

Chapter 5

PUBLIC BUILDINGS AND INSPECTIONAL SERVICES*

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ARTICLE I. PUBLIC BUILDINGS DEPARTMENT

Sec. 5-1. Department established.

There shall be established a public buildings department, which shall have as its head, a public buildings commissioner. This person shall be an officer of the city to whom the provisions of laws applicable to department heads shall apply. (Ord. No. S-301, 2-1-88)

Charter reference—Administrative departments, Art. 6

Sec. 5-2. Duties and responsibilities.

The public buildings commissioner shall have as among his duties and responsibilities the construction, alteration, repair and maintenance of all public buildings except as otherwise may be provided for by the charter of the city. (Ord. No. S-301, 2-1-88)

Sec. 5-3. Employees.

The public buildings commissioner, subject to the civil service laws of the commonwealth, shall have the authority to appoint or hire such support staff as the work requires, and to remove any of them for cause. (Ord. No. S-301, 2-1-88)

Secs. 5-4—5-15. Reserved.

ARTICLE II. INSPECTIONAL SERVICES DEPARTMENT

Sec. 5-16. Department established; duties - generally.

(a) There shall be established an inspectional services department, which shall have as its head, a commissioner of inspectional services. This person shall be an officer of the city to whom the provisions of laws applicable to department heads shall apply.

(b) The commissioner of inspectional services shall perform the following functions:

* **Cross references**—City engineer, Ch. 25; civil defense, Ch. 8; fire protection and prevention, Ch. 10; recycling and trash, Ch. 11; regulations regarding moving of buildings, Ch. 19, Art. XI; planning and development, Ch. 22; public works department, Ch. 25; numbering of buildings, § 26-7; zoning, Ch. 30

- (1) The execution of statutes of the commonwealth relating to buildings and the state building codes, including enforcement of regulations relating to plumbing, gas and electrical wiring and shall in this capacity serve as and be the building commissioner, local inspector of buildings, or local official, all as may be referenced in the applicable general laws; and
- (2) The execution of those statutes of the commonwealth and ordinances of the city relating to zoning and the performance of such other duties as may be required, by such other statutes and ordinances as may from time to time be enacted, to be performed by a building commissioner, local inspector of buildings or local official, all as may be referenced in the applicable statutes or ordinances.

(c) The word "commissioner" in this article shall be taken to mean the commissioner of inspectional services or his duly authorized representative.

(d) All inspectors of the inspectional services department including the inspectors of plumbing and the inspectors of wires shall be subject to the immediate control, supervision and direction of the commissioner.

(e) The department shall cooperate with the operations of the building and land development service counter operated pursuant to section 22-3. (Rev. Ords. 1973, § 2-151; Ord. No. 190, 12-20-76; Ord. No. 317, 2-20-79; Ord. No. S-83, 1-21-85; Ord. No. S-301, 2-1-88; Ord. No. T-215, 2-18-92; Ord. No. V-285, 3-6-00; Ord. No. X-62, 11-17-03)

Editor's Note—By the terms of G.L. c. 143, § 3A, the state building code is effective throughout the state.

State law references—Local regulation of buildings, G.L. c. 143, § 3

Sec. 5-17. Employees.

(a) The commissioner of inspectional services, subject to the civil service laws of the commonwealth, shall have authority to appoint such numbers of inspectors, clerks and other subordinates as the work requires, and to remove any of them for cause. The inspectors shall be competent, qualified persons as required by the Massachusetts General Laws and applicable codes.

(b) No commissioner, inspector or deputy connected with the inspectional services department shall have an interest, financial or otherwise, in the performance of work or furnishing of material or appliances for the construction, alteration or maintenance of any building in the city or in the making of plans or specifications therefor, unless he is the owner thereof. No such commissioner, inspector or deputy shall be engaged in any work which is inconsistent with his or her duties or the interest of the department. (Rev. Ords. 1973, § 2-152; Ord. No. 190, 12-20-76; Ord. No. 317, 2-20-79; Ord. No. S-301, 2-1-88; Ord. No. T-215, 2-18-92; Ord. No. V-285, 3-6-00)

Cross reference—human resources dept. Ch. 2, Art. V.

Sec. 5-18. Reports.

In addition to other reports required by statute or ordinance, the commissioner shall file a quarterly report with the mayor and city council. The quarterly report shall contain, but not be limited to, the number of complaints filed for the quarter, the number of complaints filed for the year to date, a comparison with previous years, the status of the complaints, and any specific problems encountered with the zoning ordinance and any recommendations for correction of such problems. (Rev. Ords. 1973, § 2-153; Ord. No. 317, 2-20-79)

Sec. 5-19. Residential swimming pool enclosures and lighting.

(a) For the purpose of this section, "private swimming pool" shall mean a pool which is used for swimming or bathing in connection with a single family residence and available only to the family of the householder and his private guests, provided, however, this section shall not be applicable to any pool less than twenty-four (24) inches deep or having a surface area of less than two hundred and fifty (250) square feet, except when such pools are

permanently equipped with a water recirculating system or involve structural materials.

(b) Every outdoor private swimming pool shall be enclosed at all times, whether or not filled with water, by a fence or wall not less than five feet in height, except that fences and walls of not less than four feet in height in existence prior to August 25, 1964 shall satisfy this height requirement as to outdoor private swimming pools in existence prior to January 1, 1975. Such fence or wall shall be firmly secured at ground level and be so constructed and maintained as not to have openings, holes or gaps larger than four inches in any dimension, except for doors and gates, and except for picket fences in which case, however, the gaps between pickets shall not exceed four inches. A building may be used as part of such enclosure.

All gates or doors opening through such enclosure shall be of not less than the same height as the fence or wall and shall be equipped with a self-closing and self-catching device located not more than one foot below the top of the fence or wall for keeping the gate or door securely closed at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped. Each such gate or door shall be kept locked at all times when the swimming pool enclosure is not in use.

No construction, installation or enlargement of private swimming pools shall be commenced until the commissioner of inspectional services has issued a building permit. Before work is commenced applicants shall submit an application, together with such plans and specifications as the commissioner of inspectional services may require. The commissioner of inspectional services shall review the application to determine whether the proposed work complies with the provisions of this subsection.

(c) All lighting of an outdoor private swimming pool or its enclosures shall be directed at the pool and the source of the light shall be shielded from view from any street or adjoining property.

(d) The provisions of this section shall not become applicable to private swimming pools in existence on the date of enactment of said section until the date six months subsequent to such date of enactment.

(e) Spas or hot tubs having a depth of no more than forty-eight (48) inches and no exterior dimension greater than eight (8) feet, equipped with a water circulating system shall be exempt from the fencing and self-closing gate requirements of section 5-19(b) provided the following conditions are met:

- (1) Such spas or hot tubs are equipped with a safety cover meeting the American Society for Testing and Materials (ASTM) F-1346-91 standard, as may hereafter be amended, now entitled "Standard Performance Specification for Safety Covers and Labeling Requirements For All Covers For Swimming Pools, Spas and Hot Tubs;"
- (2) The aforementioned safety cover shall be equipped with a locking device in order to keep the cover securely attached at all times when spas or hot tubs are not in actual use; and
- (3) Each such safety cover shall be kept securely attached and shall be securely locked at all times when spas or hot tubs are not in actual use, or are unattended. (Ord. No. S-143, 9-17-85; Ord. No. V-22, 6-19-95)

Sec. 5-20. Soil, loam, sand or gravel; removal.

(a) No person shall remove any soil, loam, sand or gravel from any land in the city not in public use except in conjunction with the construction or alteration of a building or structure on the same lot for which a building permit shall have been issued, or for grading of the lot reasonably incidental to such construction or alteration; for the construction of a private way in accordance with a subdivision plan approved by the planning board; in conjunction with the continued operation on the same lot of an existing sand and gravel pit authorized under the provisions of chapter 30 of the Revised Ordinances; or unless such removal is authorized by a permit issued pursuant to a vote of

the city council upon a written application therefor filed with the city clerk. The city council may but shall not be required to hold a public hearing on such application, on such notice as they shall determine to be sufficient.

(b) No building permit shall be issued by the commissioner of inspectional services in any single residence district or in a multi-residence 1, 2 or 3 district if the area of the lot is in excess of one and one-half (1½) times the minimum lot size required in that district, in a multi-residence 4 district if the area of the lot is in excess of thirty thousand (30,000) square feet or in any business or manufacturing district if the area of the lot is in excess of fifteen thousand (15,000) square feet, unless the applicant files an affidavit that no soil, loam, sand or gravel will be removed from the lot except as provided in this section.

(c) In determining the size of a lot for the purposes of this section, there shall be included the area of any adjoining lot with respect to which a building permit has been issued but not exercised to the point of substantial completion of the foundation or with respect to which an application for a building permit has been filed but has not been acted upon or withdrawn.

(d) This section is enacted pursuant to the provisions of chapter 40, section 21, clause 17 of the General Laws and the penalties prescribed thereby shall attach to violations of this section. This section is in addition to and not in substitution for the provisions of chapter 30 of these revised ordinances. (Rev. Ords. 1973, § 14- 10; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88; Rev . Ords. 1995, § 20-10; Rev. Ord. 2007, § 20-59)

Sec. 5-21. Regulation of Inadequately Maintained Vacant Properties

(a) *Purpose:* The purpose of this ordinance is to help protect the health, safety and welfare of the citizens by preventing blight, protecting property values and neighborhood integrity, protecting the City’s resources, avoiding the creation and maintenance of nuisances and ensuring the safe and sanitary maintenance of dwellings. Inadequately maintained vacant buildings are at an increased risk for fire, unlawful entry, and other public health and safety hazards. This ordinance will help secure the welfare of the City’s residents and neighborhoods by requiring all residential property owners, including lenders, trustees, and service companies and alike, to properly maintain vacant residential properties.

(b) *Definitions:*

Commissioner: commissioner of the inspectional services department.

Owner: every person, entity, service company, property manager or real estate broker, who alone or severally with others:

- (1) has legal or equitable title to any dwelling, dwelling unit, or parcel of land, vacant or otherwise; or
- (2) has care, charge or control of any dwelling, dwelling unit, parcel of land, vacant or otherwise, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- (3) is a mortgagee in possession of any such property; or
- (4) is an agent trustee or other person appointed by the courts and vested with possession or control; or
- (5) is an officer or trustee of the association of unit owners of a condominium; each such person is bound to comply with the provisions of these minimum standards as if he were the owner; or
- (6) is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and

has initiated a foreclosure process.

Property: any real, residential property, or portion thereof, located in the city of Newton, including buildings or structures situated on the property. For purposes of this section, property does not include property owned or subject to the control of the city or any of its governmental bodies.

Residential Property: any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

Vacant property: any residential property that is unoccupied for a period greater than one hundred eighty (180) days by a person or persons with legal right to reside therein.

(c) *Requirements for adequate maintenance:* owners of vacant properties, as defined in section (b), must fulfill the following minimum adequate maintenance requirements for any such property they own:

- (1) Maintain vacant properties subject to this section in accordance with the relevant sanitary, building, and fire codes.
- (2) Secure vacant properties subject to this section to prevent unauthorized entry and exposure to the elements.
- (3) Maintain vacant properties subject to this section in accordance with regulations promulgated by the commissioner pertaining to the external/visible maintenance of the property, including but not limited to the maintenance of major systems, the removal of trash and debris, and the upkeep of lawns, shrubbery, and other landscape features.
- (4) Repair or replace broken windows or doors within thirty (30) days. Boarding up any doors or windows is prohibited except as a temporary measure for no longer than thirty (30) days.
- (5) For properties vacant for six months or more, whose utilities have been shut off, remove or cut and cap such utilities to prevent accidents.
- (6) Compliance with this subsection shall not relieve the owner of any applicable obligations set forth in any other codes, regulations, covenant conditions or restrictions, and/or homeowner or condominium association rules and regulations.

(d) *Notice of failure to adequately maintain vacant property:* Upon identifying a vacant residential property as failing to meet the minimum maintenance requirements set out in section (c), the commissioner will notify the owner in writing of maintenance deficiencies at the owner's last known address. If any maintenance deficiency is not corrected within 30 days of said notice, or if a maintenance plan is not approved by the commissioner within 30 days of said notice, the commissioner may impose the fines described in section 17-23(c).

(e) *Inspections:* The commissioner of inspectional services, the commissioner of health and human services, the chief of the police department and the chief of the fire department or their designees shall have the authority to periodically inspect any property subject to this section for compliance. The commissioner shall have the discretion to determine when and how such inspections are to be made, provided that the time and manner of such inspections are reasonably calculated to ensure that this section is enforced.

(f) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with a maintenance plan approved by the commissioner, shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Where non-criminal

disposition of specified sections of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).

(g) *Enforcement*: The commissioner or his designee shall enforce all provisions of this section; including any regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.

(h) *Regulatory Authority*: The commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.

(i) *Severability*: If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect. (Ord. No. Z-60, 12-21-09; Rev. Ords. 2007, §20-70)

Sec. 5-22 Regulation of Public Nuisances: Keeping of Junk, Debris, Overgrown Vegetation.

(a) *Purpose*: The purpose of this ordinance is to help protect the health, safety and welfare of the citizens by preventing neighborhood blight from the creation and maintenance of public nuisances on property detrimental to neighboring residents and properties.

(b) *Regulation of Public Nuisance*. No owner or occupant of any lot in any residential district shall keep in the public view for more than sixty (60) days either, (1) any substantial amount of junk and debris, or (2) a condition of overgrown vegetation. Such keeping of a substantial amount of junk and debris or overgrown vegetation is declared to be a public nuisance if any of the following three criteria are also met:

- (1) causes adverse effects on the health or safety of neighbors;
- (2) materially diminishes the reasonable use and enjoyment of any neighboring properties; or
- (3) produces a hazardous or harmful condition of private property, land or structures.

(c) *Definitions*:

Commissioner. The Commissioner of Inspectional Services or designee.

Substantial Amount of Junk or debris. Any materials or combination of materials including but not limited to scrap, metal, scrap construction materials, rags, plastics, batteries, paper trash, inoperable appliances, inoperable machinery, mattresses, tires, and dilapidated or decayed furniture unusable for its intended purpose, which occupies more than 375 cubic feet in the aggregate on any one lot in a residential district.

A condition of overgrown vegetation. Any weeds, grass, bushes, or other shrubbery which are so untrimmed or unkempt that they present a reasonable expectation of harboring or attracting rats and vermin, or concealing pools of stagnant water.

Public view. Viewed from public property or ways or is visible from multiple privately owned properties.

(d) *Regulatory authority*. The Commissioner or designee has the authority to promulgate rules and regulations necessary to implement and enforce this section.

(e) *Enforcement.* The Commissioner or designee shall enforce the provisions of this section, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.

(f) *Notice of violation.* The Commissioner or designee shall issue a written notice of any violation of this section to the owner or occupant of the lot. Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice. If such condition is not remedied within that time, the Commissioner may take action to impose the fines described in sec. 5-22 (g).

(g) *Penalties.* Any violation of any portion of this section, including violations of any rules and regulations promulgated by the commissioner hereunder, shall be punishable by a fine of one hundred dollars (\$100.00) per day for days one through seven that the violation continues; two hundred dollars per day (\$200.00) for days eight through fourteen that the violation continues; and three hundred dollars (\$300.00) per day for each subsequent day the violation continues. Each day a violation continues shall constitute a separate offense. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).

(h) Action under this section shall not bar any separate regulation by or action by any other City department for health, fire safety, building code or any other violations.

(i) *Severability.* If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered severable from the remaining provisions, which shall remain in full force and effect. (Ord. No. A-41, 06-16-14)

Cross Reference – State Sanitary Code, 105 C.M.R. 410 *et. seq.*

Secs. 5-23—5-29. Reserved.

**ARTICLE III.
FENCES**

Sec. 5-30. Regulation of Perimeter Fences.

(a) Purpose: The purpose of this section is to establish criteria for the location, appearance and maintenance of perimeter fences. The intent is to regulate the location and type of fences in order to promote and to protect the open and natural characteristics of Newton streetscapes and neighborhoods, the unencumbered passage of pedestrians on city sidewalks and to assure the safe visibility of both pedestrians and motor vehicular traffic.

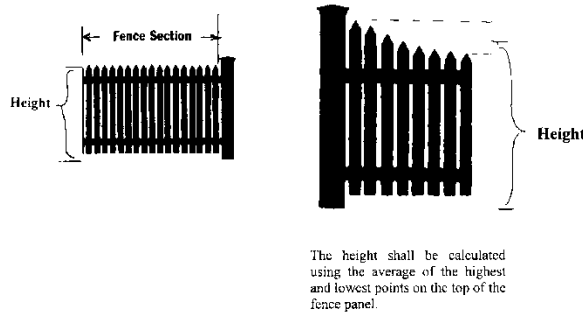
(b) Definitions: As used in this section, the following terms shall be defined as set forth herein, unless otherwise stated:

Appropriate Materials: Materials normally manufactured for, used as, and recognized as fencing materials, including but not limited to, wrought iron or other decorative metals suitable for the construction of fences, fired masonry, concrete, stone, wood, vinyl and chain link. Such materials must be suitable for exterior use and weather and decay-resistant, provided that this requirement shall not prevent the use of wood that is untreated or unpainted.

Fence: Any permanent partition or barrier more than twelve (12) inches in height from the natural grade (or the top of a retaining wall if a fence is placed on such wall) bordering or parallel to and within five (5) feet of a lot line that in whole or in part defines the boundaries of said lot. A retaining wall or landscaping material such as

hedges shall not be considered a fence. Fences located within the interior of a lot which do not serve to define a lot boundary, such as, but not limited to, fences that enclose dog runs, play areas, pools, tennis courts, etc., are not subject to regulation pursuant to this ordinance except for any portion of such fence that borders or is parallel to and within five (5) feet of a lot line.

Height: The vertical distance measured from the natural grade of the ground at the location where the fence is erected (or from the top of a retaining wall if a fence is placed on such wall) to the top of the fence section or panel. Fence supports such as posts, columns, piers or pilasters, as well as gates and arbors may exceed the height restriction contained in this ordinance by not more than twenty-four (24) inches. In cases where the top of the fence section or panel is curved, the height shall be calculated using the average of the highest and lowest points on the top of the fence section or panel as illustrated in the diagram below.



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

Lot Line, Front: A lot line that borders a public or a private way.

Lot Line Rear: The lot line that is opposite the front lot line. In the case of corner lots as defined in Section 30-1 of the Revised Ordinances, as amended, the rear lot line shall be the lot line opposite the street faced by the main entrance of any house located on the lot.

Lot Line, Side: Any lot line that is not a front or rear lot line.

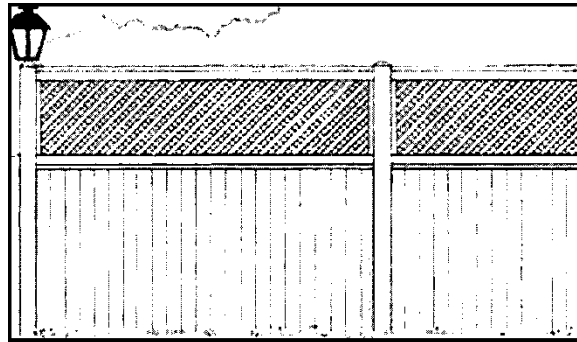
Legal Nonconforming Fence: Any fence that does not conform with the requirements of this ordinance shall be considered nonconforming. Fences erected prior to July 1, 2004 that do not conform with the requirements of this ordinance shall be considered legal nonconforming fences.

Repair: Routine maintenance, such as painting, or replacement of less than 50% of the length of a fence along any property line with in-kind material. Replacement of 50% or more of the length of a fence along any property line shall constitute a new fence.

(c) Requirement of a Permit: Any person erecting a perimeter fence greater than four (4) feet in height shall first obtain a fence permit from the Commissioner of Inspectional Services. Any person seeking to repair an existing fence shall not be required to obtain a fence permit. The Commissioner of Inspectional Services shall issue the fence permit if he or she finds that the proposed fence complies with all the requirements of this ordinance. An individual who has been denied a fence permit by the Commissioner may appeal such denial to the Urban Design Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design Commission shall issue the fence permit if the Commission determines that the proposed fence complies with the requirements of this ordinance, or if owing to conditions especially affecting a particular lot compliance with the provisions of this ordinance would involve substantial hardship.

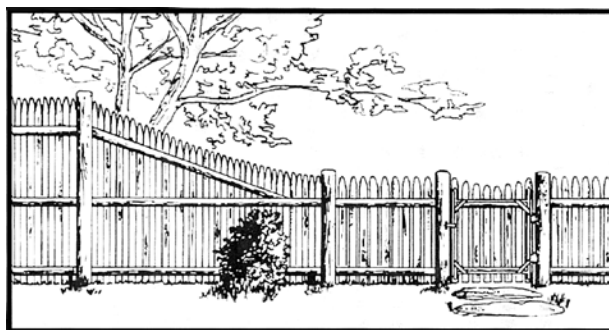
(d) Regulation of Perimeter Fences in Residential Zoning Districts:

The height of perimeter fences located in residential zoning districts shall be regulated as follows:



Example of a perimeter fence with an open top

- (1) Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line.
- (2) Fences bordering side lot lines: No fence or portion of a fence bordering or parallel to a side lot line shall exceed six (6) feet in height except as provided in subsection (6) below, and further, that any portion of a fence bordering a side lot line which is within two (2) feet of a front lot line shall be graded to match the height of any fence bordering the front lot line.
- (3) Fences bordering the rear lot line: No fence or portion of a fence bordering or parallel to a rear lot line shall exceed six (6) feet in height, provided, however, that the height of a rear lot line fence may be increased to a maximum of eight (8) feet if no portion of such rear lot line constitutes a side lot line for an adjoining lot or as provided in subsection (6) below.



Example of graded fence

- (4) Limited access highway fences: Regardless of whether the fence is located along a front, side or rear lot line, fences abutting Route 128, or the Massachusetts Turnpike, may be increased to a maximum of twelve (12) feet in height.
- (5) Fences bordering side or rear lot lines that immediately abut an MBTA or Commuter Rail line may be

increased to a maximum of eight (8) feet in height.

(6) Fences bordering side or rear lot lines where the entire length of said side or rear lot lines immediately abut nonresidential or public use zoning districts may be increased to a maximum of eight (8) feet in height.

(7) Any fence located on top of a retaining wall must meet the height and setback requirements in subsection (d) above.

(e) Regulation of Perimeter Fences in Nonresidential Zoning Districts: The height of perimeter fences located in nonresidential zoning districts including fences erected by the City of Newton in the public use districts shall not exceed eight (8) feet in height except as necessary for athletic facilities such as, but not limited to softball diamonds or tennis courts which may be permitted at heights in conformance with established recreation standards.

(f) Regulations Applicable to All Perimeter Fences: The following regulations shall be applicable to all perimeter fences, including those erected by the City of Newton, regardless of the zoning district in which the fence is located.

(1) All fences must be positioned so that a finished side of the fence faces away from the lot on which it is constructed. Fences should follow the natural contours of the ground and shall be made of appropriate materials.

(2) No fence shall be constructed wholly or in part of barbed wire or razor wire. There shall be no sharp prongs on the top of a chain link or similar fence and all such prongs shall be either meshed or turned over.

(3) A legal nonconforming fence may be repaired. Restoration of said fence with materials different from the materials of the original fence and reconstruction or replacement of the entire fence with the same or different materials shall not be considered a repair, but shall be considered the erection of a new fence that must comply with the requirements of this ordinance.

(4) Fences located in a local historic district must receive a Certificate of Appropriateness, Non-Applicability or Hardship from the local historic district commission prior to submitting an application for a fence permit.

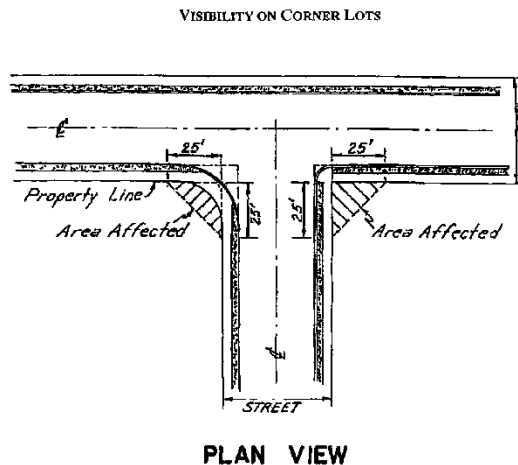
(5) Fences located in a wetland area may be subject to additional regulations and must be reviewed by the Conservation Commission prior to submitting an application for a fence permit.

(6) Scenic Road Fences. In order to maintain the character of all designated scenic roads, no stockade fences or other fences with solid sections or panels excepting stone fences shall be permitted bordering or parallel to the front lot line along a designated scenic road. Notwithstanding the height regulations set out in subsections (d) and (e) above, no fence bordering or parallel to a front lot line along a designated scenic road may exceed four (4) feet in height above the natural grade.*

(7) Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section

* **Editor's note:** As of the passage of this ordinance there are 17 designated Scenic Roads in Newton: Woodland Road, Hancock Street, Grove Street, Concord Street, Fuller Street, Valentine Street, Highland Street, Waban Avenue, Woodcliff Road, Lake Avenue, Sumner Street, Hobart Road, Dudley Road, Mill Street, Hammond Street, Chestnut Street and Brookside Avenue.

30-1 of the Revised Ordinances, as amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets as illustrated in the diagram below. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer.



(g) Exemptions for Certain Types of Perimeter Fences:

- (1) Temporary or Construction Fences: A temporary or construction perimeter fence not exceeding six (6) feet in height or such other height as may be required by the State Building Code may be erected without a fence permit for the period of the event requiring the temporary fence or for the duration of construction.
- (2) Protective Measure Fence: A perimeter fence that does not comply with this ordinance may be erected in the interest of public safety and to protect an enclosed area and the property therein or to deny access to a potentially dangerous property or location if, at the time a fence permit is requested, the Commissioner of Inspectional Services determines that a fence that complies with the regulations of the ordinance does not provide the required public safety, security or protection. An individual who has been denied a fence permit for a protective measure fence by the Commissioner may appeal such denial to the Urban Design Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design Commission shall issue the fence permit for the protective measure fence if the Commission determines that the proposed fence is necessary to provide the required public safety, security or protection.
- (3) Should there be any conflict between the requirements of this section and the relevant provisions of the State Building Code as most recently promulgated in 780 CMR 421.10 (6th ed.) which require a barrier enclosing an outdoor private swimming pool measuring at least 48 inches above finished ground level, the State Building Code shall prevail.

(h) Exceptions: The Urban Design Commission may grant exceptions to the provisions of this ordinance in accordance with the procedures and criteria for such exceptions established by the Commission where it

determines that owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise, to the individual requesting the exception, and the desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good.

(i) Nothing in this ordinance shall relieve any person erecting a fence from compliance with any other applicable statute, ordinance or regulation, including but not limited to, the State Building Code, (780 CMR), G.L. c. 49, and Chapter 30 of the Revised Zoning Ordinances, as amended.

(j) Penalty: Whoever violates any of the provisions of this ordinance shall be punished by a fine of not more than fifty (\$50) dollars for each day during which the violation continues. Where non-criminal disposition of specified sections of this ordinance by civil fine has been provided for in sections 17-22 and 17-23 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in section 17-21(c).

(k) Enforcement: The Commissioner of Inspectional Services shall enforce all provisions of the ordinance, including instituting all necessary administrative or legal action to assure compliance therewith. Any person found to be in violation of the ordinance shall receive a written warning and a minimum of thirty (30) days to remediate all violations thereof prior to the institution of any enforcement action by the Commissioner. (Ord. No. X-93, 06-21-04; Rev. Ord. 2007, § 20-40)

Secs. 5-31—5-34. Reserved.

ARTICLE IV. DESIGNER SELECTION COMMITTEE

Sec. 5-35. Established; purpose.

A designer selection committee is hereby established to make recommendations to the mayor whenever an architect is to be engaged by the city for any purpose involving construction, alteration, repair or maintenance of a public building, and the mayor shall consult with this committee and shall select said architect from these recommendations. At least three (3) recommendations shall be offered and the mayor may request three (3) additional recommendations. The designer selection committee shall also oversee the selection process for design services contracts subject to the provisions of section 38K of chapter 7 of the General Laws. The designer selection committee shall not oversee the selection process for design services contracts in any instance where an alternative procurement process inconsistent with this section is prescribed by state or federal laws or regulations.

The public buildings commissioner may consult with the designer selection committee regarding procurement of any design services contract not otherwise required to be overseen by the committee pursuant to the provisions of this section. (Rev. Ords. 1973, §2-346; Ord. No. Z-109, 05-07-12)

Cross references—Commissions and committees generally, Ch. 2, Art. VII; regulations governing appointment to and service on commissions and committees, § 2-8

Sec. 5-36. Composition, appointment and compensation of members.

When the public facility to be constructed is not under the jurisdiction of the school committee, the designer selection committee shall consist of six (6) members, three (3) of whom shall be appointed by the mayor, and three (3) of whom shall be selected by the city council. For school facilities, three (3) additional members shall be selected by the school committee. All of the persons serving on this committee shall serve without compensation and shall be residents of the city. (Rev. Ords. 1973, § 2-347)

Sec. 5-37. Terms of members, vacancies, procedures.

Members of the designer selection committee shall serve coterminous with the terms of their respective appointing authority. Vacancies in the committee shall be filled by appointment in the same manner by the designated appointing authority as the original appointments for the period of the unexpired term. The committee shall elect a chairman annually and establish rules and procedures. Committee members shall serve at the pleasure of their respective appointing authority. The public buildings department shall provide such assistance to the committee as is necessary for the exercise of the committee's responsibilities. Records of the committee shall be public documents. The committee shall make reports no less than annually to the respective appointing authorities. (Rev. Ords. 1973, § 2-348; Ord. No. 190, 12-20-76; Ord. No. 317, 2-20-79; Ord. No. S-301, 2-1-88)

Secs. 5-38—5-53. Reserved.**ARTICLE V.
DESIGN REVIEW COMMITTEE****Sec. 5-54. Established.**

(a) A design review committee is hereby established to coordinate the design review process for any public facility which has been submitted to the committee by the mayor, city council or any other public agency or committee within the city.

(b) The design review committee shall examine the specifications prepared by the using agency and shall consult with the planning, public buildings and other city departments, or if appropriate, may request the public buildings commissioner to hire outside consultants to assist the design review committee in studying the feasibility of the proposed facility and shall consider to the extent the committee deems appropriate a range of solutions such as renewal, renovation or replacement within realistic budgetary limits and shall make a recommendation. The design review committee's study of the feasibility of the proposed facility shall include a review of indoor environmental health issues. The design review committee may make recommendations for specific program requirements for the proposed facility to address indoor environmental health issues. The design review committee shall include in its feasibility study a review of the proposed facility's use of natural resources and energy. The design review committee may make recommendations as to site planning, building design, or construction that contribute significantly to the proposed facility's efficient use and conservation of natural resources and energy. Whenever an architect is proposed to be engaged by the city in any design or consulting capacity, the design review committee shall review the contract between the city and the architect prior to its execution to assure that the scope of the work, as described in said contract, complies with the program requirements for the proposed public facility.

(c) The design review committee shall review the architect's solution for compliance with the program and time schedule requirements and shall evaluate the quality, appropriateness and functional attributes of the architect's solution. The committee shall have periodic meetings with the architect and hold periodic presentations and reviews and shall make reports as the project moves through the various stages of design to contract development. Prior to the issuance of bid documents, design review recommendations to the architect shall be made by the design review committee in writing to the commissioner of public buildings for his approval and issued from his office. The commissioner of public buildings shall not permit the construction contract to be advertised for public bid until the design review committee certifies in writing that the plans and specifications substantially meet the program requirements of the project.

(d) During the construction of the public facility, the commissioner of public buildings shall consult with the design review committee concerning any changes in the plans or specifications that may affect the design or program of the facility and the committee shall act promptly on all matters before it. (Rev. Ords. 1973, § 2-361; Ord.

No. 8, 8-12-74; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88; Ord. No. V-216, 12-21-98; Ord. No. Y-29, 7-9-07)

Sec. 5-55. Composition, appointment and compensation of members.

(a) Voting membership. The design review committee shall consist of twelve (12) permanent voting members, four (4) appointed by the mayor, four (4) selected by the city council, and four (4) selected by the school committee. There shall be two (2) additional voting members for each facility under design review, who are community representatives who shall represent the interests of the community in which the proposed facility is to be located, and who reside in the immediate area of the facility. One community representative shall be appointed by the mayor and one shall be selected by the city council. In the event that more than one facility shall comprise a project, and where the city council determines that the resulting number of community representatives for said project is unreasonably large, it may reduce the total number of community representatives required to not fewer than two. (Ord. No. R-142, 4-21-81)

(b) Nonvoting membership. There shall be the following nonvoting members of the design review committee: one city councilor, one school committee member for school department building projects, the planning director or his designee, the head of the using agency or his designee, and the public buildings commissioner or his designee. The public buildings commissioner shall also serve as secretary of the design review committee. (Rev. Ords. 1973, § 2-362; Ord. No. 8, 8-12-74; Ord. No. S-301, 2-1-88)

Cross references—Regulations governing appointment and service on commissions and committees, § 2-8

Sec. 5-56. Terms, vacancies and rules.

(a) The members of the design review committee, excepting the community representatives, shall serve coterminous with the terms of their respective appointing authority. Vacancies in the committee shall be filled by appointment in the same manner by the same designated appointing authority as the original appointments for the period of the unexpired term. The term of community representatives shall expire upon final acceptance by the city of the facility for which they were appointed.

(b) The design review committee shall have such assistance as is reasonably necessary for the exercise of its responsibilities provided by the department of public buildings. The records of the design review committee shall be public documents. The design review committee shall elect a chairman annually and establish rules and procedures. Members shall serve at the pleasure of their respective appointing authority.

(c) It is the intent of this section that those participating in the design review process as voting members shall be a diversified group of interested citizens, independent of and not directly employed by city government, and that some of these members shall be professionally qualified.

(d) To the extent that citizens make themselves available to serve, there shall be at least one (1), but not more than two (2) voting members from each of the following professions: architect, general construction manager, electrical engineer, mechanical engineer, structural engineer, landscape architect. Professional qualifications of voting members are desirable in the fields of city planning, traffic engineering and real estate development, but shall not be required.

(e) Whenever a vacancy in voting membership occurs, the appointing authority shall make inquiry of the public buildings commissioner and the chairman of the design review committee as to whether an appointee with particular professional qualifications is required, and after written response, the appointment shall be made so that the membership of the design review committee will be professionally balanced and will comply with the requirements and the intent of this section. Community representatives shall be appointed without regard for professional qualifications.

- (f) No voting member of the design review committee shall hold an elected or salaried position with the city.
- (g) All members shall serve without compensation and all voting members shall be residents of the city. All members shall serve until their successors take office.
- (h) The two (2) voting members who are community representatives shall vote only on those matters concerning facilities for which they are appointed. (Rev. Ords. 1973, § 2-363; Ord. No. 8, 8-12-74; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88)

Sec. 5-57. Other provisions.

Any public corporation, agency, authority, commission or body of any such private organization which is empowered to construct a public or quasi-public facility within the city and which desires to submit itself to the jurisdiction of the design review committee, may enter into an agreement, in writing, with the city for this purpose, and thereafter the design review committee shall perform all of its functions and duties with respect to such facility. (Rev. Ords. 1973, § 2-364; Ord. No. 8, 8-12-74)

Sec. 5-58. Site plan approval for construction or modification of municipal buildings and facilities.

It shall be the policy of the city to apply similar standards of planning and control of density and environmental impact, when the city's public buildings and facilities are constructed or modified, as the city applies under chapter 30, Zoning, of the Revised Ordinances when petitions for changes in land use are initiated by its citizens or property owners. In implementing this policy for land in the public use district or otherwise classified city land, the prior establishment of a zoning classification or district (in accordance with section 30-4 of these Revised Ordinances) shall not be required.

(a) Whenever construction or modification of a municipal building or facility is undertaken which involves new construction or substantial change in usage, and which involves a change in: vehicular access; off-street parking requirements; site grading; drainage; landscape features; or service areas, the following procedures shall apply:

- (1) The executive department shall include in the architect's contract the requirement for preparation and submission of site plans suitable for review and approval in accordance with the procedure outlined in section 30-23 of these Revised Ordinances.
- (2) The department of planning and development shall maintain cognizance over the development of specifications, conceptual designs and site plans to determine the consistency and compatibility of such designs and plans with the city's comprehensive plan and other pertinent planning and analytical studies. The director of planning and development shall make written notification of this finding to the mayor, to the clerk of the city council, to the design review committee, and (in the case of school buildings) to the secretary of the school committee.
- (3) The design review committee shall consider the project plans, designs, and specifications not only in terms of the details of layout and construction of the building or facility, but also in terms of the site and its surrounding area. Consultations shall be made with such city departments and neighborhood groups as are considered necessary and appropriate.
- (4) Upon its approval of the initial design concept and prior to recommending that the project proceed to the detailed design phase and to the preparation of construction drawings, the design review committee shall file with the clerk of the city council its approved site plan including building floor plans and architectural schematics, along with a formal petition for site plan approval in accordance with the procedure outlined in section 30-23 of these Revised Ordinances. The design review committee shall not be required to pay a

filing fee for purposes of this section.

(5) At the earliest opportunity, the city council shall for the purposes of this section assign that petition for public hearing before its committee dealing with matters of public buildings and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the proposed building or facility and to the abutters of such abutters. The committee shall deliberate and negotiate such changes to the site plan and affix such restrictions and conditions as are in the public interest, and it shall make its report to the city council within forty-five (45) days following the public hearing.

(6) The site plan, including building floor plans and architectural schematics, as formally approved by the city council and the mayor (and in the case of school buildings, by the school committee) shall become part of the final set of project plans and construction drawings, and they shall not be changed or altered in any manner without first being resubmitted to the design review committee and to the city council in accordance with steps (3), (4) and (5) above. The city council may waive a public hearing on a previously approved site plan if in its judgment the changes proposed are not of sufficient scope as to warrant a public hearing.

(b) The city council shall not approve an appropriation of any funds for preparation of detailed construction drawings for a project applicable under this section until the requirements of (a)(1) through (a)(6) above have been satisfied.

(c) The executive department shall not formally submit a project applicable under this section to competitive construction bid unless the requirements of (a)(1) through (a)(6) have been satisfied.

(d) The requirements of this section that are not otherwise required by law or by the charter may be waived in whole or in part by a two-thirds (2/3) vote of those members of the city council present and voting. (Rev. Ords. 1973, § 2-365; Ord. No. 8, 8-12-74; Ord. No. 102, § 4, 12-15-75; Ord. No. V-195, 9-22-98)