

^ARTICLE 41

HUNTINGTON AVENUE/PRUDENTIAL CENTER DISTRICT

(^Article inserted on March 20, 1990*)

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* Date of public notice: February 10, 1990 (see St. 1956, c. 665, s. 5).

**As amended through January 7, 2009.

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

SECTION 41-1. Statement of Purpose, Goals, and Objectives. The purpose of this article is to establish the zoning regulations for the comprehensive plan for the Huntington Avenue/Prudential Center 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 Huntington Avenue/ Prudential Center District Plan are: to preserve the historic and architectural character of the historic residential neighborhoods included in the district; to realize the potential of Huntington Avenue as an important city boulevard and as a transitional boundary between the large-scale Prudential Center and the historic St. Botolph Street and South End neighborhoods; to encourage the private redevelopment of the Prudential Center; to integrate more effectively the Prudential Center with adjacent districts; to promote development that emphasizes a sense of human scale through appropriate block and building sizes and shapes, modulated and detailed facades and storefronts, and articulated entryways; to increase pedestrian activity along the streets surrounding the Prudential Center by promoting streetscape improvements, requiring active ground-level uses, and permitting the creation of a mixed-use economy, including office, retail, commercial, and residential uses; and to promote the public welfare of the people of Boston.

SECTION 41-2. Recognition of the Huntington Avenue/Prudential District Center Plan. In accordance with Section 27D-18 of this code, which required production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including Huntington Avenue/Prudential Center (Special Study Area No. 1), the Zoning Commission hereby recognizes the Huntington Avenue/Prudential Center District Plan as the general plan for the Huntington Avenue/Prudential Center District. The Huntington Avenue/Prudential Center District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Huntington Avenue/ Prudential Center District. This article is one of the means of implementing the Huntington Avenue/Prudential Center District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 41-3. Physical Boundaries. The provisions of this article are applicable only in the Huntington Avenue/Prudential Center District. The boundaries of the Huntington Avenue/Prudential Center District are as shown on the map entitled, "Map 1D Huntington Avenue/Prudential Center District (supplemental to `Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston" as amended.

(^As amended on July 31, 1997.)

SECTION 41-4. Applicability. This article together with the rest of this code constitutes the zoning regulation for the Huntington Avenue/Prudential

Center District and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Zoning Relief in the form of exceptions to the provisions of this article pursuant to Article 6A is not available, except to the extent expressly provided in this article or Article 6A. Application of the provisions of Article 27D to the Huntington Avenue/Prudential Center District is rescinded, and the Huntington Avenue/Prudential Center District is deleted from the Downtown Interim Planning Overlay District as of the effective date of this article, except as provided below. Where conflicts between this article and the rest of this code exist, the provisions of this article shall govern. Except where specifically indicated in this article, the provisions of this article supersede Sections 13-1, 13-2, and 13-4 and Articles 8 and 14 through 24 of this code for the Huntington Avenue/Prudential Center District. However, the exclusions from building height limitations set forth in Section 16-2 are applicable to building height limitations established in this article, unless expressly otherwise provided. Further, the provisions of this article, are not applicable to the following Proposed Projects, which are governed by the rest of this code, including Article 27D:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning 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 Zoning 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 41-5. Establishment of Protection Areas. This section establishes three "protection areas" within the Huntington Avenue/Prudential Center District. The three protection areas are established in order to protect public open spaces and residential neighborhoods within the protection areas, the concentration of historic buildings within the protection areas, and the existing human scale of buildings within the protection areas. The three protection areas are shown on Map 1D of this code, and are otherwise referred to herein, as "St. Botolph Street Protection Area," "St. Germain Street Protection Area," and "Massachusetts Avenue/Belvidere Street Protection Area." Any other provision of this article or this code notwithstanding, Proposed Projects within a protection area are limited to the as-of-right building height and floor area ratio ("FAR") specified for such protection area as follows:

1. St. Botolph Street Protection Area. Within that portion of the Huntington Avenue/Prudential Center District depicted on Map 1D of this code as the "St. Botolph Street Protection Area," an as-of-right building height of forty-five (45) feet and an as-of-right FAR of two (2) are allowed.

2. St. Germain Street Protection Area. Within that portion of the Huntington Avenue/Prudential Center District depicted on Map 1D of this code as the "St. Germain Street Protection Area," an as-of-right building height of forty-five (45) feet and an as-of-right FAR of two (2) are allowed.
3. Massachusetts Avenue/Belvidere Street Protection Area. Within that portion of the Huntington Avenue/Prudential Center District depicted on Map 1D of this code as the "Massachusetts Avenue/Belvidere Street Protection Area," an as-of-right building height of forty-five (45) feet and an as-of-right FAR of two (2) are allowed; provided that any Proposed Project is allowed an as-of-right building height of seventy-five (75) feet and an as-of-right FAR of four (4) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

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

SECTION 41-6. Rooftop Additions within Protection Areas. Each protection area in the Huntington Avenue/Prudential Center District shall constitute a Restricted Roof Structure District for the purposes of Section 16-8. Reference to the "maximum height specified in Table B of Section 13-1" shall be deemed to mean forty-five (45) feet. The restrictions set forth in Section 16-8 shall apply only to residential structures or structures originally built for residential use within said protection areas. In considering any appeal for a conditional use pursuant to this section and Section 16-8, the Board of Appeal shall consider whether a proposed 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 any appeal for a conditional use pursuant to this section and Section 16-8 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 41-7. Establishment of Christian Science Institutional Area. This section establishes the "Christian Science Institutional Area" within the Huntington Avenue/Prudential Center District. The area is shown on Map 1D of this code. In order to preserve the unique urban plan of the Christian Science Center, within the Christian Science Institutional Area an as-of-right building height of seventy-five (75) feet and an as-of-right FAR of two (2) are allowed, provided that any structure in existence as of the date of the first notice of hearing before the Zoning Commission for the adoption of this article and described in the urban renewal plan and land disposition agreement applicable to the Christian Science Institutional Area as of said date may be reconstructed in

conformity with said plan and agreement in the event of fire or other casualty, notwithstanding any contrary provision of Section 13-3. Any Proposed Project that would encroach upon or diminish open spaces in existence in the Christian Science Institutional Area as of said date is 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 that section, unless such Proposed Project is subject to Large Project Review. In reviewing such a Proposed Project pursuant to the Design Component of Small Project Review or the Urban Design Component of Large Project Review, the Boston Redevelopment Authority shall consider the impact of the Proposed Project on the unique urban design of buildings and open spaces of the Christian Science Institutional Area and other urban design considerations described in Section 80B-3.3, concerning the Urban Design Component of Large Project Review.

Pursuant to the provisions of Article 6A and this section, the Board of Appeal may grant an exception to the maximum permitted building height otherwise applicable to a Proposed Project within the Christian Science Institutional Area in the following manner. The Board of Appeal may grant such an exception for increased building height only if it finds that: (a) the Proposed Project and its massing are architecturally compatible with the surrounding area and with the unique urban plan of the Christian Science Center as described in the urban renewal plan and report and decision identified below, in accordance with the Design Component of Small Project Review or the Urban Design Component of Large Project Review as certified by the Director of the Boston Redevelopment Authority; (b) such an exception is in harmony with the general purpose and intent of this code; (c) the Proposed Project is consistent with the Huntington Avenue/Prudential Center 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, as applicable. The increased height available by exception is limited to 40 (forty) feet for a total building height of up to one hundred fifteen (115) feet. The procedure for granting such an exception 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 height prior to the Board of Appeal's consideration of the application.

Reference is made to the fact that the entire Christian Science Institutional Area is included within the Symphony Sub-Area of the Fenway Urban Renewal Plan, Mass. R-115, as approved by City Council on December 20, 1965, as amended, which plan shall remain in full force and effect until December 20, 2005. Further, portions of the Christian Science Institutional Area are governed by the provisions of Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, pursuant to a Report and Decision by the Boston Redevelopment

Authority filed on August 16, 1966, as amended, the controls of which will remain in full force and effect until August 16, 2006. Notwithstanding any contrary provision of this article, until such expiration dates, no change in the existing structures or open spaces requiring a building permit may proceed without a determination by the Boston Redevelopment Authority that such change is consistent with the said urban renewal plan and said Chapter 121A Report and Decision or a modification of that plan or report and decision, as applicable, by the Boston Redevelopment Authority after a public hearing and community review process.

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

^SECTION 41-8. Establishment of Huntington Avenue Boulevard Area. This section establishes the "Huntington Avenue Boulevard Area" within the Huntington Avenue/Prudential Center District. The Huntington Avenue Boulevard Area is established in order to promote the improvement of Huntington Avenue as an important urban boulevard, while creating a successful transition between the scale of Huntington Avenue and the historic and architectural character of the St. Botolph Street neighborhood. The area is shown on Map 1D of this code. Within the Huntington Avenue Boulevard Area, an as-of-right building height of one hundred fifteen (115) feet and FAR of eight (8) are allowed. Special side and rear yard requirements apply within the Huntington Avenue Boulevard Area as provided in Subsections 41-18.4(d) and 41-18.4(e).

(^As amended on July 31, 1997.)

^SECTION 41-9. St. Cecilia Special Study Area. This section establishes the "St. Cecilia Special Study Area" within the Huntington Avenue/Prudential Center District. The area is shown on Map 1D of this code. Within the St. Cecilia Special Study Area, an as-of-right building height of sixty-five (65) feet and FAR of four (4) are allowed; provided that any Proposed Project is allowed an as-of-right building height of one hundred (100) feet and an FAR of seven (7) if such Proposed Project is subject to or elects to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6. In accordance with the Huntington Avenue/Prudential Center District Plan, a comprehensive plan for the St. Cecilia Special Study Area shall be developed and shall address, at a minimum, the following: (a) appropriate means to preserve and encourage the rehabilitation and restoration of the notable historic buildings which characterize the St. Cecilia Special Study Area; (b) appropriate means to encourage the creation of housing, including Affordable housing; (c) an open space plan for appropriate portions of the St. Cecilia Special Study Area; (d) appropriate means to encourage a mix of retail uses serving neighborhood needs; (e) appropriate means to ensure a human scale in the design of new development in the St. Cecilia Special Study Area; (f) the appropriate mix of land uses to accomplish these objectives; and (g) land use regulations necessary to implement the comprehensive plan's proposals.

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

SECTION 41-10. As-of-Right Building Height and Floor Area Ratio.

Except as otherwise may be allowed within a Planned Development Area ("PDA") established in accordance with Section 41-11 and Section 3-1A of this code and except as otherwise provided in Section 41-5, pertaining to protection areas, Section 41-7, pertaining to the Christian Science Institutional Area, Section 41-8, pertaining to the Huntington Avenue Boulevard Area, and Section 41-9, pertaining to the St. Cecilia Special Study Area, a Proposed Project within the Huntington Avenue/Prudential Center District is allowed an as-of-right building height of one hundred fifty-five (155) feet and an as-of-right FAR of ten (10).

SECTION 41-11. Establishment of Area Within Which Planned Development Areas May Be Permitted. This section establishes one area within which Planned Development Areas ("PDAs") may be permitted within the Huntington Avenue/ Prudential Center District. The purposes for establishment of the area within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private redevelopment of the obsolete Prudential Center while insuring high-quality design by providing planning and design controls; to provide a secure economic base for the Back Bay hotel, convention, and hospitality economy; and to encourage development which knits together the surrounding neighborhoods through a new urban design for the Prudential Center.

1. Consistency with Section 3-1A; Review and Approval Requirements. The area in the Huntington Avenue/Prudential Center District within which PDAs may be permitted is shown on Map 1D of this code, and is otherwise referred to herein, as the "PDA Area." No PDA is permitted within the Huntington Avenue/Prudential Center District except within the PDA Area. Any application for Development Plan approval for a Proposed Project within the PDA Area is subject to the provisions of this section and Sections 41-12 through 41-16, in addition to the provisions of Subsection 3-1A.a. See Article 80 concerning the applicability of Planned Development Area Review.
2. Reconstruction of Pre-existing Structures. A Proposed Project for the reconstruction of a structure in existence in a PDA as of the date of Development Plan approval and described in said Development Plan, or of a structure constructed pursuant to said Development Plan, shall be determined by the Boston Redevelopment Authority to be consistent with said Development Plan, provided that said reconstruction is substantially similar to the original structure. Said reconstruction, unless described as part of the original Proposed

Project in said Development Plan, shall constitute a separate Proposed Project for all purposes hereunder.

3. Transition Provision. Where a boundary line of the Huntington Avenue/Prudential Center District divides a lot in single ownership of record at the time the PDA is approved in accordance with this article and Subsection 3-1A.a of this code, the regulations set forth in this article as applicable to the PDA and the authorizations, requirements, terms, and conditions of said PDA approval, including the approved Development Plan, any Cooperation Agreement, Development Impact Project Agreement, and any other plan or agreement included in or providing the basis for such PDA approval, shall be deemed to be applicable to an area extending to so much of the remainder of said lot as is within 120 feet of said district boundary line, except that the height provisions applicable within the PDA shall extend only to so much of the remainder of said lot as is within thirty (30) feet of said district boundary line.

(^As amended on May 9, 1996, July 31, 1997 and July 27, 2002.)

^SECTION 41-12. Planned Development Areas: Use and Dimensional Regulations. The land use and dimensional regulations for PDAs are established by this section.

1. Use Regulations. Proposed Projects within PDAs are subject to the use regulations set forth in Section 41-17.
2. Dimensional Regulations. Proposed Projects within a PDA shall be in Substantial Accord with the following FAR and building height standards: there shall be permitted a maximum FAR of six (6) and a maximum building height of one hundred fifty-five (155) feet, except that one (1) building only within the PDA shall be permitted a maximum building height of four hundred sixty-five (465) feet, and one (1) building within the PDA shall be permitted a maximum building height of two hundred and forty-two (242) feet, and one (1) building within the PDA shall be permitted a maximum building height of three hundred and eleven (311) feet. For the purposes of this paragraph 2 of Section 41-12, FAR shall be computed as though the land within a PDA were in single ownership, notwithstanding actual ownership patterns or changes in ownership occurring after the approval of a Development Plan for the PDA and off-street parking as permitted in a Development Plan shall not be included in said FAR computation.

(^As amended on January 7, 2009.)

^SECTION 41-13. Planned Development Areas: Standards for Development Plan Approval. For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

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

^SECTION 41-14. 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 Huntington Avenue/Prudential Center District Plan, including, at a minimum, each of the following: (a) the creation of Affordable housing in accordance with the provisions of paragraph 1, below, of this section, and (b) the provision of substantial street improvements in accordance with the provisions of paragraph 2, below, of this section.

1. Development Plan Approval for Creation of Affordable Housing. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or cause the construction of housing if: (a) at least twenty percent (20%) of the gross floor area proposed to be newly constructed (as distinct from refurbished or rehabilitated) as part of the Proposed Project is devoted to Residential Uses; (b) either (i) at least ten percent (10%) of the new dwelling units proposed in the Development Plan on-site are Affordable; or (ii) the Applicant causes the creation, rehabilitation, or preservation of Affordable dwelling units off-site by making a dollar contribution to the Neighborhood Housing Trust, or another entity acceptable to the Boston Redevelopment Authority, of not less than an amount calculated by multiplying the total number of dwelling units to be constructed as part of 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; and (c) a minimum of 0.7 off-street parking space is provided for each new on-site dwelling unit or, if a lesser number of spaces is permitted to be provided for such dwelling units pursuant to the terms of any applicable state or federal parking freeze or similar law, the greatest number of spaces permitted for such dwelling units under such parking freeze or similar law. On-site Affordable dwelling units shall be comparable in size, appearance, and quality to other dwelling units within the Proposed Project.
2. Development Plan Approval for the Provision of Street Improvements. The Boston Redevelopment Authority may approve a Development Plan providing, either directly or through funding, for substantial street

improvements to streets adjacent to and in the vicinity of the PDA. Such street improvements must be consistent with any applicable street improvement regulations or guidelines and must be sufficient, as determined by the Boston Redevelopment Authority, to improve the appearance, condition, quality of design and materials, and accessibility and useability of the affected streets by pedestrians, taking into account increased vehicular and pedestrian flows.

(^As amended on May 9, 1996.)

^SECTION 41-15. 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 41-16. 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 as part of an application for Development Plan approval under Planned Development Area Review shall comply with the District general design and environmental impact standards described herein. Compliance with these additional standards shall be determined through Large Project Review. The purpose of these additional standards is to maintain and improve the quality of life in the Huntington Avenue/Prudential Center District.

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 September 21, in any calendar year, on any portion of dedicated public parkland 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. In addition, shadow studies shall be conducted in connection with any Proposed Project demonstrating that shadows will be minimized to the extent practicable in public open spaces created as part of the Proposed Project.

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 A of this section.

TABLE A

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity*</u>	<u>Permitted Annual Occurrence Frequency</u>
Limit for All Pedestrian Areas	13.8 m/sec (31 mph)	1%
Major Walkways - Especially Principal Egress Path for High-Rise Buildings	13.8 m/sec	1%
Other Pedestrian Walkways - Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas, Walking and Strolling Areas	6.3 m/sec (14.1 mph)	15%
Open Plaza and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

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

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3. Transportation Access. Each Proposed Project that is subject to Large Project Review shall be subject to a Transportation Access Plan providing for effective transportation access and mitigation measures designed to minimize adverse traffic impacts on the Huntington Avenue/Prudential Center District and surrounding neighborhoods and improve traffic flow and access within the affected area. Such Transportation Access Plan shall also provide for effective parking management measures to minimize adverse parking

effects within the Huntington Avenue/Prudential Center District and surrounding neighborhoods.

4. Landmarks and Historic Buildings. Each Proposed Project shall generally be designed and arranged in such a way as to limit the reduction of light and air surrounding Landmarks and Historic Buildings and to minimize the shadow impact on their facades.
5. 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) interior retail uses;
(e) pedestrian systems that encourage more trips on foot; (f) sidewalk and street improvements that improve pedestrian flow and increase pedestrian safety on sidewalks and crosswalks; (g) other attributes that improve the pedestrian environment and pedestrian access to mass transit stations; (h) appropriate management and maintenance of public space within the Proposed Project; and (i) exterior or interior pedestrian passageways.
6. Boston Civic Design Commission Review. In addition to complying with the above standards, 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 May 9, 1996.)

^SECTION 41-17. Huntington Avenue/Prudential Center District Use Regulations. In the Huntington Avenue/Prudential Center 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 41-17 or in conformity with the provisions of an approved Development Plan with respect to land or structures located in a PDA.

1. Special Use Areas. Any other provision of this article or this code notwithstanding, within the St. Botolph Street Protection Area and St. Germain Street Protection Area, Proposed Projects shall be limited to those uses indicated as follows:

(a) St. Botolph Street Protection Area

Allowed uses: residential uses identified in paragraph 4(a) of this section; uses accessory thereto identified in paragraph 4(q) of this section.

Conditional uses: residential uses identified in paragraph 5(a) of this section; uses accessory thereto identified in paragraph 5(k) of this section.

(b) St. Germain Street Protection Area

Allowed uses: residential uses identified in paragraph 4(a) of this section; uses accessory thereto identified in paragraph 4(q) of this section.

Conditional uses: residential uses identified in paragraph 5(a) of this section; uses accessory thereto identified in paragraph 5(k) of this section.

2. Inclusion of Day Care Facilities. The provisions of this paragraph 2 shall apply only to Proposed Projects exceeding a building height of one hundred fifteen (115) feet or an FAR of six (6) or both. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds one hundred thousand (100,000) square feet shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table B of this Section. For the purposes of this Subsection 41-17.2 and Table B only, floor area devoted exclusively to hotel or motel uses shall be multiplied by 0.5 before being used in any calculation of required day care facilities. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this paragraph by either (a) creating such facilities on-site; or (b) creating such facilities, or causing such facilities to be created elsewhere in the City. The provision of day care facilities in accordance with this 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 required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE B

Provision of Day Care Facilities

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

3. Ground Level Uses. Within a Proposed Project, uses with street frontage on Huntington Avenue, Massachusetts Avenue, or Boylston Street, either located on the ground level or entered by stairs from a sidewalk entry, are limited to Ground Level Uses, as listed in Appendix B to this article. A display window physically contiguous to a Ground Level Use or with exhibits or displays operated and maintained by an occupant of the building in which said window is located is allowed as a Ground Level Use. 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.

4. Allowed Uses. No land or structure in the Huntington Avenue/Prudential Center District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified (a) in this Subsection 4, (b) in an approved Development Plan (except uses therein identified as conditional uses) for land or structures in a PDA, (c) in Subsection 5 of this Section 41-17 subject to the provisions of Article 6, or (d) in Subsections 1, 2, and 3 of this Section 41-17 subject to the limitations therein set forth. Any use so specified in this Subsection 4 shall be allowed as a matter of right, subject only to the provisions of this Section 41-17, including, without limitation, Subsections 1, 2, and 3 hereof, or, in the case of a PDA, the approved Development Plan.
 - (a) Residential Uses. Limited to: single-family, two-family, and multifamily dwellings, artists' live/work space, apartment house, 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 whether or not dancing or entertainment is provided; concert hall; theater, commercial or nonprofit (including motion picture or video theater, but not drive-in theater); art galleries, nonprofit or for profit; provided that the uses set forth in this paragraph (b) shall be conditional for any building (other than a building used primarily as a hotel or motel) that abuts or is located across an alley from a building located in the St. Botolph Street Protection Area or St. Germain Street Protection Area and provided further that uses described in Use Item No. 38A of Table A of Section 8-7 of this code are forbidden.
- (c) Office Uses. Limited to: offices of community service organizations; medical or dental offices; business or professional offices; offices of real estate, insurance, or other agency, institutional, or government office; office building; post office, or bank (including automatic teller machines but not including drive-in bank) or similar establishment.
- (d) Dance theater, or music rehearsal studio, artist studio or work space.
- (e) Hotel or motel.
- (f) Deleted on February 22, 1991.
- (g) Day care center, family care center, nursery school, kindergarten, elementary or secondary school, or community health center or clinic.
- (h) Recreational and Community Uses. Limited to: private grounds for games and sports; other social, recreational, or sports center conducted for profit; private club (not including quarters of fraternal or sororal organizations) operated for members only; adult education center or community center building; settlement house; the maintenance and operation of any amusement game machine in a private club, or similar noncommercial establishment.
- (i) Amended to Conditional Use on October 20, 2000.

- (j) 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.
- (k) 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; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; key and lock shop; express mail operation and digs box; ticket outlet; funeral home; undertaker's establishment; mortuary; research laboratory; animal hospital or clinic; or similar use provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning.
- (l) Retail Uses. Limited to: stores 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; provided that uses described in Use Item No. 34A are forbidden.
- (m) Uses specified in Appendix B hereto.
- (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; research laboratory.
- (o) Communications Uses. Limited to: radio and television studio; operation of fiber optic and other related communication equipment; telecommunication operation; data retrieval and transmission operation.
- (p) Urban Plazas. Limited to: passive and recreational uses accessible from adjoining streets, with facilities and structures appropriate to urban plazas, including benches and other seating facilities, pools, fountains, works of art, plantings, and other features.
- (q) 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 under paragraph 4(a) of this section, a hotel or motel, or a group care residence under paragraph 4(f) of this section; (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) the sale over the counter 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, provided such sale is wholly incidental to a use listed under paragraph 4(b) or 4(l) of this section; (vii) or 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; (viii) 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.

5. Conditional Uses. No land or structure in the Huntington Avenue/Prudential Center 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 Subsection 5 or, within a PDA, is identified as a conditional use in the applicable Development Plan. 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 said article and this Section 41-18, or may be allowed by the Zoning Commission in its approval of a Development Plan for a PDA. The continued right to a conditional use is dependent upon maintaining the character and extent of operations and structures.
- (a) Residential Uses. Limited to: temporary dwelling structure, orphanage, dormitory, fraternity or sorority house, 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 4(a) of this section.
 - (c) Light Manufacturing Uses (as identified in Subsection 36-4.1); 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 4(b) or 4(l) of this section, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (g) The change of use of any residence to another use.
- (h) Transportation Uses. Limited to bus terminal, bus station, subway station or railroad passenger station, airline shuttle service.
- (i) 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.
- (j) Institutional Uses. Limited to college or university granting degrees by authority of the Commonwealth; 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, elderly care facility, orphanage, or similar institution not for correctional purposes, whether or not 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 pursuant to paragraph 4(n) of this section; clinic not accessory to a main use.
- (k) Service Uses. Check cashing business.

- (l) Accessory Uses. Limited to: (i) a garage or parking space for occupants, employees, customers, students, and visitors, accessory to an allowed or conditional use, but not provided for under paragraph 4(q) of this section; (ii) 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; (iii) 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; (iv) in hospitals with more than fifty (50) beds, incidental uses and services ordinarily found in connection therewith and primarily for the patients and staff when conducted wholly within a building and entered from within the building where there is but one building on the lot line or from an entrance not directly facing a street or lot line where there is more than one building on a lot; (v) car wash, valet service, and automobile repair service accessory to a parking garage and located entirely within said parking garage; (vi) rental motor vehicle or trailer agency accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street and that any exterior lighting is arranged to shine downward and away from residences.
 - (m) Public Service Uses. Limited to: public service pumping station, sub-station, automatic telephone exchange, telecommunications data distribution center, or outdoor payphone, subject to St. 1956, c. 665, s. 2.
 - (n) 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 dumpster repair facility, waste hauling contractor yard, or site assigned and licensed solid waste management facility
 - (o) Pawnshops
 - (p) Body Art Establishment
6. Forbidden Uses. No land or structure in the Huntington Avenue/Prudential Center 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 Subsections 1, 2, 3, 4, or 5 of this section as the case

may be, 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, September 30, 1993, October 6, 1994, September 20 and November 21, 1996, May 30, 2000, September 18, and October 20, 2000, February 16, and April 9, 2001, and March 15, 2006.)

^SECTION 41-18. **Specific Design Requirements.** Except as otherwise expressly provided in this article or code, all Proposed Projects within the Huntington Avenue/Prudential Center District shall comply with the specific design requirements established in this section. The provisions of Article 6A shall be applicable to the provisions of this Section 41-18.

1. **Street Wall Continuity.** A Street Wall of any Proposed Project shall be built to be coextensive with the building line, as defined in clause 7A of Section 2-1, of the block on which the Street Wall faces. If there is no determinable building line of said block, then said Street Wall shall be built at a depth from the curb line equal to that of the building line farthest from the curb line of the two blocks adjacent to said block, facing onto the same street. If there is no determinable building line of either of said adjacent blocks, then (i) if the Proposed Project is subject to or elects to comply with Large Project Review, an appropriate Street Wall location shall be determined through such review or (ii) otherwise, the Proposed Project shall be deemed subject to the Design Component of Small Project Review for the limited purpose of determining an appropriate Street Wall location. The foregoing notwithstanding, within a PDA a Street Wall of any Proposed Project shall be built at the depth from the curb line stipulated in the applicable Development Plan. A Proposed Project shall comply with the requirements of this Subsection 41-18.1 with respect to each facade facing a public street, but excluding alleys and private ways.

Except as otherwise provided in this Subsection 41-18.1, Street Walls shall be continuous across a lot. However, design articulation involving deviations from the Street Wall Plane of two (2) feet or less shall be permitted across the Street Wall. Further, larger recesses and bays in Street Walls shall be permitted as follows. For Proposed Projects neither subject to nor electing to comply with Large Project Review, recesses in Street Walls shall be permitted as set forth in Table C of this article, and bay windows shall be permitted to extend from the Street Wall Plane above the ground floor ceiling height provided that such bay windows do not affect more than forty percent (40%) of the Street Wall Plane. For Proposed Projects that are subject to or elect to comply with Large Project Review, recesses and

bays shall be permitted if appropriate to the creation of visually interesting designs or the accommodation of a specific ground level function, such as a hotel or residential carriageway, provided that the facade remains compatible with its historical and architectural surroundings and visual continuity in the block front is preserved, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.

TABLE C

Permitted Street Wall Recesses*

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

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

2. Street Wall Height. The Street Wall Height of Proposed Projects within the Huntington Avenue/Prudential Center District shall not exceed sixty-five (65) feet or the initial cornice height of the adjacent buildings, whichever is less, except that street walls facing Huntington Avenue shall be permitted a Street Wall Height not exceeding eighty (80) feet or the initial cornice heights of the adjacent buildings, whichever is less. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 41-18.
3. Display Window Area Regulations. The provisions of this subsection 3 apply only to Proposed Projects with gross floor areas of 50,000

square feet or more and only to Street Walls facing Massachusetts Avenue, Huntington Avenue, or Boylston Street. The Display Window Area, excluding any portion occupied by a permitted Lobby Entrance Area or entrance/exit to an off-street parking or loading area, shall be sufficiently and appropriately glazed and transparent, with sufficient individual storefront entrances, to encourage active pedestrian use, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review. Glazed portions of the Display Window Area, excluding storefront entrances and Lobby Entrance Areas, shall be used to a depth of at least two (2) feet for: (i) the display of goods and services available for purchase on the premises; or (ii) an area for exhibits and announcements. However, the provisions of the preceding sentence do not apply to foyer space for cultural uses, restaurants, or other active storefront uses.

4. Setback and Floorplate Requirements.

- (a) Sky Plane Setbacks. Other than decorative cornices and other surface ornamentation, any portion of a Proposed Project (including, but not limited to, mechanical equipment), which portion faces a street listed in Table D of this article, shall be set back by not less than the amount of the "Sky Plane Setbacks" set forth in Table E of this article and applicable at the Street Wall Height and a building height of one hundred fifteen (115) feet. Portions of a Proposed Project more than one hundred fifty-five (155) feet high shall be treated in a manner to create a visually distinctive roof or other termination of the facade of the Proposed Project.

TABLE D

Streets on Which Sky Plane Setbacks are Required

Belvidere Street	Exeter Street
Boylston Street	Huntington Avenue
Dalton Street	Massachusetts Avenue
Dartmouth Street	Stuart Street

TABLE E

Sky Plane Setbacks

Minimum Depth of Setback from Street Wall

<u>Location</u>	<u>Above Street Wall Height</u>	<u>Above 115' (Total Minimum Setback From Street Wall)</u>
Street listed in Table D	5'	15'
PDA	As determined in design review by the Authority	As determined in design review by the Authority

The Sky Plane Setback provisions established in this paragraph are not applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than nine thousand (9,000) square feet.

- (b) Entrance Elements. In order to permit the creation of a distinctive entrance element, and notwithstanding any contrary provision of paragraph (a) of this Subsection 41-18.4, a portion of the front facade of a building may be built to the level of one hundred twenty-five (125) feet without setbacks provided that such portion has a maximum horizontal dimension of 35 feet or such other dimension as may be approved by the Boston Redevelopment Authority in Large Project Review for any Proposed Project subject to or electing to comply with such review.
- (c) Rear Yard Setbacks. Any portion (including, without limitation, mechanical equipment) of any Proposed Project fronting on a street listed in Table F of this article shall be set back from the rear lot line by not less than the amount of the "rear yard setback" set forth in Table F for such street.

TABLE F

Rear Yard Setbacks

15' Rear Yard Setback

Lots fronting on:

Belvidere Street
Clearway Street
Edgerly Road
Haviland Street
Massachusetts Avenue, north of Huntington - southwest side
St. Germain Street - southwest side

20' Rear Yard Setback

Lots fronting on:

Albermarle Street
Blackwood Street
Boylston Street
Durham Street
Garrison Street
St. Germain Street - northeast side

25' Rear Yard Setback

Lots fronting on:

St. Botolph Street
Follen Street

30' Rear Yard Setback

Lots fronting on:

Cumberland Street
Huntington Avenue
Massachusetts Avenue, south of Huntington
West Newton Street

Anything to the contrary herein contained notwithstanding, the following are not subject to the rear yard setback requirements of this paragraph (c) and paragraph (d) of this Subsection 41-18.4: (i) fences and walls not over six feet in height above the natural grade of the rear yard; (ii) accessory buildings not over fifteen (15) feet in height and not less than five (5) feet from any lot line; (iii) porches and balconies not occupying more than half the horizontal length of the rear facade and not less than five (5) feet from any lot line; (iv) fire escapes, bays, chimneys, flues, and gutters not less than five (5) feet from the rear lot line; and (v) belt courses, leaders, sills, pilasters, lintels, decorative cornices, and other surface ornamentation. In addition, the requirements of this paragraph (c) do not apply within a PDA.

The sky plane setback provisions of paragraph (a) of this Subsection 41-18.4, and not the rear yard requirements of this paragraph (c) nor paragraph (d) of this Subsection 41-18.4, shall apply to that part of a rear yard which abuts a public street other than a street less than twenty (20) feet in width or an alley. For the purposes of computing rear yard setbacks pursuant to this paragraph (c) and paragraph (d) of this Subsection 41-18.4, "rear lot line" has the meaning set forth in clause 31 of Section 2-1 of the code, except that where the rear of a lot abuts a public alley or private way, the rear lot line shall be deemed to be the centerline of said alley or way.

Notwithstanding any contrary provision of clauses 30 and 31 of Section 2-1 of this code, for any lot abutting two or more streets the determination of which portions of the lot constitute the "front" and "rear" shall be made as follows: (i) if the building on the lot is or is proposed to be contiguous with an adjacent building, the front and rear of said lot shall correspond to the front and rear of said adjacent building; (ii) if the determination cannot be made on the basis of clause (i), the rear of said lot shall be the portion abutting a public alley or private way and the front shall be the portion that most nearly qualifies as distant and opposite the rear of said lot; however, (iii) if the determination cannot be made on the basis of either clauses (i) or (ii) above, the rear of said lot shall be determined in accordance with said clauses 2-1(30) and 2-1(31) of this code.

- (d) Special Rear Setbacks in the Huntington Avenue Boulevard Area. Any Proposed Project in the Huntington Avenue Boulevard Area is subject to the following special rear setback requirements. Other than decorative cornices and surface

ornamentation, any portion of said Proposed Project (including, without limitation, mechanical equipment) shall be set back from the rear lot line:

- (i) at and above grade by thirty (30) feet (rear yard setback);
- (ii) above a building height of sixty (60) feet by ten (10) additional feet for a total a setback of forty (40) feet;
- (iii) above a building height of eighty (80) feet, by five (5) additional feet for a total setback of forty-five (45) feet.

(e) Special Side Setbacks in the Huntington Avenue Boulevard Area. Any Proposed Project located in the Huntington Avenue Boulevard Area is subject to the following special side setbacks: other than decorative cornices and surface ornamentation, any portion of such a Proposed Project (including, without limitation, mechanical equipment) above a building height of eighty (80) feet shall be set back by not less than ten (10) feet from any Street Wall facing Cumberland Street, Newton Street, or Garrison Street, or building edge facing Public Alley No. 405.

(f) Maximum Floor Plates. The following is applicable to any Proposed Project with a building height in excess of one hundred fifty-five (155) feet: above a height of one hundred fifty-five (155) feet, the average gross floor area per floor of separate buildings or elements of such Proposed Project shall not exceed twenty-two thousand five hundred (22,500) square feet, except within a PDA, such average gross floor area shall not exceed twenty-four thousand (24,000); and no single floor above such height shall exceed a maximum gross floor area of twenty-five thousand (25,000) square feet.

5. Design Review and Special Design Guidelines for Protection Areas. Within the St. Botolph Street Protection Area and the St. Germain Street Protection Area, any Proposed Project for exterior alteration or construction shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component). To be consistent with the design guidelines established in this subsection 41-18.5, 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 Huntington Avenue/Prudential Center 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.

- (a) Special Facade Considerations. In reaching its decision, pursuant to Section 80E-4.1 (Standards for Small Project Review Approval: Design Component), the Boston Redevelopment Authority shall consider whether the Proposed Project will have an adverse effect on: (a) the character of the St. Botolph Street Protection Area and the St. Germain Street Protection Area as areas within which traditional brownstone and brick residential facades predominate; or (b) the lot-by-lot appearance of the district.

(^As amended on May 9, 1996, July 31, 1997, July 27, 2002 and January 7, 2009.)

SECTION 41-19. Off-Street Parking. The provisions of Article 23, Off-Street Parking, shall govern any Proposed Project in the Huntington Avenue/Prudential Center District, except a Proposed Project in a PDA, for which off-street parking shall be provided as required in the applicable Development Plan. The off-street parking requirements stated as applicable to a specific floor area ratio set forth in Table B of Section 13-1 shall also apply to the same floor area ratio set forth in this article. Where a use specified in this article is not included in any use item number listed in Article 23, off-street parking facilities shall be provided in accordance with the requirements for the use item number listed in Article 23 which is most similar to such use. The foregoing notwithstanding, in no event shall any Proposed Project be required to provide parking in excess of that permitted under any applicable state or federal parking freeze or similar law. No portion of any lot or structure within the St. Botolph Street Protection Area or St. Germain Street Protection Area shall be used, or arranged or designed to be used, for parking accessed directly from a public street (excluding alleys) over a curb cut not existing as of the date of the first notice of hearing before the commission for the adoption of this article.

SECTION 41-20. Off-Street Loading. Article 24 provides the regulations governing the provision and design of off-street loading facilities for the use of any structure or land not subject to Large Project Review. Where a use specified in this article is not included in any use item number listed in Article 24, off-street loading facilities shall be provided in accordance with the requirements for the use item number listed in Article 24 which is most similar to such use. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review, and mitigative measures, as appropriate, shall be required through such

review to minimize the environmental effects of any off-street loading facilities on adjacent properties. Notwithstanding any contrary provision of Article 24, off-street loading facilities shall not be permitted in the St. Botolph Street Protection Area or in the St. Germain Street Protection Area.

(^As amended on May 9, 1996.)

SECTION 41-21. **Regulations.** The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this article.

SECTION 41-22. **Severability.** The provisions and requirements of this article are severable, and if any such provision or requirement shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this article.

APPENDIX B to ARTICLE 41

Ground Level Uses

1. The following uses are Ground Level Uses, and are allowed uses within the Huntington Avenue/Prudential Center District, provided that the uses described in Use Items No. 34A and No. 38A are forbidden. This list is intended to be illustrative of ground level uses and not exclusive.

Antique stores
Appliances, repair shops
Appliances, sales
Art galleries, commercial and non-profit
Art metal craft shops
Art needle work shops
Artists' supply and music stores
Athletic goods stores
Auditoriums
Bakeries or pastry shops
Bank branch offices
Bank machines, provided that the ground level street frontage of a bank facility containing only bank machines is limited to twenty (20) feet
Barber shops
Beauty parlors
Bicycle stores, rental or repair
Book stores or card stores
Cafes
Candy stores
Carpet, rugs, linoleum, or other floor covering stores
Churches
Cigar stores
Clock or watch stores, or repair shops
Clothing retail establishments
Clothing stores (men's, women's, children's apparel)
Clubs, noncommercial
Coffee shops
Coin stores
Community centers
Costume rental establishments
Dance halls, public
Day care centers
Delicatessen stores
Department stores
Diners

APPENDIX B to ARTICLE 41 (continued)

Dressmaking shops, custom
Drug stores
Dry cleaning establishments or laundromats
Dry goods or fabric stores
Eating or drinking places, in accordance with the provisions of Use Item No. 38A
Entrance/exit to off-street parking or loading area provided that it occupies not more than thirty (30) feet of ground level street frontage or such other dimension as may be provided in an approved Development Plan
Entrance/exit to public transit facilities
Fabric or yarn store
Fire Stations
Fishing tackle or equipment stores, 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
Gift shops
Hair products for headwear
Hardware stores
Health club or gym (only a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed at-grade on streets bounding blocks)
Historical exhibits
Hobby shops
Hotel or motel (only a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed at-grade on streets bounding blocks)
Housewares
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware
Lamp shops
Leather goods or luggage stores
Libraries
Locksmith shops
Luggage stores

Millinery shops
Motion pictures or video production studio
Museums
Music stores
Musical instruments, repair
Newsstands, enclosed
Office or business machine stores, sales or rental
Offices (only a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed at grade on streets bounding blocks)
Optician or 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 a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed 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 shop

APPENDIX B to ARTICLE 41 (continued)

Stamp stores
Stationery stores
Studios: music, dancing, visual arts, or theatrical
Tailor shops, custom
Telegraph offices
Television repair shops
Theater
Ticket sales
Tobacco stores
Tour operator
Toy stores
Typewriter stores
Typewriter or other small business machine repair stores
Variety or convenience stores
Video or motion picture store, sale or rentals
Wallpaper stores

APPENDIX C to ARTICLE 41

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, as amended, or as set forth in regulations adopted in accordance with Section 41-14.
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, as amended, or as set forth in regulations adopted in accordance with Section 41-14.
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 41-4, or the authorized agent of any such person or entity.
5. "Curb Line" means the line of the curb or other structure or indication separating the street from the sidewalk.
6. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 228.
7. "Display Window Area" means that portion of the Street Wall between (i) a height of two (2) feet above the ground floor and (ii) the height of the underside of the floor structure of the second floor, or fourteen (14) feet, whichever is less.
8. "Ground Level Uses" means the uses listed in Appendix B to this article.
9. "Historic Building" means any building listed on the Massachusetts Register of Historic Places.

10. "Landmark" means any building or structure designated as a landmark by the Boston Landmarks Commission pursuant to Chapter 772 of the Acts of 1975, as amended.
11. "Lobby Entrance Area" means the frontage at street level of the lobby of an office, residential, hotel/motel, or other structure.
12. "Low-Income Household" means any household whose Annual Income does not exceed 50% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
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, as amended, or as set forth in regulations adopted in accordance with Section 41-14.
14. "Moderate-Income Household" means any household whose Annual Income does not exceed 80% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
15. "Huntington Avenue/Prudential Center District Plan" means the zoning regulations applicable to the Huntington Avenue/Prudential Center District and the plan for the District as evidenced by applicable development precedents and planning studies and any applicable comprehensive plan for the District, adopted by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of the code.
- ^16. "Huntington Avenue/Prudential Center District" means the area depicted on Map 1D of this code.

(^As amended on July 31, 1997.)
17. "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.
18. "State Building Code" means the state building code and amendments and rules and regulations thereto as promulgated by the state board of building regulations under sections ninety-three, ninety-four, and ninety-five of Chapter One Hundred Forty-Three of the General Laws.

APPENDIX C to ARTICLE 41 (continued)

19. "Street Wall" means the portion of the exterior wall (including recesses, bays, windows, doors, and other features) of a Proposed Project that fronts on a public street (excluding public alleys) and is below the Street Wall Height, determined pursuant to Section 41-18.
20. "Street Wall Plane" means the planar surface of the Street Wall (disregarding recesses, bays, windows, doors, etc.) required pursuant to Section 41-18.
21. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor shall not exceed the specified height limit for the applicable district or subdistrict by more than the lesser of (i) ten (10) feet or (ii) two-thirds of the average floor-to-floor height of the building, excluding the ground floor. "Substantial Accord" shall not be interpreted as allowing a Proposed Project to exceed the maximum permitted FAR.
22. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code.
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.