



IN CITY COUNCIL

Marlborough, Mass., DECEMBER 4, 2023

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ORDERED:

THAT, PURSUANT TO SECTION 5 OF CHAPTER 40A OF THE GENERAL LAWS, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT CHAPTER 650 OF THE CODE OF THE CITY OF MARLBOROUGH, AS MOST RECENTLY AMENDED, BE FURTHER AMENDED AS FOLLOWS:

- I. By amending Chapter 650 (Zoning), Section 650-5 (Definitions; word usage), Subsection B, by inserting a new definition for "Area Median Income (AMI)" and "Eligible Household", and amending the existing definition for "Mixed Use", to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

AREA MEDIAN INCOME (AMI)

The Housing Area Median Family Income set forth in or calculated from regulations promulgated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined annually for the Metropolitan Statistical Area that includes the City of Marlborough and adjusted for family size.

ELIGIBLE HOUSEHOLD

A household whose gross household income does not exceed the corresponding percentage of AMI specified in Section 650-26.

MIXED USE

- (1) A combination of permitted (Y) or special permit (SP) residential/business uses as listed in §650-17, Table of Use Regulations, for a particular zoning district, located on the same lot and arranged vertically in multiple stories of a structure or horizontally adjacent to one another in one or more buildings.
- (2) To achieve a mix of residential to business uses, such as retail or restaurant, uses shall be that is balanced and compatible, and shall contribute to a vibrant downtown atmosphere, including a combination of ground floor street front uses, such as retail or restaurant.
- (3) ~~G~~ground floors of buildings fronting streets or public accessways shall be ~~reserved for restricted to~~ restricted to nonresidential public business/commercial uses, except as specified below:

Dwelling units shall be allowed on ground floors of a buildings if: ~~(a) The building that is set behind another a mixed-use building that has business commercial uses on the ground floor and residential on other floors so long as the building set behind does not face a public way; or (b) The residential portion of the ground floor of a building is set behind street front nonresidential uses within the same building.~~



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II. By amending Chapter 650 (Zoning), Section 650-17 (Table of Uses), by striking “V” and replacing it with “SP” for the following specific uses, in the MV zoning district, to read as follows: (new text shown as underlined, deleted text shown as ~~strike through~~):

Business Use	Zoning District Abbreviations												Wayside	
	RR	A - 1	A - 2	A - 3	R B	R C	R C R	N B	B	C A	L I	I		MV
Hotels (41)	N	N	N	N	N	N	N	S P	S P	S P	S P	S P	V <u>SP</u>	N
Hotels with conference facilities and commercial uses (21)	N	N	N	N	N	N	N	N	S P	S P	S P	S P	V <u>SP</u>	N
Mixed-Use Development (42)	N	N	N	N	N	N	N	S P	S P	N	N	N	V <u>SP</u>	S?

III. By amending Chapter 650 (Zoning), Section 650-18 (Conditions for uses), Subsection A, paragraphs 41 and 42, as follows: (new text shown as underlined, deleted text shown as ~~strike through~~):

(41) Hotels within the Marlborough Village District are by ~~right~~ special permit, and subject to site plan approval by the City Council with input from department staff who participate in administrative site plan review as provided under § 270-2. See in § 650-34B special provisions for site plan review by City Council of hotels in the Marlborough Village District.

(42) Mixed-use development, including multifamily residential uses, shall ~~not~~ be subject to special permit provisions for multifamily uses. In the Wayside District, multifamily dwelling shall be allowed only as part of a mixed-use development. Mixed-use development may include vertically mixed uses in a single building or horizontally mixed uses in which multiple buildings create the mix of uses on a single parcel. Each individual building may include a single use with multiple uses occurring next to each other and within multiple buildings on the single parcel.

IV. By amending Chapter 650 (Zoning), Section 650-26 (Affordable Housing), to read as follows: (new text shown as underlined, deleted text shown as ~~strike through~~):



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§ 650-26. Affordable housing.

The purpose of this section is to provide that multifamily uses include an affordable component to ensure the city remains above the state's required inventory of affordable units.

- A. This section 650-26 shall apply to all developments that result in or contain eight (8) or more dwelling units, in all zoning districts, for the following types of uses: multifamily dwelling(s) or mixed-use development containing multifamily dwelling(s). This section shall apply as set forth above unless an exception is otherwise stated in this section 650-26. Compliance with this section shall be made a condition of any special permit that is required for the development.

All special permits granted to applicants to construct multifamily dwellings, ~~or mixed-use development containing multifamily dwelling(s)~~, thereby increasing the number or density of residential dwellings to a number or level greater than that allowable as a matter of right under the zoning classification for the subject parcel shall require the following

- (1) Developments of ~~20-8~~ or more units.

- (a) Number of on-site affordable units. ~~The A development subject to this section 650-26 shall i) provide that at least 125% of the dwelling units to be constructed for homeownership or rental purposes will be made available at affordable prices to eligible home buyers or renters, or ii) if authorized by a majority of the City Council, provide a sum not less than \$50,000 per affordable dwelling unit that would have been required in Item i) above to be deposited as directed by the City Council into the fund for economic development created by Chapter 126 of the Acts of 2011 or into another fund designated by the City Council. If when applying the specified percentage to the total number of units to determine the required number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction, if equal to or over one-half, shall be rounded up to the next whole number.~~
- (b) Eligibility for affordable units. All affordable units must be eligible for inclusion on the state's Subsidized Housing Inventory (SHI). The affordable units shall be available to households at no more than eighty percent (80%) of AMI in accordance with SHI requirements. After initial occupancy, the gross household income of an eligible household shall be verified annually to determine continued eligibility and rent.
- (~~b~~c) Local preference. The development plan shall provide that all legally permissible efforts shall be made to provide 70% of the affordable dwelling units to eligible residents of the City of Marlborough.



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- (de) Distribution of affordable units. Dwelling units to be sold or rented at affordable prices shall be integrated into the overall development to prevent physical segregation of such units.
- (ed) Appearance. The exterior of the affordable units shall be designed to be compatible with and as nearly indistinguishable from the market rate units as possible.
- (fe) Minimum and maximum floor areas. Affordable housing units shall have a gross floor area not less than the minimum required by the State Department of Housing and Community Development under the regulations created under the authority of MGL Chapter 40B.
- (gf) Period of affordability. Limitations and safeguards shall be imposed to ensure the continued availability of the designated affordable units ~~for a minimum of 25 years~~ or in perpetuity. Such limitations and safeguards may be in the form of deed restrictions, resale monitoring, requirements for income verification of purchasers and/or tenants, rent level controls and the like.
- (hg) Limitation on change in affordability. In no event shall any change in affordability occur if the minimum percentage of affordable units required in the entire City under MGL Chapter 40B has either not been met at that time or such change in affordability would cause the City to fall below that percentage.
- (ih) Staging of affordable and market-rate units. No more than 50% of the building permits for the market-rate units shall be issued until construction has commenced on 30% of the affordable units. No more than 50% of the occupancy permits for the market-rate units shall be issued until 30% of the occupancy permits for the affordable units have been issued. The City Council may modify this provision for developments under 50 units.
- ~~(i) Alternate site. The City Council may allow the developer to build some or all of the affordable housing required by Subsection A(1)(a) on an alternate site within the City, provided that the City Council determines that this is in the best interests of the City and orders that this specific condition be attached to the special permit. The location of the alternate site shall either be specified at the time of approval for the special permit or selected within six months of said application and shall then be subject to approval by the Housing Partnership Committee or its successor, by the City Council if otherwise required by this Zoning Ordinance and by any other proper authority as may be required by law. The development of the alternate site shall comply with Subsection A(1)(b), (e), (f), (g), (h) and (i) of this section, and the staging of development on the alternate site shall be governed by Subsection A(1)(f) applied to all units on both the main and alternate sites.~~



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- (j) Guaranty of performance. No final certificate of occupancy shall be issued for any unit within a development subject to this section until all actions necessary to preserve the affordability of the affordable units in compliance with this section and include the affordable units on the subsidized housing inventory, including without limitation, a deed restriction, regulatory agreement and declaration of restrictive covenants, and/or any other restrictive instrument necessary, and all other required documentation, have been executed and registered or recorded by the developer, in a form satisfactory to the City Solicitor. The City Council shall require security in a form satisfactory to the City Council and City Solicitor to guarantee performance, including preservation of affordability, under this subsection, and no building permit shall be issued until and unless said security has been provided.
- (2) ~~Developments of 19 or fewer units. All provisions of Subsection A(1) above applicable to 20 or more units may also be applied to developments of 19 or fewer units as the City Council finds practical.~~
- (32) The provisions of this section shall not apply to a special permit for an existing retirement community, or the expansion of an existing retirement community as governed by §§ 650-21 and 650-22. This subsection will be effective pursuant to the applicable provisions of Chapter 40A of the General Laws.
- (4) ~~The provisions of this section shall not apply to projects which are granted special permits within the Marlborough Village District.~~
- V. By amending Chapter 650 (Zoning), Section 650-34(D)(1), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):
- D. Design standards.
- (1) The purpose of the following design standards is to promote quality development emphasizing the City's sense of history and desire for contextual, pedestrian-scaled projects. Supporting streamlined development review, design standards are integral to the Marlborough Village District regulations and must be met as part of any special permit and/or site plan review and approval.
- (a) Nonmandatory ~~In addition to the design standards, in connection with a special permit and/or site plan application in the Marlborough Village District, such applications shall be reviewed with respect to the Design Review Guidelines for the Marlborough Village District, which The guidelines will complement the design standards of this section and which will provide a guide to the desired appearance and quality of design in the Marlborough Village District. The guidelines are will be~~ available at the Building Department and/or on the official website of the City.



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VI. By amending Chapter 650 (Zoning), Section 650-34(D)(2), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

(2) All special permit and/or site plan review and approval applications in the Marlborough Village District shall be subject to the following design standards:

VII. By amending Chapter 650 (Zoning), by **inserting** a new Section 650-34(D)(2)(a)[4], to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

[4] Facade step back. A step back in the facade of a building shall occur at the upper floor(s) for all buildings above three stories in height. For example, the fourth story of a four-story building shall be recessed from the lower three stories of the primary facade with a step back. Five feet shall be the minimum step back.

VIII. By amending Chapter 650 (Zoning), Section 650-34(D)(2)(d), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

(d) External materials and appearance.

[1] Predominant wall materials for all ground floors shall be brick in traditional New England colors and character, and stone. shall be red brick, stone, or precast concrete panels; wWood siding may be used where the structures are adjacent to residential districts where the intent is to blend the structure more into the existing neighborhood. Thin brick veneer, precast concrete panel finished to look like brick or stone, masonry brick panels, and Flexbrick (or a similar product) can be used on upper floors. Glass Fiber Reinforced Concrete (GFRC) panels (or something similar) can be used for a curtain wall (non-load bearing) exterior wall cladding. If painted, or coated, a nonmetallic finish is to be used. Cladding materials should be consistent on all facades with the exception of special design elements, such as turrets. Materials designed to imitate brick, e.g., faux brick, are not permitted.

[2] The standards for all acceptable masonry construction are as follows:

[a] Acceptable masonry construction for bricks will be of standard, fired clay, brick units bonded together with mortar. Acceptable applications include building components, such as walls, stairs, columns, arches, planter beds, etc.

[b] ~~Utilize b~~Bricks which are should be sound, hard, well-burnt with uniform color, shape and size.

[c] The bricks should be compact, homogeneous, free from holes, cracks, flaws, air-bubbles, spawls and stone lumps.

[d] Frogged bricks shall be laid with the frogs pointing upwards.

[e] Mortar specifications shall comply with relative ASTM International standards.



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- [f] The properties of all other masonry units shall comply with the requirements of relevant ASTM International standards. These include concrete masonry, stone masonry and composite masonry. Masonry units are classified into the following types: solid, hollow unit, cellular, perforated and frogged.
- IX. By amending Chapter 650 (Zoning), Section 650-34(E)(1)(a)[2], to read as follows (new text shown as underlined, deleted text shown as ~~strikethrough~~):
- [2] Spaces in ~~city-owned~~ public garages and lots within 1,000 feet of the development can be counted to fulfill the required spaces, with payment-in-lieu required.
- X. By amending Chapter 650 (Zoning), Section 650-34(E)(1)(b)[1], to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):
- [1] Eliminate parking minimums per the existing off-street parking (§550-48) unless the use is part of a mixed-use development where off-street parking would be determined during the special permit and/or site plan review process.
- XI. By amending Chapter 650 (Zoning), Section 650-34(E)(2), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):
- (2) Payment in lieu of parking. In the Marlborough Village District, any new commercial or mixed use structure that is required to provide parking spaces may request to make payments to the City of Marlborough in lieu of providing for ~~all or part of the on-site~~ required parking, not to exceed twenty percent (20%) of the required on-site parking spaces. If when applying the specified percentage to determine the maximum number of on-site parking spaces which may be subject to payment-in-lieu, the resulting number includes a fraction of a unit, this fraction, if equal to or over one-half, shall be rounded up to the next whole number.
- (a) Payment made to the City of Marlborough in lieu of providing ~~some or all of~~ the required off-street parking spaces for a project in the Marlborough Village District (MV) shall may only be allowed by right, subject to site plan and design review authorized by special permit, in parking spaces designated for overnight parking, and subject to conditions set forth by special permit.
- (b) A one-time fee to be paid shall be \$2510,000 (twenty-five thousand dollars) per parking space, which shall be paid prior to the receipt of an occupancy permit.
- XII. By deleting Chapter 650 (Zoning), Section 650-34(E)(3), (Additional reduction in parking requirements).
- XIII. By amending Chapter 650 (Zoning), Section 650-34(F), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):
- F. Heights of structures.



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ORDERED:

- (1) To encourage redevelopment and reuse of parcels within the Marlborough Village District, minimum and maximum heights are established. Minimum heights shall be 35 feet or 2.5 stories; maximum height is 60 feet or 4 stories. ~~six stories and up to 70 feet except for where a proposed structure is within 50 feet of a residential district boundary, where the height limit shall be 52 feet. By grant of a special permit, maximum building height, including building areas within 50 feet of a residential district boundary, may be increased to seven stories and up to 85 feet.~~ Height limits do not include roof-mounted mechanical appurtenances; however, said appurtenances, and the screening required for them in § 650-34D(2)(b), shall be subject to site plan review and design standards. Rooftop mechanical equipment, including wireless communications equipment, shall be located and screened to minimize impacts on abutters and the general public. No interior space shall be occupied for any purpose above these height limits. This shall not preclude the use of a flat roof for purposes allowed in this section.
- (2) Roof decks, providing recreation and amenity areas for residents and businesses on the roof above the top story of a building, shall be encouraged in the Marlborough Village District. Roof decks may include open space areas for sitting and gardens; open air areas covered by permanent roofs (flat or sloped); indoor areas for social gathering, meetings, common kitchens, restrooms, and storage; spaces for mechanical equipment; and enclosures for elevators and stairs. The portions of a building designed as a roof deck shall be subject to maximum height restrictions, as but may be increased by special permit.

XIV. By amending Chapter 650 (Zoning), Section 650-41 (Table of Lot Area, Yards, and Height of Structures), District: Marlborough Village District MV, Height, and Notes #12 (as referenced therein) to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

<u>District</u>	<u>Height</u>
Marlborough Village District MV	Minimum: 35 feet <u>or 2.5 stories</u> ; Maximum: 64 stories: not to exceed a maximum of <u>60</u> 70 feet ₁₂

NOTES:

- 12 Within the Marlborough Village District, special permits may allow for an increase in height for a roof deck to 7 stories and up to 85 feet; also, ~~provided that the height of any development within 50 feet of a residential district boundary, shall be stepped down and shall not exceed 52 feet except where allowed by special permit.~~ [See § 650-34F(1).]



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ORDERED:

XV. By amending Chapter 650 (Zoning), Section 650-37 (Special Provisions Applicable to the Wayside Zoning District), Subsection H(4)(A), entitled "Mixed Uses", by inserting the following sentence at the end of the existing subsection: Floor usage in a mixed-use development shall conform to subsection (2) of the definition of "Mixed Use" set forth in Section 650-5(B).

XVI. Effective Date. The effective date of these amendments shall be the date of passage. These amendments do not apply to any special permit or site plan approval, for which an application was submitted and/or a special permit or site plan approval was issued before the date of the first publication of notice of the public hearing pursuant to MGL c. 40A, s. 5 on these amendments.

Be and is herewith **APPROVED**.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

Councilor Landers opposed.

ADOPTED
In City Council
Order No. 22/23-1008721M

Approved by Mayor

Arthur G. Vigeant ** VETOED BY MAYOR ARTHUR G. VIGEANT **

Date: ** DECEMBER 15, 2023 **

** VETO OVERRIDDEN - DECEMBER 28, 2023 **

A TRUE COPY

ATTEST:

City Clerk