve the pedestrian environment and pedestrian access to mass transit stations; (g) appropriate management and maintenance of public space within the Proposed Project; and (h) preservation or recreation of the historic street pattern of the district through exterior or interior pedestrian passageways and through-block corridors.
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.

(^As amended on March 15, 1993, May 9, 1996, and August 1, 2012.)

SECTION 38-17. Planned Development Areas: Relocation Assistance. Any Development Plan submitted for approval shall provide a plan for relocation assistance for any resident, or store with street frontage primarily serving the local retail business needs of residents of the neighborhood, grocery store with street frontage, or local eating place with street frontage, which will be directly displaced by the Proposed Project. Such relocation assistance shall be comparable to the relocation assistance required under Chapter 79A of the General Laws as amended from time to time and regulations promulgated thereunder.

^SECTION 38-18. Midtown Cultural District Use Regulations. In the Midtown Cultural District the use of land and structures is hereby regulated as provided in this section. The provisions of Article 8 apply only as specified in this section, except that

Section 8-6 applies. 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 38-18.

1. Ground Level and Cultural Uses. Within any Proposed Project, uses with street frontage located on the ground level or entered by stairs from a sidewalk entry, except for lobby entrances, are limited to Ground Level Uses and Cultural Uses, as listed in Appendix B to this article. All other uses with street frontage which are allowed by this section are conditional uses when located on the ground level or entered by stairs from a sidewalk entry.
2. Housing Priority Areas. The Housing Priority Areas are shown on Map 1A of this code. Notwithstanding any other provision of this article to the contrary, within these areas, for any Proposed Project which has more than ten thousand (10,000) square feet and which involves new construction or exterior alterations to an existing structure, or change in the use of a building, of up to one hundred fifty-five (155) feet in height, a minimum of three (3) square feet of gross floor area shall be devoted to Residential Uses allowed under Section 38-18.5 for each square foot of gross floor area not devoted to such Residential Uses; provided that in a Proposed Project which is to exceed one hundred fifty-five (155) feet in height, all of the floor area above a height of one hundred fifty-five (155) feet shall be devoted to Residential Uses allowed under Section 38-18.5, and a minimum of one (1) square foot of gross floor area shall be devoted to Residential Uses allowed under Section 38-18.5 for each three (3) square feet of gross floor area not devoted to such Residential Uses in the Proposed Project as a whole. The Housing Priority Area regulation does not apply to the ground-floor level or to any space devoted to Cultural Uses, uses accessory to Cultural Uses, or space devoted to community services. An Applicant for any Proposed Project subject to the provisions of this paragraph may construct or rehabilitate space for allowed Residential Uses within the same Housing Priority Area and aggregate the space for allowed Residential Uses and the space for non-Residential Uses within the same Housing Priority Area to meet the ratio provided in this paragraph so long as the different Proposed Projects are completed within any consecutive period of twenty-four months.
3. Neighborhood Business Opportunities. An Applicant for any Proposed Project with fifty thousand (50,000) or more square feet of floor area available for lease shall use Best Efforts 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. If the Proposed Project is subject to Large Project Review, such Plan shall be submitted as part of such review. 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.

"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 paragraph 3, the Applicant shall take other affirmative measures to sufficiently afford such an opportunity. The measures to be taken to satisfy Best Efforts shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing.

A Neighborhood Business Opportunity Plan shall not require that the Applicant lease space to Neighborhood Business Establishments under any terms or conditions that are in any respect inconsistent with terms or conditions generally applicable to other lessees in the Proposed Project.

4. Inclusion of Day Care Facilities. The provisions of this paragraph apply only to Proposed Projects to exceed a building height of one hundred twenty-five (125) feet, or an FAR of eight (8), or both. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds one hundred thousand (100,000) square feet, up to two hundred thousand (200,000) square feet, shall devote to day care facilities an amount of floor area equal to at least two percent (2%) of the Proposed Project's gross floor area. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds two hundred thousand (200,000) square feet, up to five hundred thousand (500,000) square feet, shall devote to day care facilities an amount of floor area equal to at least four thousand square feet. Any Proposed Project having a gross floor area which equals or exceeds five hundred thousand (500,000) square feet, up to one million (1,000,000) square feet, shall devote to day care facilities an amount of floor area equal to at least eight thousand (8,000) square feet. Any Proposed Project having a gross floor area which equals or exceeds one million (1,000,000) square feet shall devote to day care facilities an amount of floor area equal to at least twelve thousand (12,000) square feet. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this paragraph by: (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 paragraph 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 paragraph, the term "day care facilities" includes the finish, furnishings, and equipment for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

5. Allowed Uses. No land or structure in the Midtown Cultural District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except under the provisions of Section 38-18.6 and Article 6, Conditional Uses, unless such use is specified in this Section 38-18.5. Any use so specified shall be allowed as a matter of right, subject only to the requirements set forth in this Section 38-18 and Section 38-21.
 - (a) Residential Uses. Limited to multifamily dwelling, artists' live/work space, apartment hotel, lodging or boarding house, temporary housing shelters, group residence, limited, as defined in clause (22B) of Section 2-1, and any dwelling converted for more families where structures after conversion will conform to this code. 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.
 - (b) Restaurant and Entertainment Uses. Limited to the service or sale of food or drink for on-premises consumption; concert hall; Theater, commercial or nonprofit (including motion picture or video Theater, but not drive-in Theater); art galleries, nonprofit or for profit.
 - (c) Office Uses. Limited to offices of cultural groups; offices of community service organizations; business or professional offices; real estate, insurance, or other agency or government office; office building; post office; bank (other than drive-in bank) or similar establishment; dance, Theater, or music rehearsal studio; artist studio or work space.
 - (d) Hotel or motel.
 - (e) Deleted on February 22, 1991.
 - (f) Day care center, family care center, nursery school, kindergarten, elementary or secondary school, or community health center or clinic.
 - (g) Recreational and Community Uses. Limited to private grounds for games and sports not conducted for profit; other social, recreational, or sports center conducted for profit; private club (including quarters of fraternal or sororal organizations) operated for members only; adult education center or community center building; college granting degrees by authority of the Commonwealth, but only if such authority is

accorded to an adult education facility existing within the Midtown Cultural District prior to the effective date of this article; settlement house; the maintenance and operation of any amusement game machine in a private club, dormitory, fraternity or sorority house, or similar noncommercial establishment, or in any commercial establishment.

- (h) Wholesale Uses. Limited to office or display or sales space of a wholesale, jobbing, or distributing house; and provided that not more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (j) Service Uses. Limited to video or film production studio; 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; framer's studio; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholster's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; funeral home; undertaker's establishment; mortuary; research laboratory; radio or television studio; or similar use provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning; animal hospital or clinic.
- (k) Retail Uses. Limited to store primarily serving the local retail business needs of the neighborhood; artist supply store; grocery store; department store, furniture store, general merchandise mart or other store serving the general retail business needs of a major part of the city, including accessory storage.
- (l) Uses specified in Appendix B hereto.
- (m) Adult Entertainment Uses. As set forth in Use Items 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.
- (n) Institutional Uses. Limited to place of worship, monastery, convent, or parish house; elderly care facility; nonprofit library or museum, not accessory to another institutional use; or clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, provided that such use will occupy interior space being used by the same institution for another institutional use at the time such change is proposed.
- (o) Pawnshops

- (p) Accessory Uses subject to the limitations and restrictions of Article 10, limited to: (i) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use, a hotel or motel, a group care residence, or a dormitory, fraternity, or sorority house; (ii) a swimming pool or tennis court; (iii) the storage of flammable liquids and gases incidental to a lawful use; (iv) the manufacture, assembly, or packaging of products sold on the lot; (v) the maintenance and operation of not more than four amusement game machines accessory to eating and drinking establishments; (vi) any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory; (vii) 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 Uses. No land or structure in the Midtown Cultural District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Section 38-18.6. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the requirements set forth in this Section 38-18. The continued right to a conditional use is dependent upon maintaining the character and extent of operations and structures.

- (a) Residential Uses. Limited to orphanage, and any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.
- (b) Group Care Residence. Unless otherwise allowed pursuant to paragraph 5(a) of this section.
- (c) Light Manufacturing Uses; kennel or pound.
- (d) Parking lot or parking garage.
- (e) Wholesale uses. Limited to accessory storage (other than of flammable liquids, gases, and explosives) in roofed structures or office or display or sales space of a wholesale, jobbing, or distributing house where more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.

- (f) Fast Food Restaurant Uses. Limited to sale over the counter, not wholly incidental to a use listed under paragraph 5(b) or 5(k) of this section, of on-premises prepared food or drink for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (g) Rental motor vehicle and trailer agency accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street and that exterior lighting is arranged to shine downward and away from residences.
- (h) The change of use of any Theater, unless excepted pursuant to Section 38-21.1, to another use; the change of use of any Residential Use allowed under Section 38-18.5(a) to another use.
- (i) Transportation Uses. Limited to bus terminal, bus station, subway station, or shuttle service to airlines.
- (j) 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.
- (k) Institutional Uses. Limited to college or university granting degrees by authority of the Commonwealth, not including those allowed under Section 38-18.5(g); fraternity or sorority house or dormitory; trade, professional, or other school; penal or correctional institution; detention home; machine shop or other noisy activity accessory to a school, college, or university, adequately sound-insulated to protect the neighborhood from unnecessary noise; hospital, sanatorium, or similar institution not for correctional purposes, whether or not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; library or museum not conducted for profit and accessory to another institutional use not allowed under paragraph 5(n) of this section; research laboratory not accessory to another institutional use; clinic not accessory to a main use.
- (l) Service Uses. Check cashing business.
- (m) Accessory Uses. Limited to: (i) a garage or parking space for occupants, employees, customers, students, and visitors, such use not

accessory to a residential use, a hotel or motel, a group care residence, or a dormitory, fraternity, or sorority house; (ii) 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; (iii) 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 (iv) in educational institutions with more than four hundred (400) full-time students, and in hospitals with more than fifty (50) beds, 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 from within the building where there is but one building on the lot or from an entrance not directly facing a street or lot line where there is more than one building on a lot, unless accessory to a hospital or sanatorium or clinic which is an allowed use.

- (n) Public Service Uses. Limited to public service pumping station, substation, automatic telephone exchange, telecommunications data distribution center, or outdoor payphone subject to St. 1956, c. 665, s. 2.
- (o) Storage of dumpsters not accessory or ancillary to a main use, nor used in conjunction with the ongoing operation of a permitted site with explicit legal use and occupancy as a dumpsters repair facility, waste hauling contractor yard, or site assigned and licensed solid waste management facility
- (p) Body Art Establishment

- 7. Forbidden Uses. No land or structure in the Midtown Cultural District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use specified in the use item column of Table A of Section 8-7 if such use is not specified in Sections 38-18.5 and 38-18.6 as an allowed or conditional use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9.

(^As amended on February 22, 1991, March 15 and September 30, 1993, October 6, 1994, May 9, September 20, and November 21, 1996, July 31, 1997, May 30, 2000, September 18, 2000, October 20, 2000, February 15, 2001, April 9, 2001, and March 15, 2006.)

^SECTION 38-19. **Specific Design Requirements.** Proposed Projects within the Midtown Cultural District shall comply with the specific design requirements

established in this section. Except as provided in Article 6A, no Zoning Relief shall be granted from the provisions of this section.

1. Street Wall Continuity. The Street Wall of any Proposed Project shall be built:
 - (a) to be coextensive with at least eighty percent (80%) of the "Existing Building Alignment" of the block on which the Proposed Project fronts, established pursuant to Section 18-2 of this code; or
 - (b) to a depth from the street line equal to that of at least eighty percent (80%) of the Existing Building Alignment of either block adjacent to the block on which the Proposed Project is located, if there is no Existing Building Alignment of such block.

Recess Above Display Window Area Street Wall*

<u>Maximum Depth</u>	<u>Maximum Aggregate Surface Area</u>
fifteen (15) feet	twenty percent (20%)

* Recesses do not include windows, which must be indented.

2. Street Wall Height. The "Street Wall Height" of Proposed Projects within the Midtown Cultural District shall not exceed ninety (90) feet. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 38-19.
3. Display Window Area Regulations. The provisions of this paragraph apply only to Proposed Projects of fifty thousand (50,000) or more square feet. The term "Display Window Area" means that volumetric area of any such Proposed Project that is (i) within a depth of four (4) feet from the Street Wall of the Proposed Project; and (ii) between a height of two (2) feet above the ground floor and the height of the underside of the floor structure of the second floor of the Proposed Project, or fourteen (14) feet, whichever is less. The Display Window Area excludes any area of Street Wall serving as ingress or egress to the interior of the Proposed Project, including off-street loading berths or accessory off-street parking, or lobby or storefront entrances; provided that no single lobby area shall occupy more than forty (40) feet of street frontage.
 - (a) Display Window Area Street Wall Transparency. The Display Window Area Street Wall shall be appropriately glazed and transparent for attractiveness to pedestrians, as certified to by the Boston

Redevelopment Authority in accordance with the Urban Design Component of Large Project Review. Article 11 of this code applies to any painting or signs on the Display Window Area Street Wall, and to signs in the Display Window Area.

- (b) Display Window Area Street Wall Continuity. The Display Window Area Street Wall shall be sufficiently coextensive with the Street Wall line, established pursuant to paragraph 1 of this section, to spatially reinforce such Street Wall line.

Display Window Area Street Wall Recesses*

<u>Maximum Depth</u>	<u>Maximum Aggregate Surface Area</u>
ten (10) feet	thirty percent (30%)
two (2) feet	fifty percent (50%)

* The restrictions on recesses are not applicable to pedestrian arcades.

- (c) Display Window Area Usage. To a depth of at least two (2) feet behind the Display Window Area Street Wall there shall be: (i) an area for the display of goods and services available for purchase on the premises; or (ii) an area for exhibits and announcements. The provisions of this subparagraph are not applicable to foyer space for cultural activities, restaurants, or other active storefront uses.

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 the amount of the "Sky Plane Setbacks" established in Table D for the Street Wall Heights and building heights of one hundred fifty-five (155) feet and two hundred thirty-five (235) feet. 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 amount of the Sky Plane Setback at various heights for each wall of a building depends on whether the particular wall faces on a street, as identified below in Table C, or on a side lot line. The endwall of a

street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 38-19.

TABLE C

Streets on Which Setbacks Are Required

Arlington Street	Kingston Street
Avery Street	LaGrange Street
Bedford Street	Mason Street
Bosworth Street	School Street
Boylston Street	Province Court
Bromfield Street	Province Street
Charles Street South	Stuart Street
Chauncy Street	Summer Street
Columbus Avenue	Temple Place
Essex Street	Tremont Street
Franklin Street	Warrenton Street
Hadassah Way	Washington Street
Hamilton Place	West Street
Harrison Avenue	Winter Street

TABLE D

Sky Plane Setbacks
Minimum Average Depth of Setback from Street Wall*

<u>Location</u>	<u>Above Street Wall Height</u>	<u>Above 155' (Total Setback from Street Wall)</u>	<u>Above 235' (Total Setback from Street Wall)</u>
Street listed in Table C	10'	15'	15'
PDA-I			
North-South Streets	35'	35'	35'
East-West Streets	15'	15'	35'
PDA-II			
North-South Streets	25'	35'	35'
East-West Streets	15'	15'	35'
PDA-III	15'	15'	25'
PDA-IV	10'	15'	15'
PDA-V	10'	15'	15'

- * With respect to streets in more than one setback category, the more restrictive provision of Table D governs, except where the Landmarks Commission has jurisdiction, in which case the street wall height and setbacks shall be determined by the Landmarks Commission. Table D governs only streets listed in Table C.

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) Maximum Floor Plates. Notwithstanding any provision in this Section 38-19 to the contrary, above a height of one hundred twenty-five (125) feet the average gross floor area per floor of separate elements of a Proposed Project shall not exceed twenty-two thousand five hundred (22,500) square feet; and no single floor shall exceed a maximum floor area of twenty-five thousand (25,000) square feet.
 - (c) The principal facade of a building may violate the setback requirements up to the one hundred fifty-five (155) foot level, up to a maximum of 35 feet horizontal dimension or one bay or thirty percent (30%) of total horizontal length of the principal facade, whichever is greater.
 - (d) Corner Conditions for Corner Lot Buildings. The corner condition may be either a continuous curve that follows the curve of the street or a notched setback at the intersection of the two facade planes. The treatment may be a curve, a projection (bay), or a recessed element. The maximum horizontal dimension of the notch cannot exceed one bay or 35 feet from the intersection of the two planes, whichever is less. The form and character of the treatment will be determined through the Urban Design Component of Large Project Review.
5. Small Business Expansion Area. To facilitate the further expansion of small businesses on the ground level in the Midtown Cultural District, this paragraph establishes a "Small Business Expansion Area." The ground level and Street Walls of the streets listed below in Table E constitute the Small Business Expansion Area. Within the Small Business Expansion Area, the maximum street frontage of any single use is fifty (50) feet, and the maximum ground level floor area to be devoted to any single use with street frontage is three thousand (3,000) square feet.

TABLE E

Small Business Expansion Area

<u>Street</u>	<u>From</u>	<u>To</u>
Chauncy Street	Avenue de Lafayette	Essex Street
Essex Street	Washington Street	Kingston Street
Harrison Avenue	Hayward Place	Essex Street
Washington Street	Stuart Street	Boylston Street

(^As amended on March 15, 1993, May 9, 1996 and December 7, 2006.)

^SECTION 38-20. Design Review and District Design Guidelines for Protection Areas. Within the Protection Areas established in Section 38-5 and depicted on Map 1A of this code, any Proposed Project for exterior alteration or construction (excluding rooftop structures and signage and displays allowed pursuant to Section 38-6), including exterior alteration of an existing building affecting more than one hundred (100) square feet of the Street Wall Façade, 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 38-20, 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 Midtown Cultural District 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 Façade 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 Ladder Blocks Protection Area as an area within which there are notable terra cotta facades; (b) the character

of the Boston Common and Public Garden Protection Area as an area within which masonry facades predominate; (c) the character of the Washington Street Theater Protection Area as an area within which varied ornamental facades related to Theater uses predominate; or (d) the lot-by-lot appearance of the district.

(^As amended on March 15, 1993, May 9, 1996, July 31, 1997 and September 10, 2007.)

***SECTION 38-20A. Design Review for Signs in the Downtown Crossing District.** All signs within the Downtown Crossing District, as shown on Appendix F to this Article, shall be subject to design review through Large Project Review (Urban Design Component) or Small Project Review (Design Component), pursuant to Article 80.

(*As inserted on December 22, 2008.)

***Section 38-20B. Sign Regulations in the Downtown Crossing District.** The provisions of this Section 38-20B shall apply to all signs in the Downtown Crossing District, as shown on Appendix F to this Article, except to the extent that sign requirements have been established through Large Project Review or Small Project Review, pursuant to Article 80. Notwithstanding any provision of Article 11 to the contrary, the following regulations shall apply:

1. Total Sign Area. The total Sign Area, in square feet, of all permanent Signs, except for signs on windows above the first floor, directional signs, and public purpose signs listed in items (g) through (k) of Section 11-1, shall not exceed the Sign Frontage multiplied by 1.5, excepting that a use with less than fourteen feet of sign frontage may have a maximum of twenty feet of permanent signs.

Permanent signs on ground floor windows or inside a building and within ten feet of the storefront must be included in total sign area.

2. Signs Parallel to Building Wall. A wall sign attached parallel to a building may not project from the building surface and letters on any such sign shall not project more than 6 inches.
3. Signs – Attached at Right Angles to Building. A Sign attached at right angles to a Building shall not: (i) project more than four feet, plus a reasonable

allowance for field fastening, from the Building, or half of the sidewalk width, whichever is less, but Signs that are banners shall not project more than three feet; and (ii) exceed fifteen square feet on either side. Flags, except for United States of America flags, are Forbidden on Washington Street.

4. Free-standing Signs. Free-standing signs, including sandwich boards, are Forbidden.
5. Billboards. Any billboard, signboard, or other advertising subject to the provisions of Section 11-6, except those legally in existence as of the effective date of this Article, is Forbidden in the Downtown Crossing District.
6. Display of Permit Number and Posting Date. Each permanent Sign, including any Sign painted on or affixed to any awning, canopy, or marquee, shall display the Sign's building permit number clearly but unobtrusively, in letters and numbers not exceeding one (1) inch in height. Temporary signs shall display the date of posting.
7. Removal. Any on-premises Sign which advertises a use or business that either ceases to exist or is no longer in existence must be removed within 30 days of the discontinuance of such use or business. The use or re-use of any such Sign by a subsequent owner or tenant is shall be allowed only if approved by the Boston Redevelopment Authority.

The lettering on any Sign shall not exceed twenty-four inches in height.

The registered trade mark of a specific commodity may occupy no more than ten percent of the area of a sign, except that if the sale of said commodity on the major business conducted on the premises, there shall be no such restriction.

(*As inserted on December 22, 2008.)

SECTION 38-21. 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 Midtown

Cultural District, as identified in the Midtown Cultural District 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 paragraph 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 Midtown Cultural 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 Midtown Cultural District 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 Midtown Cultural District Plan. In its approval of a conditional use under this Section 38-21.2, 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 Midtown Cultural District, as identified in the Midtown Cultural District Plan; or (ii) substantially rehabilitate or cause the substantial rehabilitation of an existing Theater, in accordance with the provisions of paragraph 3 of this Section 38-21; 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 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 38-21 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 detailed in the Midtown Cultural District 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 38-22. Off-Street Parking Not Required. Within the Midtown Cultural District, off-street parking facilities are not required in any Proposed Project, except as provided in Section 38-14.3 (PDAs: Public Benefit Criteria; Creation of Affordable Housing).

SECTION 38-23. Adult Entertainment District. Within the Adult Entertainment District, adult entertainment uses, established in Section 38-18.5(m), are allowed, and the prohibition of moving or flashing signs in Section 11-2 does not apply.

SECTION 38-24. Off-Street Loading. Article 24 provides the regulations governing provision and design of off-street loading facilities for the use of any structure or land not subject to Large Project Review. 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 38-25. Agreement for Substantial Rehabilitation of Existing Theater, Landmark, or Historic Building. When an Applicant proposes substantial rehabilitation of an existing Theater, Landmark, or Historic Building under Sections 38-8, 38-14, or 38-21, the Applicant shall enter into an agreement that conforms to the provisions of this Section 38-25.

1. Parties to the Agreement. In the case of an existing Theater, Historic Building, or Landmark which the Applicant does not own or will not own at the time set for commencement of construction, the Applicant shall enter into an agreement with the fee simple owner (or agent therefor) (the "Owner") of the existing Theater, Historic Building, or Landmark, which agreement shall be acceptable in form and content to the Corporation Counsel of the City of Boston.
2. Enforceability of Covenants and Conditions. The covenants and conditions of the agreement shall run with the land and shall be enforceable by the Applicant, the Owner, and the City of Boston or its designee.
3. Completion of Substantial Rehabilitation. The agreement shall provide that the substantial rehabilitation called for in Section 38-8, 38-14, or 38-21 shall be completed to the point of receipt of a certificate of occupancy for the substantial rehabilitation on or before the date (the "Estimated Completion Date") that is the date of issuance of certificates of occupancy enabling the use and occupancy of one hundred percent (100%) of the gross floor area of the Proposed Project, or if the Proposed Project is being developed in phases, one hundred percent (100%) of the gross floor area of the applicable phase of the Proposed Project with which the substantial rehabilitation has been proposed in the Development Plan. If such construction cannot be so completed, the Applicant shall furnish the Boston Redevelopment Authority on or before the Estimated Completion Date with a notice so stating accompanied by a bond, letter of credit, guaranty, or assurance reasonably satisfactory to the Boston Redevelopment Authority (which assurance may be in the form of a direct deposit to the City of Boston or its designee), in an amount sufficient to cause such construction to be so completed, in which case the certificates of occupancy may issue.
4. Recording of Agreement. A notice of the agreement shall be recorded in the appropriate public records of Suffolk County, Massachusetts.

SECTION 38-26. Regulations. The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this article.

SECTION 38-27. **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 38-28. **Appendices.** The following appendices are incorporated herein:

Appendix B - Ground Level Uses and Cultural Uses
Appendix E – Definitions
Appendix F – Map of Downtown Crossing District

Historical Note: The following appendices to this article as originally adopted by Text Amendment No. 117A were deleted by Text Amendment No. 189, effective March 15, 1993:

Appendix A (copy of Map 1A)
Appendix C (map of Housing Priority Areas, with reference to Map 1A)
Appendix D (map of Shadow Impact Areas, with reference to Map 1A)

(^As inserted on March 15, 1993. Amended on December 22, 2008.)

APPENDIX B to ARTICLE 38

Ground Level Uses and Cultural Uses

(See Sections 38-8 and 38-18.1.)

1. Ground Level Uses

The following uses are Ground Level Uses and are allowed uses within the Midtown Cultural District. This list is intended to be illustrative of Ground Level Uses and not exclusive, and includes uses and space accessory to ground level uses.

Antique stores
Appliances, repair shops
Appliances, sales
Artists' supply and music stores
Athletic goods stores
Bakeries and pastry shops
Bank branch offices
Bank machines, limited to two
Barber shops
Beauty parlors
Bicycle shops: sales, rental, or repair
Book stores and card stores*
Cafes
Candy stores
Carpet, rug, linoleum, or other floor covering stores
Churches
Cigar stores
Clock sales or repair shops
Clothing retail establishments
Clothing stores (men's, women's, children's apparel)
Clubs, noncommercial
Coffee shops
Coin stores
Community centers
Dance halls, public
Day care centers
Delicatessens

* Subject to the provisions of Sections 38-18.5 (Allowed Uses) and 38-23 (Adult Entertainment District).

APPENDIX B to ARTICLE 38 (continued)

Department stores
Diners
Dressmaking shops, custom
Drug stores
Dry cleaning establishments
Dry goods stores
Eating or drinking places, in accordance with the provisions of Use Item No. 38*
Fabric stores
Fire stations**
Fishing tackle or equipment sales, or rental establishments
Florist shops
Food stores, including supermarkets, produce and grocery stores, markets, health foods, delicatessens, prepared food/special food, spices and herbs, coffees, teas, meat, fish, poultry, and cheese stores
Furniture stores
Furrier shops, custom
General merchandise mart
Gift shops
Hair products or headwear
Hardware stores
Historical exhibits
Hobby shops
Housewares stores
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware stores
Lamp shops
Laundromats
Leather goods stores
Libraries
Locksmith shops
Luggage stores
Millinery shops
Newsstands, enclosed
Office or business machine stores: sales or rental

* Subject to the provisions of Sections 38-18.5 (Allowed Uses) and 38-23 (Adult Entertainment District).

**Subject to St. 1956, c. 665, s. 2.

APPENDIX B to ARTICLE 38 (continued)

Offices (only lobby space is allowed at grade on streets bounding blocks)
Optician and optometrist establishments
Orthopedic stores
Paint stores
Parish houses
Parks, public or private
Party shops
Perfume shops
Pet shops
Phonographic repair shops
Photographic developing or printing establishments
Photographic equipment stores
Photographic studios
Photographic supply stores
Photostating establishments
Picture framing stores
Police stations**
Post offices
Printing establishments
Radio appliance shop: repair or sales
Record stores
Recreational centers (noncommercial)
Residences (only lobby space is permitted at grade on streets bounding blocks)
Schools
Sewing machine stores selling household machines
Shoe repair and shoeshine shops
Shoe stores
Sign painting shops
Skating rinks, outdoor ice
Sporting goods stores
Sports shops
Stamp stores
Stationery stores
Tailor shops, custom
Telegraph offices
Television repair shops
Tobacco stores
Tour operators
Toy stores

**Subject to St. 1956, c. 665, s.2.

APPENDIX B to ARTICLE 38 (continued)

Typewriter stores
Typewriter or other small business machine repair stores
Variety or convenience stores
Video or motion picture store, sale or rentals
Wallpaper stores
Watch sales or repair shops
Yarn stores

2. Cultural Uses

The following uses are Cultural Uses, and are allowed uses within the Midtown Cultural District. This list is intended to be illustrative of Cultural Uses and is not exclusive.

Art galleries, commercial and nonprofit
Art metal craft shops
Art needle work shops
Auditoriums
Costume rental establishments
Motion picture or video production studio
Museums
Music stores
Musical instruments, repair
Philanthropic and nonprofit institutions which provide direct support to the arts
Public Art, display space
Studios: music, dancing, visual arts, or theatrical
Theater*
Ticket sales

* Subject to the provisions of Sections 38-18.5 (Allowed Uses) and 38-23 (Adult Entertainment District).

;APPENDIX E to ARTICLE 38

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 Section 813.102 (1986), as amended, or as set forth in regulations adopted in accordance with Section 38-24.
2. "Affordable" means either 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, or 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.
3. "Annual Income" is defined as it is in 24 CFR Section 813.106 (1986), as amended, or as set forth in regulations adopted in accordance with Section 38-24.
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 38-4, or the authorized agent of any such person or entity.
5. "Chinatown" means the area defined in Article 27D as the Chinatown Special Study Area, or any successor regulation of this code.
6. "Cultural Uses" means the uses listed in paragraph 2 of Appendix B to this article.
7. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 228.
8. "Display Window Area Street Wall" means the area below the floor structure for the second floor of a Proposed Project, or fourteen (14) feet, whichever is less.
9. "Ground Level Uses" means the uses listed in paragraph 1 of Appendix B to this article.
10. "Historic Building" means any building listed from time to time in the Massachusetts Register of Historic Places.

APPENDIX E to ARTICLE 38 (continued)

11. "Landmark" means any building or structure from time to time designated a landmark pursuant to Chapter 772 of the Acts of 1975, as amended.
12. "Low-Income Household" means any household whose Annual Income does not exceed fifty percent (50%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
13. "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 (1986), as amended, or as set forth in regulations adopted in accordance with Section 38-24.
14. "Midtown Cultural District Plan" means the comprehensive plan, adopted by the Boston Redevelopment Authority on January 12, 1987, pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of this code, which sets forth the planning policies, development controls, and design guidelines for the Midtown Cultural District, as amended from time to time.
15. "Midtown Cultural District" means the area depicted on Appendix A to this article and on a map entitled "Map 1A Midtown Cultural District" of the series of maps entitled "Zoning Districts - City of Boston" as amended.
16. "Moderate-Income Household" means any household whose Annual Income does not exceed eighty percent (80%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
17. "Neighborhood Business Establishment" means a business firm with fixed offices or distribution points located within the boundaries of the Chinatown/South Cove or Midtown Cultural District boundaries and with a business street address within such boundaries. A residential address may be used to establish status as a "Neighborhood Business Establishment."
- ^18. "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 obtain a building or use permit. A Proposed Project may proceed in phases and may include more than one building structure, or use.

(^As amended on September 10, 2007.)

APPENDIX E to ARTICLE 38 (continued)

19. "State Building Code" means the state building code and amendments and rules and regulations thereto as promulgated by the state building code commission under sections ninety-three, ninety-four, and ninety-five of Chapter One Hundred Forty-Three of the General Laws.
20. "Street Wall" means the exterior wall or portion of the exterior wall of a Proposed Project that faces a street on which such Proposed Project is located, and is below the Street Wall Height, determined pursuant to Section 38-18.2.
- ^21. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the highest occupied floor of a Proposed Project shall not exceed the specified height limit for the applicable district or subdistrict by more than fifteen (15) feet for any Proposed Project to which the Substantial Accord standard applies. The issuance of a Certification of Consistency for Planned Development Area Review, pursuant to Section 80C-8, or the issuance of a Certification of Compliance for Large Project Review, pursuant to Section 80B-6, shall conclusively determine compliance with the requirements of this paragraph. This Substantial Accord standard applies only (1) north of Bromfield Street or (ii) within Planned Development Areas.

(^As inserted on August 17, 1989 and amended on June 14, 1990 and May 9, 1996.)
22. "Theater" means a facility equipped for the production and presentation of performing and visual arts events.
23. "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.