

## Article 9 Use Regulations

### 9.1. General.

#### 9.1.1. Development Review.

- A. The establishment of any use, change in use of any structure or land, and any expansion in the use of land requires the submittal of a development review application to the Commissioner of Inspectional Services.
- B. All uses must comply with any use-specific standards applicable for each use in section 9.2.

#### 9.1.2. Protected Uses.

- A. Nothing contained in this Ordinance shall be construed to prohibit the use of land or structures for activities protected by M.G.L. Chapter 40A, Section 3. In cases where a protected use is indicated as being by Special Permit or not permitted, that use is permitted and subject only to the provisions for the appropriate building type and zoning district.

#### 9.1.3. Classification of Uses.

- A. **Use Categories.** The Commissioner of Inspectional Services is responsible for determining the use category and use. Use categories are based on similar functional, product, or physical characteristics, the type and amount of activity, the manner of tenancy, the conduct of customers, how goods or services are sold or delivered, and likely impacts on surrounding properties. The Commissioner of Inspectional Services determines the use category of a proposed use based on the similarity of the proposed use to the uses within a given category with these criteria.
  - 1. A use classified into one category may not also be classified in a different use category.
  - 2. If a proposed use is not listed in a use category, but meets the definition of a use category, as described above, the Commissioner may consider the proposed use part of that use category and issue a written interpretation to document such a determination for subsequent applications.
- B. **Uses Not Listed.** A use not specifically listed is prohibited unless the Commissioner of Inspectional Services determines the use to be part of a listed use category as described in paragraph A. above.

#### 9.1.4. Outdoor Storage & Display.

- A. Outdoor storage of equipment, inventory, materials, merchandise, supplies, or other items, or the use of temporary storage containers, is prohibited except in the Fabrication district.
- B. Unless otherwise specified, outdoor display of products and merchandise is prohibited.

## 9.2. Use Definitions & Standards.

### 9.2.1. General.

- A. This section provides definitions for use categories and individual uses and identifies standards applicable to either all uses within a category or specifically to an individual use.
- B. In some cases, a principal use may include ancillary activities that are subordinate, customary, and incidental to the day-to-day operations of the principal use, as determined by the Commissioner of Inspectional Services. Such ancillary activities do not require separate approval but must comply with any standards applicable to the principal use.
- C. Unless otherwise specified, the Special Permit Granting Authority for all uses where a Special Permit is required is the Planning Board.

### 9.2.2. Residential Use Categories.

#### A. Household Living Uses.

**Defined.** Residential occupancy of a dwelling unit (whether that unit is a single-unit building type, or one of multiple dwelling units within a building type) for 30 days or more by one of the following arrangements of people:

1. An individual
2. 2 or more persons related by blood, marriage, adoption, or foster care agreement
3. No more than 4 unrelated persons living as a single housekeeping unit

#### B. Group Living Uses.

**Defined.** Residential occupancy of a Dwelling Unit or set of Rooming Units for 30 days by more than 4 unrelated persons. The group living use category includes any residential occupancy that is not categorized as household living and any residential accommodations that provide a shared or communal kitchen, dining room, living room, or bathroom, including residential accommodations of an educational institution.

##### 1. Community or Group Residence.

**Defined.** Residential occupancy of a dwelling unit by more than 4 unrelated individuals living as a single housekeeping unit, if said occupants are ‘handicapped’ as defined in 42 U.S.C. §3602 or have a ‘disability’ as defined in 42 U.S.C. §12102. Both terms are defined as a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment not including current, illegal use of or addiction to a controlled substance.

##### 2. Dormitory or Chapter House.

**Defined.** Residential occupancy in dwelling units or rooming units exclusively by full- or part-time students, faculty, and staff of an educational institution and any group living facilities owned by or affiliated with an educational institution.

- a. The Special Permit Granting Authority for a dormitory or chapter house is the City Council.
- b. Review Criteria. In its discretion to approve or deny a special permit authorizing a dormitory or chapter house, the Special Permit Granting Authority must find that the application meets the following criteria:

- i. The criteria for all Special Permits specified in Sec. 11.4.3.
- ii. Proximity of the primary educational institution to the proposed site.
- iii. Methods of transportation from the proposed site to the primary educational institution.
- iv. Concentration of dormitories, fraternities, or sororities in the neighborhood.

3. Homeless Shelter.

**Defined.** A facility that has a primary function of providing overnight sleeping accommodations in rooming units or bunk rooms to homeless people.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a homeless shelter, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. The current supply of overnight sleeping accommodations available within the city.
  - iii. The need for additional resources to properly address changes in demand.

4. Lodging House.

**Defined.** Residential occupancy of 4 or more rooming units by individuals or up to 2 persons related by blood, marriage, adoption, or foster care agreement for at least 30 days. Lodging houses include boarding houses, rooming houses and single room occupancy buildings.

- a. Required Standards.
  - i. All lodging houses shall be licensed at all times of operation.
  - ii. The special permit granting authority may allow lodging houses located within ½ mile of rail transit (Green Line or Commuter Rail), or within ¼ mile of an MBTA bus stop, to reduce the number of required parking stalls to as little as 0.
  - iii. All parking areas shall be screened from any adjacent residences and from the public way according to the requirements found at 8.4.2.B and 8.1.3.C.2.d.i.
- b. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a lodging house, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. The intent to diversify housing choices in Newton while respecting the residential character and scale of existing neighborhoods.
  - iii. The need for less expensive housing options.
  - iv. The proximity to transit.

5. Nursing Home / Assisted Living.

**Defined.** Residential occupancy in rooming units where room and board, personal services, and skilled nursing care is provided to tenants. Nursing homes include hospice care, but specifically exclude hospitals.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a nursing home/assisted living use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Characteristics of the local thoroughfare network in providing a walkable environment and access for emergency vehicles.
  - iii. Location, visibility, and design of the principal entrance, resident drop-off area, and outdoor amenity spaces.

### 9.2.3. Arts & Creative Enterprise Use Categories.

#### A. Artisan Production Uses.

**Defined.** Individuals and firms involved in the on-site production of hand-fabricated or hand-manufactured parts and/or custom or craft consumer goods through the use of hand tools or small-scale, light mechanical equipment. The artisan production category includes apparel manufacturing, breweries, cabinetry, chocolatiers, confectionery, furniture making, glass working, jewelry making, metal working, pottery, sculpture, wood working, and their substantial equivalents. Showrooms and the ancillary sales of goods produced on-site are permitted.

##### 1. Required Standards.

- a. The production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effect is prohibited, except in the Fabrication district.
- 2. **Review Criteria.** In its discretion to approve or deny a special permit authorizing an artisan production use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. The application includes appreciable methods to mitigate noise for abutting residential properties.
  - c. The application identifies location(s) of loading, trash and recycling storage, and the procedure for drop-off and pickup that are not detrimental to the neighborhood.

#### B. Arts Exhibition Uses.

**Defined.** The production, rehearsal, or live performance of cultural entertainment or artistic expression such as singing, dancing, comedy, literary readings, performance art, musical theater, live plays, and concerts. The arts exhibition category includes venues such as assembly halls, auditoriums, cinemas, concert halls, dinner theaters, gallery space, performance halls, rehearsal & preproduction studios, live theaters, and their substantial equivalents along with the administrative offices, booking agencies, and ticket sales of performing arts organizations.

#### C. Arts, Sales & Service Uses.

**Defined.** The display and retail sale, lease, or rental of finished artwork, art supplies, musical instruments, multi-media, or publications and activities that provide various arts related services to individuals, groups, or businesses including galleries, supply stores, printing shops, set design studios, and their substantial equivalents.

### 1. Required Standards.

- a. Outdoor display of products and merchandise is permitted according to the following:
  - i. Outdoor display is permitted in any storefront frontage or on a public sidewalk subject to all City Ordinances as an ancillary activity.
  - ii. Outdoor display must be removed and placed inside a fully-enclosed building at the end of each business day.
  - iii. Display areas extending more than 8 feet from the front elevation are prohibited.
  - iv. A minimum 4 ft wide clear path must be maintained to the principal entrance and along any sidewalk or pedestrian path.
  - v. Display areas are permitted to occupy no more than 30% of the frontage area.
- b. **Review Criteria.** In its discretion to approve or deny a special permit authorizing an arts, sales and services use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Appreciable methods to mitigate noise for abutting residential properties.
  - iii. Location of loading, trash and recycling storage, and the procedure for drop-off and pickup.

### D. Shared Workspaces & Arts Education Uses.

**Defined.** The transfer of knowledge or skills related to the creative enterprises through teaching, training, or research; organizations providing collaborative workplace facilities and business planning, finance, mentoring, and other business or administrative support services to creative enterprises; and multipurpose facilities dedicated to providing space for multiple creative enterprises. The shared workspace & arts education category includes arts centers, creative incubators, culinary incubators, design & fabrication centers, fabrication laboratories, and their substantial equivalents.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a shared workspace and arts education use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Appreciable methods to mitigate noise for abutting residential properties.
  - c. Location of loading, trash and recycling storage, and the procedure for drop-off and pickup.

### E. Work/Live Creative Studio Uses.

**Defined.** Creative studio space consisting of not more than 1 room, including an area for accessory living, where the work needs of creative industry activities within the same building take precedence over any “quiet expectations” of the residents and neighbors residing in work/live creative studios within the same building.

#### 1. Required Standards.

- a. Kitchen, dining, and bathroom facilities, excluding work sinks, must be shared between the tenants of each floor.

- b. Floor area for accessory living space is limited to 200 sq. ft. or 30% of the total floor space of a Work/Live Studio, whichever is less.
  - c. The occupant(s) of the Work/Live Creative Studio must be a certified Artist.
2. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a work/live creative studio, the Special Permit Granting Authority must find that the application meets the following criteria:
- a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Width of doorways and hallways to accommodate the moving of large objects.
  - c. Weight capacity of elevators to accommodate heavy equipment.
  - d. Access to natural light within each studio with a preference towards northern exposure.
  - e. Sound transmission co-efficient to prevent the transmission of sounds from equipment or repetitive tasks.
  - f. Ventilation and air handling techniques to ensure the safety and health of residents, visitors, and neighbors.
  - g. Ceiling heights that allow for the creation of large works and equipment, including machinery and lighting.
  - h. Weight-bearing capacity of the floor.
  - i. Ability to install flooring for specific users such as dancers or performers.

#### 9.2.4. Civic & Institutional Use Categories.

##### A. Community Center Uses.

**Defined.** A place for recreational, social, educational, or cultural activities operated by a non-profit or public group or agency.

##### B. Hospital Uses.

**Defined.** An institution providing health services to patients and offering inpatient (overnight) medical or surgical care.

##### C. Minor Utility Uses.

**Defined.** Public and quasi-public facilities and services that need to be located in the area where the service is to be provided, such as water and sewer pump stations; electrical transforming substations; wind energy conversion systems; solar collector systems; water conveyance systems; gas regulating stations; storm water facilities and conveyance systems; telephone switching equipment; emergency communication warning/broadcast facilities; and central heating facilities.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a minor utility use, the Special Permit Granting Authority must find that the application meets the following criteria:
- a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Need for a facility at the proposed site.
  - c. Visual impact and quality of screening from abutting thoroughfares and surrounding properties.

- d. Impact and mitigation of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects.
- e. Location of access for servicing the facility.

**D. Major Utility Uses.**

**Defined.** Infrastructure services that have substantial land use impacts on surrounding areas. Typical uses include, but are not limited to, water and wastewater treatment facilities, major water storage facilities, and electric generation plants.

**E. Museum Uses.**

**Defined.** A repository for a collection or collections of historical, natural, scientific, or artistic objects of interest.

- 1. **Required Standards.** Ancillary sales and the holding of meetings and social events are permitted.

**F. Private, Non-Profit Club or Lodge Uses.**

**Defined.** An organization, which is open to people upon invitation, nomination, or payment of fees or dues, for social, recreational, and /or entertainment activities.

1. **Required Standards.**

- a. A non-profit club or lodge must be managed by an association with elected officers and directors pursuant to a charter or by-laws, that generally excludes the general public from its premises, and which holds property for the common benefit of its members.
- b. A non-profit club or lodge shall not offer membership for a period of less than two months
- c. A non-profit club or lodge may serve meals and/or alcohol on the premises for members and their guests.
- d. A non-profit club or lodge may do event rentals, including the service of meals and/or alcohol.

2. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a private, non-profit club or lodge use, the Special Permit Granting Authority must find that the application meets the following criteria:

- a. The criteria for all Special Permits specified in Sec. 11.4.3.
- b. Compatibility with the level of activity associated with the surrounding properties, particularly with regard to number and duration of events.
- c. Location of access to the site and building.
- d. Impact and mitigation of the production of offensive noise and light.
- e. Location of trash and recycling storage and the procedure for pick-up.

**G. Public Service Uses.**

**Defined.** Government services provided to the community at large including municipal operations of the City of Newton, such as departmental offices, social service facilities, and public works facilities; public safety services, such as police and firefighting headquarters and substations; and open spaces reserved for social and recreational activities or natural resource protection.

#### H. Religious & Educational Uses Protected by M.G.L. 40A. Sec. 3.

**Defined.** Activities related to providing general or specialized education, instruction, or training in subject areas, skills, or vocations and the practice of religions, including all accessory or ancillary activities customarily included in the operations of educational institutions and religious organizations.

##### 1. Required Standards.

- a. Real property must be owned or leased by the Commonwealth of Massachusetts, a religious sect or denomination, or by a non-profit educational corporation.
- b. Real property must be used for an educational or religious activity (See Sec. 11.4.4).

#### 9.2.5. Commercial Service Use Categories.

##### A. Animal Service Uses.

**Defined.** Any of the following: (1) grooming of dogs, cats, and similar small animals, including dog bathing and clipping salons and pet grooming shops; (2) animal shelters, care services, and kennel services for dogs, cats and small animals, including boarding kennels, pet resorts/hotels, dog training centers, and animal rescue shelters; (3) animal hospitals or veterinary services; (4) household pet crematory services; or (5) taxidermy services.

##### 1. Commercial Kennel.

**Defined.** Animal rescue shelters, boarding facilities, pet resorts/hotels, or training services for dogs, cats, and other household pets.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a commercial kennel, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Methods or techniques for noise mitigation to limit noise for other users of the building and abutting properties.
  - iii. Operational procedures for cleaning the interior and exterior of the site and trash storage and removal.

##### 2. Pet Day Care & Training.

**Defined.** Kennel and/or training centers for animals operated on a daytime-only basis.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a pet day care and training use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Methods or techniques for noise mitigation to limit noise for other users of the building and abutting properties.
  - iii. Operational procedures for cleaning the interior and exterior of the site and trash storage and removal.

##### 3. Pet Grooming.



**Defined.** The grooming of dogs, cats, and similar household pets.

4. **Veterinarian.**

**Defined.** The diagnosis and treatment of animal patients' illnesses, injuries, and physical malfunctions performed in an office setting.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a veterinarian, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Methods or techniques for noise mitigation to limit noise for other users of the building and abutting properties.
  - iii. Operational procedures for cleaning the interior and exterior of the site and trash storage and removal.

B. **Assembly & Entertainment Uses.**

**Defined.** Uses that provide gathering places for participant or spectator recreation, entertainment, or other assembly activities including, but not limited to, a cinema, venue of a professional or semi-professional sports team, bowling alley, dance hall, but excluding those regulated under the Arts & Creative Enterprise Use Categories.

1. **Required Standards.**

- a. Assembly and entertainment uses may provide incidental food or beverage service for on-site consumption.
2. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a assembly and entertainment use, the Special Permit Granting Authority must find that the application meets the following criteria:
- a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Compatibility with the level of activity associated with the surrounding properties.

C. **Banking & Financial Service Uses.**

**Defined.** Uses related to the exchange, lending, borrowing, and safe keeping of money.

D. **Broadcast/Recording Studio Uses.**

**Defined.** Uses that provide studios for audio or video production, recording, filming, or broadcasting of radio or television programs over-the-air, cable, or satellite. Telecommunications transmission towers are regulated according to the provisions of Sec. 9.2.15 Wireless Communication Structures.

E. **Building & Home Repair Service Uses.**

**Defined.** Uses that provide maintenance and repair services for all structural and mechanical elements of structures, as well as the exterior spaces. Typical uses include janitorial, landscape maintenance, exterminator, plumbing, electrical, HVAC, window cleaning and similar services.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a building and home repair service use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.

- b. Visual impact and quality of screening of parked business vehicles.

F. Business Support Service Uses.

**Defined.** Uses that provide personnel services, printing, copying, photographic services, or communication services to businesses or consumers. Typical uses include employment agencies, copy and print shops, telephone answering services, and photo developing labs.

G. Caterer/Wholesale Food Production Uses.

**Defined.** The preparation of food in significant quantities to be delivered and served or sold off-site.

- 1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a caterer/wholesale food production use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Visual impact and quality of screening of parked business vehicles.
  - c. Location of loading, trash, and recycling storage and the procedure for pick-up and drop-off.
  - d. Ventilation and air handling techniques to reduce the emission of odor or exhaust onto neighboring properties.

H. Day Care Service Uses.

**Defined.** Uses that provide licensed care, protection, and supervision in a protective setting for children or adults, with or without compensation, on a regular basis away from their primary residence and for less than 16 hours per day.

1. Adult Day Care Center.

**Defined.** A day care service use providing custodial care of adults over 18 years old, related or unrelated, who are in need of supervision and/or assistance with routine daily functions but who are not in need of regular medical attention.

2. Child Day Care Center.

**Defined.** A day care center as defined in M.G.L. 15D Section 1A.

I. Educational Institution Uses.

**Defined.** A facility for the general or specialized education, instruction, or training in subject areas, skills, or vocations including all accessory and ancillary activities customarily included in the operations of educational institutions in directly serving the needs of employees and students but does not meet the standards of a Religious & Educational Uses Protected by M.G.L. 40A. Sec. 3 (Sec. 9.2.4.H).

J. Maintenance & Repair of Consumer Goods Uses.

**Defined.** Uses that provide maintenance, cleaning, and repair services for consumer goods. Typical uses include dry cleaning shops, tailors, shoe repair, vacuum repair shops, electronics repair shops, and similar establishments.

K. Personal Service Uses.

**Defined.** Uses that provide a variety of services associated with personal grooming, personal instruction, and the maintenance of fitness, health, and well-being.

1. **Gym or Health Club.**

**Defined.** Use of space for physical exercise or training on an individual or group basis, using exercise equipment or open floor space, with or without an option for having instruction with a personal trainer.

2. **Funeral Home.**

**Defined.** A facility where the deceased are prepared for burial display and for rituals before burial or cremation. Such facilities may include chapels, crematoriums, and showrooms for the display and sale of caskets, vaults, urns, and other items related to burial services.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a funeral home, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Capacity of the local thoroughfare network providing access to the site and impact on pedestrian, bicycle, and vehicular traffic and circulation patterns in the neighborhood.
  - iii. Location, visibility, and design of the principal entrance.

3. **Health Care Provider.**

**Defined.** An office providing outpatient health services involving the diagnosis and treatment of physical or mental ailments and disorders, including doctors, dentists, mental health practitioners, physical therapists, and their substantial equivalents.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a health care provider, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Compatibility with the level of activity associated with surrounding properties.
  - iii. Location, visibility, and design of the principal entrance and patient drop-off areas.

L. **Recreation Uses.**

**Defined.** A facility providing for the communal or solitary, active or passive, indoor or outdoor pursuit of leisure activities.

- 1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a recreation use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Compatibility with the level of activity associated with surrounding properties.
  - c. Capacity of the local thoroughfare network providing access to the site and impact on pedestrian, bicycle, and vehicular traffic and circulation patterns in the neighborhood.
  - d. Location, visibility, and design of the principal entrance and pedestrian circulation from all exit points.
  - e. Lighting and hours of operation.

## 9.2.6. Eating & Drinking Use Categories.

### A. Restaurant/Café Uses.

**Defined.** An establishment preparing and selling ready-to-consume food and drinks for on-site consumption.

#### 1. Required Standards.

- a. Outdoor seating is permitted on the lot or on a public sidewalk subject to the Revised Ordinances Chapter 12, Article 8.

#### 2. Formula Eating and/or Drinking Establishment.

**Defined.** Any eating and/or drinking establishment which, along with 9 or more other businesses regardless of ownership or location worldwide, does or is required as a franchise, by contractual agreement, or by other arrangement to maintain 2 or more of the following features: a standardized menu; a standardized façade; a standardized décor and/or color scheme; a standardized uniform; a standardized sign or signage; or a trademark or a service mark. s

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a formula eating and/or drinking establishment, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. The existing concentrations of formula eating and/or drinking establishment uses within the commercial area or neighborhood.
  - iii. The availability of other similar eating & drinking establishment uses and the maintenance of a diverse blend of eating & drinking establishment uses within the commercial area or neighborhood.
  - iv. The compatibility of the proposed design for the formula eating & drinking establishment with the existing architectural and aesthetic character of the commercial area or neighborhood.
  - v. The existing non-residential vacancy rates within the neighborhood.

#### 3. Brewery Uses.

**Defined.** An establishment producing alcoholic beverages for on-site consumption and purchase. The brewery use category includes breweries producing beer, wineries producing wine, and distilleries producing hard alcohol. A brewery use is distinguished from an artisan production use by the on-site consumption of food and beverages.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a brewery use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Compatibility with the level of activity associated with the surrounding properties.

## 9.2.7. Industrial Use Categories.

### A. Commercial Dry Cleaning & Laundry Service Uses.

**Defined.** Uses that provide centralized dry cleaning and/or laundry services for other industrial, commercial, institutional, and/or business establishments.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a commercial dry cleaning and laundry service use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.
  - c. Something environmental?

**B. Data Center & Telecommunication Uses.**

**Defined.** Uses providing information/data storage and processing services to other business or end users through a collection of computer servers and related information technology infrastructure as well as uses providing telecommunication system operation and maintenance.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a data center and telecommunications use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Mitigation of any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.

**C. Manufacturing Uses.**

**Defined.** Uses that process, fabricate, assemble, treat, or package finished parts or products. Operations may include the storage of materials and the loading and unloading of materials and products. Activities common to this use category include, but are not limited to, food and beverage production, electronics and other electrical equipment assembly, medical appliances manufacturing, clothing and textile production, furniture and other woodworking products, boatbuilding, printing and publishing operations, and fabrication of metal products.

1. **Required Standards.**
  - a. Such use shall not be injurious, noxious, or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features or dangerous to the neighborhood on account of fire or any other cause.
  - b. Ancillary retail sales, cafes, and showrooms are permitted where the products displayed or sold are made or produced on the premises.
  - c. The manufacturing or production of toxic and/or hazardous materials is prohibited.

**D. Moving & Self Storage Uses.**

**Defined.** Uses engaged in the moving of household or office furniture, appliances, and equipment from one location to another, including temporary storage of those same items. Typical uses include moving companies and self service and mini-storage warehouses.

1. **Self Storage Use.**

**Defined.** The temporary storage of personal possessions in containers or individual rentable or leasable spaces.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a self storage use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Mitigation of any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.
  - iii. Location of loading, trash, recycling, and the procedure for drop-off and pick-up.

#### E. Trash & Recycling Collection/Storage Uses.

**Defined.** Uses that collect and temporarily store household waste and/or recyclable materials including glass, cardboard, paper, aluminum, tin, plastics, and compostable yard waste that are regularly moved off-site to be processed elsewhere.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a trash and recycling collection/storage use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Compatibility with the level and type of activities associated with the surrounding properties.
  - c. Capacity of the local thoroughfare network providing access to the site.
  - d. Location and screening of loading, the procedure for drop-off and pickup, and the impact on pedestrian, bicycle, and vehicular traffic and circulation patterns in the neighborhood.
  - e. Visual impact and quality of screening of parked business vehicles.

#### F. Vehicle Storage & Transportation Depot Uses.

**Defined.** Uses engaged in the dispatching and long-term or short-term storage of large vehicles or boats. Minor repair and maintenance of vehicles or boats stored on the premises is also included.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a vehicle storage and transportation depot use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Compatibility with the level and type of activities associated with the surrounding properties.
  - c. Capacity of the local thoroughfare network providing access to the site and the impact on pedestrian, bicycle, and vehicular traffic and circulation patterns in the neighborhood.
  - d. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.
  - e. Visual impact and quality of screening of parked or stored vehicles.
  - f. Ventilation and air handling techniques to reduce the emission of odor or exhaust onto neighboring properties.

## G. Wholesale Trade & Distribution Uses.

**Defined.** Uses engaged in the wholesale collection, sorting, processing, and distribution of bulk mail, packages or commercial goods, storage, processing, and distribution of bulk goods including, but not limited to, furniture & home furnishings; professional and commercial equipment; electrical goods; hardware, plumbing, and heating equipment; paper and paper products; sundries; apparel; food and beverages; healthcare equipment and supplies; and their substantial equivalents to retailers, commercial services, and/or industrial businesses.

### 1. Required Standards.

- a. Ancillary retail sales and wholesale showrooms are permitted.
- b. Activities may include physically assembling, sorting, and grading goods into large lots and breaking bulk for redistribution in smaller lots in such a way that has minimal impact on surrounding properties.
- c. The wholesale and/or storage or warehousing of toxic and/or hazardous materials is prohibited.

## 9.2.8. Lodging Use Categories.

### A. Bed & Breakfast Uses.

**Defined.** A single unit residential building type providing rooms for temporary, overnight lodging, with or without meals, for paying guests.

#### 1. Required Standards.

- a. A bed & breakfast lodging use must be owner or manager occupied.
- b. A bed & breakfast lodging use may be located within a principal building and/or an accessory structure.
- c. A common gathering space, such as a parlor, dining room, or living room must be maintained for guest use.
- d. Cooking facilities are not permitted in guest rooms.

#### 2. Review Criteria. In its discretion to approve or deny a special permit authorizing a bed and breakfast use, the Special Permit Granting Authority must find that the application meets the following criteria:

- a. The criteria for all Special Permits specified in Sec. 11.4.3.
- b. Transportation options provided to guests and the on-site management of parking.
- c. Operational procedures for limiting noise impacts on neighboring properties.
- d. Anticipated frequency of events/functions and food service is compatible with neighboring properties.

### B. Hotel Uses.

**Defined.** A building providing temporary lodging in guest rooms or apartments to persons who have residences elsewhere for a fee.

#### 1. Required Standards.

- a. A hotel use must provide for one or more employees to be on-site at all times.

2. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a hotel use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Compatibility with the level and type of activities associated with the surrounding properties.
  - c. Capacity of the local thoroughfare network providing access to the site and the impact on pedestrian, bicycle, and vehicular traffic and circulation patterns in the neighborhood.
  - d. Location and visibility of the principal entrance, guest drop-off area, outdoor amenity space, and pedestrian circulation from all exit points.
  - e. Location of loading, trash, and recycling storage and the procedure for pick-up and drop-off.

### 9.2.9. Motor Vehicle-Oriented Use Categories.

#### A. Commercial Vehicle Repair & Maintenance Uses.

**Defined.** Repair, installation, or maintenance of the mechanical components or the bodies of large trucks, mass transit vehicles, large construction equipment, or commercial boats.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a commercial vehicle repair and maintenance use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.
  - c. Visual impact and quality of screening of vehicles.

#### B. Dispatch Service Uses.

**Defined.** The storage and dispatch of ambulances, taxis, limousines, armored cars, tow trucks, buses, and similar vehicles for specialized transportation, including where ambulance crews not located at a hospital or fire department stand by for emergency calls, ancillary professional offices, and/or minor vehicle service and maintenance repair.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a dispatch service use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Compatibility of the service with other surrounding properties.
  - c. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles, particularly with regard to driver sightlines.
  - d. Visual impact and quality of screening of vehicles.
  - e. Procedures for controlling emission of noxious or hazardous materials or substances.

#### 2. Towing Service.



**Defined.** Storage of towed vehicles and/or the parking and dispatch of tow vehicles.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a towing use, the Special Permit Granting Authority must find that the application meets the criteria listed for a dispatch service use above.

**C. Gasoline Station Uses.**

**Defined.** Uses engaged in the retail sales of personal or commercial vehicle fuels.

**D. Motor Vehicle Parking Uses.**

**Defined.** The storage, for a limited period of time, of operable motor vehicles.

**1. Off-Site Accessory Parking.**

**Defined.** Motor vehicle parking that supports a principal use on a different lot.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing an off-site accessory parking use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.
  - iii. Visual impact and quality of screening of vehicles.

**2. Commercial Parking.**

**Defined.** The rent or lease of parking stalls for motor vehicles on an hourly, daily, monthly, annually or other basis.

- a. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a commercial parking use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - i. The criteria for all Special Permits specified in Sec. 11.4.3.
  - ii. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.
  - iii. Visual impact and quality of screening of vehicles.

**E. Personal Vehicle Repair & Maintenance Uses.**

**Defined.** Repair, installation, or maintenance of the mechanical components or the bodies of automobiles, small trucks or vans, motorcycles, motor homes, or recreational vehicles or that wash, clean, or otherwise protect the exterior or interior surfaces of these types of vehicles.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a commercial parking use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.
  - c. Visual impact and quality of screening of vehicles.

**F. Vehicle Sale Uses.**

**Defined.** Sale or rental of new or used motor vehicles including automobiles, small trucks or vans, motorcycles, motor homes, or recreational vehicles. Examples include car dealerships and car rental agencies.

1. **Required Standards.**

- a. On-site vehicle maintenance and repair is considered an additional principal use.
- b. Vehicles for display, sale, or lease must be located entirely within a building.

2. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a vehicle sale use, the Special Permit Granting Authority must find that the application meets the following criteria:

- a. The criteria for all Special Permits specified in Sec. 11.4.3.
- b. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.

#### 9.2.10. Office Use Categories.

A. **Co-Working Uses.**

**Defined.** A commercial or non-profit organization providing multiple individuals and small firms access to workplace facilities, including but not limited to, creative studios, office suites, for-rent 'hot-desks', dedicated workstations, conference rooms, meeting rooms, event space, resource libraries, and business or administrative support services.

B. **General Office Uses.**

**Defined.** The regular processing, manipulation, or application of business information or professional expertise predominantly for administrative, professional, and clerical operations in accounting, advertising, business to business brokerage and other business support services, employment, finance, healthcare administration, information technology and/or services, insurance, internet content development and publishing, law, non-profit organization, real estate, urban development and their substantial equivalents. Office activities may or may not provide direct services to the public.

1. **Required Standards.**

- a. Office uses do not include activities materially involved in fabricating, assembling, warehousing or sale of products for the retail or wholesale market.

C. **Research & Development and/or Laboratory Uses.**

**Defined.** The analysis, testing, and development of products, or services predominantly for scientific research operations in biotechnology, pharmaceuticals, medical equipment, communication & information technology, electronics, computer hardware, and their substantial equivalents.

1. **Required Standards.**

- a. Research & Development and/or Laboratory does not include activities involved in fabricating, assembling, warehousing, or sale of products for the retail or wholesale market.

- b. Ancillary development of mock-up and prototype products is permitted so long as the total floor area devoted to their fabrication or assembly is limited to 25% of the gross floor area occupied by the use.

### 9.2.11. Open Space Use Categories.

#### A. Farming Uses.

**Defined.** The cultivation of soil and the production, planting, caring for, treating, growing, and harvesting of any agricultural, aquacultural, horticultural, hydrocultural, floricultural, silvicultural, or viticultural commodities.

##### 1. Community Gardening.

**Defined.** The practice of growing and cultivating plants; including vegetables, flowers, and fruits; for display, enjoyment, or private/personal consumption.

##### a. Required Standards.

Sales, processing, and storage of plants or plant products are prohibited on site.

#### B. Private Cemetery Uses.

#### C. Resource Extraction Uses.

**Defined.** The removal of resources such as sod, loam, subsoil, sand, or gravel from the premises for the purpose of sale.

- 1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a resource extraction use, the Special Permit Granting Authority must find that the application meets the following criteria:

- a. The criteria for all Special Permits specified in Sec. 11.4.3.
- b. Stability of the ground relative to the impacts of the proposed use.
- c. Capacity of the local thoroughfare network providing access to the site and impact on pedestrian, bicycle, and vehicular traffic and circulation patterns in the neighborhood.

### 9.2.12. Retail Use Categories.

#### A. Building/Home Supplies & Equipment Uses.

**Defined.** Uses that sell or otherwise provide furniture, appliances, equipment and/or home improvement goods needed to repair, maintain, or visually enhance a structure or premises that are typically too large to be carried by hand.

##### 1. Required Standards.

- a. Outdoor display of products and merchandise is permitted according to the following:
  - i. Outdoor display is permitted in the private frontage or on a public sidewalk subject to City Ordinances as an ancillary activity.
  - ii. Outdoor display must be removed and placed inside a fully-enclosed building at the end of each business day.
  - iii. Display areas extending more than 8 feet from the front elevation are prohibited.

- iv. A minimum 4 ft wide clear path must be maintained to the principal entrance and along any sidewalk or pedestrian path.
  - v. Display area are permitted to occupy no more than 30% of the frontage area.
2. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a building/home supplies and equipment use, the Special Permit Granting Authority must find that the application meets the following criteria:
- a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. Location of driveway entrances and access points in relation to the safety of pedestrians, bicyclists, and motor vehicles.
  - c. Capacity of the local thoroughfare network providing access to the site and impact on pedestrian, bicycle, and vehicular traffic and circulation patterns in the neighborhood.
  - d. Location of loading, trash, and recycling storage and the procedure for pick-up and drop-off.

#### B. Consumer Goods Uses.

**Defined.** Uses that sell or otherwise provide consumer goods, functional or decorative, for use in entertainment, comfort, or aesthetics which are of a size that a customer can typically carry by hand. Consumer goods stores include, but are not limited to, stores selling apparel and accessories, sundries, pharmaceuticals, hardware and hand tools, housekeeping supplies, plants and other gardening products, and convenience food and beverage for off-site consumption. The manufacturing, assembly, and/or packaging of merchandise is prohibited unless ancillary to the sale of products from the same location.

##### 1. Required Standards.

- a. Outdoor display of products and merchandise is permitted according to the following:
  - i. Outdoor display is permitted in the private frontage or on a public sidewalk subject to City Ordinances as an ancillary activity.
  - ii. Outdoor display must be removed and placed inside a fully-enclosed building at the end of each business day.
  - iii. Display areas extending more than 8 feet from the front elevation are prohibited.
  - iv. A minimum 4 ft wide clear path must be maintained to the principal entrance and along any sidewalk or pedestrian path.
  - v. Display area are permitted to occupy no more than 30% of the frontage area.

#### C. Formula Retail.

**Defined.** Any use classified into a use category under section 9.2.12 Retail Use Categories, which, along with 9 or more other businesses regardless of ownership or location worldwide, does or is required as a franchise, by contractual agreement, or by other arrangement to maintain 2 or more of the following features: a standardized array of merchandise; a standardized façade; a standardized décor and/or color scheme; a standardized uniform; a standardized sign or signage; or a trademark or a service mark.

1. **Review Criteria.** In its discretion to approve or deny a special permit authorizing a formula retail use, the Special Permit Granting Authority must find that the application meets the following criteria:
  - a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. The existing concentrations of formula retail uses within the commercial area or neighborhood.
  - c. The availability of other similar retail uses and the maintenance of a diverse blend of retail uses within the commercial area or neighborhood.
  - d. The compatibility of the proposed design for the formula retail use with the existing architectural and aesthetic character of the commercial area or neighborhood.
  - e. The existing non-residential vacancy rates within the neighborhood.

#### D. Fresh Food Market or Grocery Store Use.

**Defined.** The self-service sales of food and household products including, but not limited to, fresh and prepared meat, dairy, baked goods, fresh fruits and vegetables, canned and/or frozen foods, and other regularly consumed household products.

1. **Required Standards.**
  - a. Floor area devoted to the sale of non-food items must not exceed twenty-five percent (25%) of the sales floor.
  - b. Ancillary prepared food and beverage service is permitted.

#### E. Farmer/Vendor Market Uses.

**Defined.** The direct sales of goods and/or products by farmers or vendors to consumers from individual booths, tables, or stands, whether indoors or outdoors.

### 9.2.13. Restricted Use Categories.

#### A. Adult Entertainment Uses.

**Defined.** Any use engaged in the sale of products or the display of video or live shows, where a significant portion of its stock in trade, or the emphasis of the videos or shows, have to do with or depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31. Adult entertainment includes, but is not limited to, adult bookstore, adult motion picture theatre, adult paraphernalia store, adult video store, and adult night club, as defined by M.G.L. Chapter 40A, Section 9A. For the purposes of this section, a significant portion of stock in trade is defined as at least 15%. Adult entertainment uses are not included within the consumer goods use category, the assembly and entertainment use category or any other use category.

1. **Purpose.** The purpose of this Sec. 9.2.13.A is to address and mitigate the secondary effects of adult entertainment uses that are referenced and defined herein. Secondary effects have been shown to include urban blight, increased crime, adverse impacts on the business climate of a city, adverse impacts on property values, adverse impacts on the tax base and adverse impacts on the quality of life in a city. All of said secondary impacts are adverse to the health, safety, and general welfare of the City and its inhabitants.
2. **Intent.** The provisions of this Sec. 6.10.1 have neither the purpose nor the intent of imposing a limitation on the content of any communicative matter or materials, including sexually-oriented matter or materials. Similarly, it is not the purpose or

intent of this ordinance to restrict or deny access by adults to adult entertainment establishments or to sexually-oriented matter or materials that are protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights of distributors or exhibitors of such matter or materials. Neither is it the purpose or intent of this ordinance to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

### 3. Required Standards.

- a. As measured by a straight line from property line to property line, an adult entertainment use must not be located within:
  - i. 500 feet of the nearest religious use, school, public park intended for passive or active recreation, youth center, day care facility, family day care facility, center for child counseling, great pond, or navigable river;
  - ii. 1,000 feet from any other adult entertainment use, whether in Newton or in a neighboring municipality, nor within 1,000 feet of a zoning district in a neighboring municipality allowing an adult entertainment use;
  - iii. 500 feet from an establishment manufacturing, selling, serving, or storing alcoholic beverages;
  - iv. 150 feet of any residential property.
- b. Notwithstanding building type or district requirements to the contrary, all building openings, entries, and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- c. Material that depicts, describes or relates to nudity or sexual conduct as defined in M.G.L. Chapter 272, Section 31 must not be located in or on the building housing such adult use in a way that is visible to the public from the outside of the premises in which an adult entertainment use is permitted. Advertising, or other material, whether displayed in the window or affixed to the building must not depict, describe or relate to nudity or sexual conduct as defined in M.G.L. Chapter 272, Section 31.
- d. An adult entertainment use must not disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- e. An adult entertainment use is not permitted to have a free-standing accessory sign.
- f. An adult entertainment use is not permitted to be open between the hours of 11:30 p.m. and 6:00 a.m.
- g. An adult entertainment use is not permitted to serve, or allow to be consumed on premises, alcoholic beverages.

### 4. Review.

- a. **Application.** An application shall be submitted in accordance with section 11.4. The following additional materials are required for an application:
  - i. Name and address of the legal owners of the proposed establishment.
  - ii. Name and address of all persons having legal, beneficial, equitable or security interests in the adult use.

- iii. Name and address of the establishment’s manager(s).
  - iv. The number of employees.
  - v. Proposed security precautions.
  - vi. A map showing all properties within 1,000 feet of the property boundary.
  - vii. A plan of the physical layout of the proposed premises showing, among other things, the location of the adult books, adult paraphernalia, or adult videos.
  - viii. A sworn statement that neither the applicant nor any persons having legal, beneficial, equitable or security interests in the establishment has been convicted of violating M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Section 28.
- b. The legal owner of an adult entertainment use having received a special permit shall promptly notify the special permit granting authority of any changes in the above information within 10 days and failure to do so will be grounds for revocation of the special permit.
  - c. **Review Criteria.** In its discretion to approve or deny a special permit authorizing an adult entertainment use, the Special Permit Granting Authority must find that the application meets the following criteria:
    - i. The criteria for all Special Permits specified in Sec. 11.4.3.
    - ii. The compatibility of the proposed design for the adult entertainment use with the existing architectural and aesthetic character of the commercial area or neighborhood.
    - iii. The level of crime and/or blight in the vicinity of the proposed location and the proposed security precautions.
    - iv. No special permit shall be issued to any person convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Section 28 or registered with or required to be registered under the Sex Offender Registration Law, M.G.L. Chapter 6, Sections 178C et. seq., or its successor.
  - d. **Expiration.** A special permit to conduct an adult entertainment use expires after a period of 2 calendar years from its date of issuance and is eligible for renewal for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon notification of adverse changes regarding the public safety factors applied at the time that the original special permit was granted.
  - e. **Existing Adult Entertainment Uses.** Any adult entertainment use in existence upon the effective date of this Sec. 9.2.13 shall apply for an adult entertainment use special permit within 90 days of the adoption of this Sec. 9.2.13.

#### B. Gambling Uses.

**Defined.** Any use in which participants are engaged in the wagering of money enabled by, under the supervision of, or otherwise with the consent of the property owner. When including wagering, such uses include, but are not limited to, keno, sports betting, card or dice games, or slot machines, but do not include the sale of lottery tickets. A gambling use is never considered an accessory use.

1. **Purpose.** Whereas the deleterious effects of gambling and wagering on individuals, families and the public health, safety, convenience and welfare are known and documented, it is the policy of the City to regulate and condition the operation of establishments allowing Keno, or similar games of chance, entertainment or amusement, whether operated live or through audio or video broadcast or closed-circuit transmission, and to prohibit persons under 18 years of age from engaging in or participating in any manner in such games of chance, entertainment or amusement.
2. **Required Standards.** No building or structure, or any portion of a building or structure, shall be used for a gambling use unless the following conditions are met:
  - a. It must be a restaurant-business which is duly licensed by the Newton Board of Licensing Commissioners pursuant to both M.G.L. Chapter 140 as a common victualler selling prepared food to patrons and pursuant to M.G.L. Chapter 138, Section 12, whereby alcoholic beverages may be sold to and drunk on the premises by patrons. The alcoholic beverages license may be either an “all alcoholic beverage” license, or a “wine and malt beverages” license.
  - b. The restaurant-business must provide a lounge or similar area within the premises which is physically separated from the regular dining area by a wall, partition or other means deemed acceptable to the Newton Board of Licensing Commissioners. Keno, or similar games of chance, entertainment or amusement shall be restricted to this separate lounge or similar area. The restaurant-business shall not permit minors unaccompanied by a parent or adult guardian to enter, occupy, or remain in the restricted lounge or similar area, and shall prominently post signs to this effect.
  - c. No restaurant-business shall provide more than 2 video monitors for broadcast or closed-circuit transmission of Keno or similar games of chance, entertainment or amusement in the aforesaid lounge or similar area. Said limitation shall not apply to regular television programming of network, independent television stations, or television stations provided by cable, satellite, or similar systems.
  - d. No person under 18 years of age shall be permitted to engage in or participate in any manner in Keno or other such games of chance, entertainment or amusement, pursuant to this Sec. 6.10.1, M.G.L. Chapter 10, Section 29, as amended, and the regulations promulgated thereunder, including, but not limited to 961 CMR 2.00, 2.20(3) and 2.27(5).
3. **Violation.** Any establishment found to have violated state laws or regulations or the provisions of this section regarding the prohibition of minors in this regard shall be deemed an unlawful use in violation of this Chapter, and shall be subject to enforcement proceedings and penalties provided under M.G.L. Chapter 40A, Section 7, and this Chapter.
4. **Penalties.** Any ‘person’, including a business as defined in the Massachusetts Lottery Commission regulations, 961 CMR 2.03, which is found to have violated state laws or regulations regarding prohibition of minors in this regard shall be subject to the statutory penalties of M.G.L. Chapter 10, Section 29, as amended, and revocation of their license as a lottery sales agent pursuant to state law, including but not limited to Massachusetts Lottery Commission regulations 961 CMR 2.00, 2.13(1), 2.20(3) and 2.27(5).



5. **No Affirmative Rights are Granted by this Sec. 6.10.2.** The City shall not be precluded from exercising any legislative powers it may now have or which may be granted to the city by the General Court in future legislative enactments to prohibit or further regulate Keno, or similar games of chance, entertainment or amusement.
6. **Existing Keno License.** Any ‘person’, including a business as defined in the Massachusetts Lottery Commission regulations, 961 CMR 2.03, who has filed prior to June 10, 1996 an application for a Keno license with the Massachusetts Lottery Commission and who thereafter receives from said Commission a valid Keno license, pursuant to M.G.L. Chapter 10, Section 27A, will be exempt from the provisions of paragraphs 2.a., 2.b., and 2.c. above, but only at the location for which the application was filed prior to June 10, 1996.

#### C. Marijuana Establishment Uses.

[Reserved]

### 9.2.14. Accessory Use Categories.

#### A. Accessory Apartments.

**Defined.** A separate secondary dwelling unit located in a single or two-unit residential building, or in a detached building located on the same lot as a single or two-unit residential building, as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 9.2.14.A. An internal accessory apartment is located within the principal building on a lot. A detached accessory apartment is not located in the principal building but is located in a separate detached accessory building.

1. **Intent.** Accessory apartments are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit, meeting the requirements of the following section. Accessory apartments are intended to advance the following objectives:
  - a. Diversify housing choices in the City while respecting the residential character and scale of existing neighborhoods;
  - b. Provide a non-subsidized form of housing that is generally less expensive than similar rental units in multi-family buildings;
  - c. Create more housing units with minimal adverse effects on Newton’s neighborhoods;
  - d. Provide flexibility for families as their needs change over time and, in particular, provide options for seniors to be able to stay in their homes and for households with disabled persons; and
  - e. Preserve historic buildings, particularly historic carriage houses and barns.
2. **Allowed Building Types.** An accessory apartment may be located in a House A, House B, House C, House D or Duplex building type or on the same lot as a House A, House B, House C, House D or Duplex building type.
3. **Rules for All Accessory Apartments.**
  - a. An accessory apartment cannot be held in separate ownership from the principal structure/dwelling unit;
  - b. No more than 1 accessory apartment shall be allowed per lot;

- c. The property owner must occupy either the principal dwelling unit or the accessory apartment;
- d. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 9.2.2.A and other applicable sections;
- e. The principal dwelling unit must have been constructed 4 or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the dwelling or, where no certificate is available, the owner provides other evidence of lawful occupancy of the existing dwelling on or before a date at least 4 years prior to the date of application, except by special permit;
- f. Where the accessory apartment or the principal dwelling is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
- g. No additional parking is required for the accessory apartment. If parking for the accessory apartment is added, however, screening is required sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination;
- h. Before a Certificate of Occupancy is issued the property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County, or with the land court, a certified copy of the decision or of the determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department;
- i. When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services within 30 days, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with this Section 9.2.14.A and with 780 CMR; and
- j. The property owner shall file with the Commissioner of Inspectional Services a sworn certification attesting to continued compliance with the requirements of this Section 9.2.14.A and all applicable public safety codes. Such certification shall be filed annually on the first business day of January or upon transfer to a new owner as provided above, and the property may be subject to inspection.

#### 4. Rules for Internal Accessory Apartments.

- a. An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total Habitable Space in the principal dwelling, as defined in Sec. 8.3, whichever is less. The applicant may request a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40 % of the total Habitable Space, whichever is less.
- b. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure, and the look, character and scale of the surrounding neighborhood as viewed from the street, including, but not limited to, the following considerations:

- i. The exterior finish material should be the same or visually consistent in type, size, and placement, as the exterior finish material of the remainder of the building;
  - ii. The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;
  - iii. Trim should be consistent in type, size, and location as the trim used on the remainder of the building;
  - iv. Windows should be consistent with those of the remainder of the building in proportion and orientation;
  - v. Exterior staircases should be designed to minimize visual intrusion and be complementary to the existing building;
  - vi. The Commissioner of Inspectional Services, or the special permit granting authority in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of the above criteria. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C)(4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.
- c. Only one entrance may be located on the front elevation of the building facing a street unless the building had additional street-facing entrances before the accessory apartment was created, except by special permit.

#### 5. Rules for Detached Accessory Apartments.

- a. Except as provided below, a Detached Accessory Apartment may be allowed by special permit as a use accessory to a single or two-unit residential building.
- b. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet or 40% of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet.
- c. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the principal dwelling on the lot and the residential character of the neighborhood. The exterior finish material should be the same or visually compatible in type, size, and placement, as the exterior finish material of the principal dwelling unit on the site. The Commissioner of Inspectional Services, or the City Council in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of this requirement. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C)(4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required

under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.

- d. The Detached Accessory Apartment must be at least 6 feet from the principal dwelling unit on the site.
  - e. The Detached Accessory Apartment must meet the setback requirements of the principal dwelling unit and other applicable dimensional controls, except by special permit.
  - f. Except as required above, a Detached Accessory Apartment is subject to the dimensional requirements of an Accessory Building in the zoning district that the lot is located in. For the purposes of this section, the Commissioner of Inspectional Services may determine which lot line is the front on corner lots.
  - g. Historic Carriage Houses and Other Historic Accessory Buildings. Under the following conditions, a Detached Accessory Apartment in an historic accessory building located outside of an historic district, may be allowed by right without requiring a special permit, and only subject to the rules in this subsection 5.g.
    - i. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection 5.g, the structure must qualify and be deemed as “historically significant” under Section 22-50 of the City of Newton Ordinances, The Demolition Review Ordinance, as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission;
    - ii. The proposed Detached Accessory Apartment will be greater than 15 feet from an existing residential dwelling on an abutting property, except by special permit; and
    - iii. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve the historic character and integrity of the building. Exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission.
6. **Review Criteria.** In its discretion to approve or deny a special permit authorizing an accessory apartment use or to modify or waive dimensional or other requirements as identified in this section 9.2.14.A, the Special Permit Granting Authority must find that the application meets the following criteria:
- a. The criteria for all Special Permits specified in Sec. 11.4.3.
  - b. The consistency of the proposed exterior design for the accessory apartment with the existing architectural and aesthetic character of the existing building and neighborhood.
  - c. The citywide need for a diverse array of housing choices.
7. **Invalidity Clause.** If it is determined by a court of competent jurisdiction that any provision or requirement of Sec. 9.2.14.A. is invalid as applied for any reason, then Sec. 9.2.14.A. must be declared null and void in its entirety.

## B. A.T.M.

**Defined.** An automated teller machine operated as an accessory use to a commercial establishment other than a banking or financial services use.

**C. Car Share & Bike Share.**

**Defined.** Parking for bikes or motor vehicles that are made available for hourly or daily rental fee, typically to members of a bike or car share service.

**D. Commercial Vehicle Parking.**

1. **Defined.** The parking of any vehicle, conveyance or piece of mechanized equipment which is used to further any business, trade, profession or employment, and which meets any 1 or more of the following criteria:

- a. There is affixed on it any writing or logo that designates an affiliation with any business, trade, profession or employment.
- b. It is used to store, in a manner or place that is visible from outside of the vehicle, any tools, equipment, accessories, body height extensions or other things used to further any business, trade, profession or employment.
- c. It is used to transport persons, their luggage, and/or their animals or other materials for any kind of fee or charge.
- d. It has a mechanized dumping capability.
- e. It has a plow blade or plow blade frame or other device attached, or a plow blade or other device associated with the vehicle is stored on the premises.

2. **Required Standards.** In any residential district commercial vehicles must not:

- a. Exceed 18 feet in length or 7 feet in width.
- b. Contain more than 4 square feet of advertising on any one side.
- c. Be stored between any front line of the principal building and the street line, or in the side or rear setback unless stored within a garage or other enclosure.

**E. Food Trucks.**

**Defined.** Defined in City Ordinances Sec. 20-88.

1. **Intent.** Food trucks are intended to advance the following:

- a. Bring variety to the availability of local food establishments.
- b. Add vibrancy and interest to the street life of a district.
- c. Encourage the advancement of new restaurants and food service businesses by serving as a form of business incubator for new restaurant ideas in a start-up phase.
- d. Create food options and amenities for underserved locations in the City.

2. **Required Standards.**

- a. In the Public Use District, Food Trucks must only locate on the public street 'Wells Avenue' according to City Ordinances Sec 20-88 and 20-92. Food Trucks are allowed on public land as part of a special event with a license from the Health Department.
- b. A Food Truck must not remain parked overnight.

- c. A Food Truck is not required to provide parking.
- d. A Food Truck must meet all of the requirements of City Ordinances sections 17-47 through 17-50.
- e. A Food Truck operating as part of a special event or in a catering capacity for a private function is allowed in all districts.

#### F. Home Business Uses.

**Defined.** A commercial occupation carried on by a resident of a dwelling unit where the occupation is secondary to the use of the dwelling unit for residential purposes and where the “quiet expectations” of neighbors takes precedence over work needs of the occupation. A home business must be a use from the following use categories; Artisan Production; Building & Home Repair Services; Day Care Services; Maintenance & Repair of Consumer Goods; Personal Services; and General Office.

##### 1. Required Standards.

- a. The home business must be operated within a completely enclosed principal or accessory building owned or occupied by the resident of the property where the home business is located. The home business must be operated by said resident.
- b. The Home Business must not change the residential character of the dwelling.
- c. The Home Business must not occupy more than 25% of the useable floor area of the dwelling unit or be located within an Accessory Building that meets the requirements for accessory buildings for the zoning district in which the lot is located.
- d. No storage of materials, supplies, or equipment is permitted outdoors.
- e. No display of products may be visible from the right-of-way of any public street.
- f. Commercial signs are prohibited except as allowed for Home Business in Sec. 8.2.
- g. Shipping and delivery is restricted to parcel and small freight carriers.
- h. No more than one off street parking space is permitted for the Home Business.
- i. The Home Business must not produce noise, vibration, glare, fumes, odors, electrical interference, or traffic congestion beyond that which normally occurs in the immediate residential area or that might unreasonably interfere with any person’s “quiet expectations” in enjoyment of their residence.
- j. Products produced on-site must be grown, fabricated, or assembled by hand.
- k. No more than one non-resident employee may be present at any one time during the hours of operation.
- l. Retail sales to walk-in customers are prohibited.
- m. Not more than three clients, customers, or pupils for business or instruction shall be present at any one time.

- n. Client, customer, or pupil visits must be by appointment only and business activities may not have more than one visitor car at a time.

2. Home Day Care.

**Defined.** A home business providing custodial care of children under 7 years of age or children under 16 years of age if such children have special needs. Home day care does not include the informal cooperative arrangement for child care among neighbors or relatives, or the occasional care of children with or without compensation.

a. Required Standards.

The requirements of Sec 9.2.14.F.1 apply to home day care except care may be provided for no more than 6 children at a time, including any children living with the residence providing home day care services.

G. Short Term Rental.

**Defined.** The rental of an owner-occupied dwelling unit, or portion thereof, on an overnight or short-term basis of less than 30 days (typically less than 7 days).

1. Required Standards.

- a. The property owner must reside on the property for a minimum of 185 days a year.
- b. The number of guests may not exceed the maximum allowed in household living uses at any time.
- c. A property, or portion thereof, may be used for short term rental for a maximum of 90 days in a calendar year.
- d. A property used for short term rental may not be rented for a commercial event during its use for a short term rental.
- e. The burden of proof is placed on the property owner to demonstrate that they are operating within the limits of this section.

H. Rental of a Residential Property for a Commercial Event.

**Defined.** The rental of a residential unit, or portion thereof, for a commercial event such as a party rental, promotional event, or filming.

1. Required Standards.

- a. A commercial event may not coincide with use of the property for short term rental.
- b. Commercial events must comply with the City Noise Ordinance.
- c. The burden of proof is placed on the property owner to demonstrate that they are operating within the limits of this section.

9.2.15. Wireless.

[Same as Existing]