

ON-LINE ZONING ORDINANCE DISCLAIMER

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ARTICLE 21.000 TRANSFER OF DEVELOPMENT RIGHTS REGULATIONS

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Text current through Ordinance #1397 of August 7, 2017.

21.10 TRANSFER OF DEVELOPMENT RIGHTS (TDR) – GENERAL PROVISIONS

- 21.11** *Purpose.* It is the intent of this Article 21.000 to establish regulations by which Gross Floor Area (GFA) permitted on one lot or lots, as determined by the zoning district applicable to that lot [the Donating Lot(s)], may be transferred and used on another lot or lots [the Receiving Lot(s)] in the same or different zoning district in order to (i) introduce a level of flexibility into the development of designated areas in the city in ways that construction on one lot at a time cannot accomplish, (ii) allow multiple owners to coordinate development on small lots that may not be contiguous, (iii) facilitate the implementation of urban design and other planning objectives, particularly in contexts where there may be many, small lots and multiple property owners, and (iv) to allow development to respond to market forces and infrastructure patterns in ways that further public transportation and urban design objectives. The restrictions that otherwise apply in the Zoning Ordinance restricting development to a single lot in single ownership shall be modified by the regulations contained in this Article 21.000.
- 21.12** *Establishment and Scope.* The Transfer of Development Rights may be secured through the provisions of a (1) a Development Rights Transfer Overlay District designated from time to time on the Zoning Map or (2) through the provisions of an Overlay District, having multiple regulatory objectives or through the provisions of a Special District. The Transfer of Development Rights shall be regulated by the general provisions of this Section 21.10 and by specific provisions established for each individual district.
- 21.13** *Procedure.* The transfer of GFA from a Donating Lot to a Receiving Lot shall be permitted by special permit from the Planning Board and shall be subject to further provisions set forth below in Section 21.13.1. The transfer shall be permitted between contiguous and non-contiguous lots that may be held in common or separate ownership, notwithstanding any definition of lot or owner set forth in Article 2.000 of this Ordinance or elsewhere in the Ordinance.
- 21.13.1** Special Permit Procedures.
- 21.13.11** Required Information. In applying for a special permit to permit the transfer of GFA from one or more Donating Lots to one or more Receiving Lots, the following information shall be provided:
1. The location of all Donating Lots and all Receiving Lots.
 2. Enumeration of the GFA to be transferred, GFA to be retained on the Donating Lot, and the total GFA to be accommodated on the Receiving Lot; the calculations by which the proposed GFA on all sites has been determined.
 3. Schematic development plans showing the proposed development on both the Donating and the Receiving lots.
 4. A narrative describing the plan's compliance with all requirements of this Section 21.10 and the specific Transfer of Development Rights provisions of other applicable sections

of the Zoning Ordinance, consistency with any applicable design guidelines and area plan, and with the Citywide Urban Design Objectives, Section 19.30.

5. The schedule by which necessary demolition will take place and authorized construction will commence and be completed. Where it is proposed to occupy transferred GFA before a Donating Lot has been brought into compliance with the requirements of the special permit, the legal instruments proposed by which the requirements applicable to it will be met.
6. The status of leaseholds for tenants in any GFA on a Donating Lots in structures that are required to be demolished or converted to residential uses, and the mechanisms by which those leaseholds will be terminated and the site brought into compliance with the requirements of the special permit.

21.13.12 Special Permit Conditions. The Planning Board shall establish in its Decision granting a special permit under the provisions of this Section 21.10 conditions that address at a minimum, the following:

1. The sequence by which construction and demolition are to occur on both the Donating and Receiving Lots;
2. The binding commitments to be executed if occupancy of new GFA on the Receiving Lot is to occur before demolition of GFA transferred out from the Donating lot or before new on the Donating Lot.
3. The legal instruments by which a proposed park or other public amenity is to be made available to the general public, where applicable.
4. The process by which final development plans are to be approved by the Planning Board.

21.14 *Reservation of Gross Floor Area by Owners of Donating Lots.* To provide flexibility over time in the utilization of GFA available to be transferred, the Planning Board may issue a special permit to permit the reservation of GFA from a Donating Lot to be applied at a later date to a Receiving Lot through a second special permit process. The reservation may be for any length of time acceptable to the Planning Board.

The Board, in granting the special permit, shall approve the permanent development plan for the Donating Lot.

Substantial Use of such special permit, as required in Section 10.46 of the Zoning Ordinance, shall be that date at which it is filed with the Registry of Deeds for Middlesex County.

The Planning Board may establish such conditions as it deems appropriate to ensure that development on the donating lot is consistent with the conditions of the special permit until the development rights are fully utilized on a future receiving lot.

21.15 *Application for a Building Permit.* Prior to issuance of a building permit for any construction on any Donating or Receiving Lot linked through the issuance of a single special permit, the Superintendent of Buildings shall determine, based on information provided with the application (including a certification from the Community Development Department that all conditions of the special permit are met), that all Donating and Receiving Lots continue to be in conformance with the conditions of the special permit, the provisions of this Section 21.10, and the applicable base zoning districts. Among the information to be provided are the following:

1. An identification of all lots subject to the requirements of a single special permit.
2. A list of all building permits issued for those lots since the granting of the authorizing special permit.

3. The GFA existing and authorized on each lot at the time of the application.
4. An enumeration of the GFA authorized on each lot by the Special Permit.

21.16 *Dimensional Limitations.* Except as may be provided elsewhere in the Ordinance in the individual Transfer of Development Rights Districts and Provisions, all development on both Donating and Receiving Lots shall be subject to the dimensional limitations of the applicable base district with the exception of the FAR limitation. On Receiving Lots, Gross Floor Area may be increased above the FAR limit normally applicable to the extent of GFA transferred from Donating Lots by special permit.

21.20 EASTERN CAMBRIDGE DEVELOPMENT RIGHTS TRANSFER DISTRICT (TDD and TRD)

21.21 *Purpose.* It is the intent of this Section 20.30 to (1) reduce the density of development close to the existing residential neighborhoods and (2) encourage housing construction compatible with the existing residential neighborhoods through the transfer of existing or potential development to other locations. It is also intended to facilitate the construction of additional residential, office, research and development, retail, and manufacturing uses in areas of eastern Cambridge that are close to transit services, and on sites now fully developed that can more effectively serve the city's Urban Design Objectives, as set forth in Section 19.30 of the Ordinance, with additional building construction. For the purposes of this Section 20.30, residential use shall be as defined as uses set forth in Section 4.31 a-h

21.22 *Establishment and Scope.* There is hereby established the Eastern Cambridge Development Rights Transfer Districts which shall be governed by the regulations and procedures specified in this Section 20.30. These regulations shall apply to areas described below or as they may be otherwise identified on the Zoning Map, which shall be designated as "Eastern Cambridge Development Rights Transfer Donating District" (TDD) or "Eastern Cambridge Development Rights Transfer Receiving District" (TRD) on the Zoning Map of the City of Cambridge established in Section 3.20.

21.23 *Boundaries of the Districts.*

The boundaries of the districts shall be as described below.

1. The Eastern Cambridge Development Rights Transfer Donating District shall be coterminous with the boundaries of the Eastern Cambridge Housing Overlay District (Section 20.40 below) and the portion of the PUD-4B District located north of Binney Street. The Donating District shall be that area from which Gross Floor Area (GFA) is removed for use on a lot in the Receiving District. A Donating Lot shall be a lot in the Donating District from which GFA is removed.

2. The Eastern Cambridge Development Rights Transfer Receiving District shall be (a) that area bounded by the centerlines of Binney Street to the north, First Street to the east, Main Street to the south, and on the west a line parallel to, easterly of, and one hundred and fifty feet distant from the easterly sideline of Portland Street and Cardinal Medeiros Avenue, and (b) that portion of the Industry B zone located south of Main Street and bounded by the centerlines of Albany Street; Massachusetts Avenue; Windsor Street; a line southerly of, parallel to, and one hundred and fifty feet distant from the southerly sideline of Main Street; a

line easterly of, parallel to and one hundred and fifty feet distant from the southwesterly extension of the centerline of Portland Street north of Main Street; and then Main Street to the point of beginning . The Receiving District shall be that area where GFA from a Donating Lot is used for development. A Receiving Lot shall be a lot in the Receiving District to which GFA is moved.

21.24 *Procedure.* The transfer of GFA from the Donating District to the Receiving District shall be permitted by special permit from the Planning Board and shall be subject to further provisions set forth below in Section 20.36. The transfer shall be permitted between non-contiguous lots that may be held in separate ownership, notwithstanding any definition of lot set forth in Article 2.000 of this Ordinance.

21.25 *Limitations, Requirements, and Conditions Applicable to Lots in the Sending District*

21.25.1 Non Residential Gross Floor Area Available for Transfer from a Lot in the Donating District to Any Lot in the Receiving District.

The total GFA that may be transferred from any Donating Lot to any Receiving Lot shall be the greater of the following:

- (1) The total amount of non-residential GFA permitted on a lot in any non-residential zoning district in the Donating District at the time of application to permit the transfer, or
- (2) The existing amount of non-residential GFA contained on a lot in any zoning district in the Donating District at the time of application to permit the transfer.

21.25.2 Residual Gross Floor Area Available for Residential Development on a Donating Lot after the Non-residential GFA Transfer has been Authorized.

The total Gross Floor Area available for residential development on any Donating Lot shall be the greater of the following:

- (1) The total amount of residential GFA permitted on the Donating Lot after the non-residential GFA has been transferred, including existing residential GFA and residential GFA allowed through the application of the provisions of Section 5.28.2 – Conversion of Non-Residential Structures to Residential Use, where it is proposed to reuse a non-residential structure for residential use, or.
- (2) The GFA resulting from an FAR of 0.75 in Residence C-1 base district or 1.25 in any non-residential base district.

21.25.21 Residual Residential Gross Floor Area on a Donating Lot Available for Transfer to a Lot in the Receiving District.

The residential GFA permitted on a lot in any residential or non-residential zoning district as determined by Section 20.34.2 above may be transferred to any receiving lot provided the future residential development potential on the Donating Lot is not reduced below an FAR of 0.75.

21.25.3 Restrictions on the Donating Lot after Transfer is Authorized.

(1) All non-residential GFA existing or permitted under the zoning district regulations applicable on the Donating Lot, whichever is greater, must be transferred, held for future transfer, or abandoned. No non-residential development potential shall remain on the Donating Lot and no use variance may be granted to reestablish non-residential uses after the transfer of GFA has occurred. Any active non-residential use shall be discontinued.

(2) Development on the Donating Lot is limited to residential use or a public park. Where residential development is proposed to be established, the future residential development shall not have an FAR of less than 0.75. All existing gross floor area not redeveloped to residential use shall be demolished where housing is to be established on the site. The entire site shall be cleared if it is to be developed as a public park.

(3) No building or structure determined to be a Preferably Preserved Significant Building by the Cambridge Historical Commission, as provided in Ordinance No. 965 of the Ordinances of the City of Cambridge, may be demolished. Any such building required to remain shall be converted to a permitted residential use.

(4) Notwithstanding the provisions of Paragraphs (1) – (3) above, or other provisions of this Section 20.30, the remaining residential GFA on a Donating Lot may contain any office or retail use permitted in the applicable base district up to ten (10) percent of the permitted residential GFA.

21.26 *Dimensional and Use Limitations on the Receiving Lot.*

The GFA transferred from any Donating Lot to a Receiving Lot shall be subject to the following provisions:

(1) The transferred GFA shall not be subject to any FAR or GFA limitations applicable to the receiving lot, including lots which already exceed permitted FAR limits.

(2) Transferred Non-residential GFA may be used for any use permitted on the Receiving Lot. However, where any non-residential use is limited to a maximum percentage of total development on the Receiving Lot or Development Parcel, the transferred GFA shall be subject to that limitation unless the transferred GFA is in addition to, and not a substitute for, the GFA and use limitations otherwise applicable on the Receiving Lot or Development Parcel.

(3) Residential GFA transferred, as permitted in Section 20.34.21 above, shall only be used for residential uses on the receiving lot.

(4) All other dimensional limitations applicable to the receiving lot shall apply to the transferred GFA.

21.30 SPECIAL DISTRICTS 8, 8A, 9 and 10

Transfer of Development Rights shall be permitted in Special Districts 8, 8A, 9 and 10 for the purpose of creating open space facilities, pursuant to the general provisions of Section 21.10 above and the following specific requirements.

21.31 *Transfer of Development Rights and/or Additional Height to secure Publicly Accessible Open Space.*

The Planning Board may permit the transfer of all of the gross floor area permitted as of right or by special permit on one or more Donating Lots located in Special District 8, Section 17.81, or Special Districts 8A, 9 and 10, Sections 17.82, 17.90 and 17.100, to one or more Receiving Lots located in Special District 8 and may permit in conjunction with that transfer an increase in the permitted height on the Receiving Lot for the purpose of creating an open space facility of approximately fifty-nine thousand (59,000) square feet and such other additions to that space or the creation of other such open space facilities as may be offered that are accessible to the general public and designed and intended to be used for active and/or passive recreation. The special permit shall be granted subject to the following requirements:

1. One open space parcel containing an area of approximately fifty-nine thousand (59,000) square feet, as shown on Lots # 48 and 57 on Assessor's Plat # 95, shall be a Donating Lot and must be secured as an open space as required in this Section 21.30 before any other lot may be considered a Donating Lot; other open space parcels within the Special District 8 or Special Districts 8A, 9 and 10 may also be Donating Lots.
2. The FAR on the Receiving Lot does not exceed 2.5 for nonresidential uses or 3.0 FAR for residential and dormitory use.
3. The Receiving Lot for the one hundred three thousand, two hundred fifty (103,250) gross square feet or more of floor area to be transferred is located in Special District 8.
4. The maximum height of any structure on the Receiving Lot may be increased subject to the following limitations:
 - a. Sixty (60) feet in that area lying between Sidney Street and a line, which line is parallel to, southeasterly of and one hundred (100) feet distant from Sidney Street;
 - b. Ninety (90) feet in that area lying between the parallel line described in Paragraph (a) above and Albany Street;
 - c. One hundred (100) feet in that area lying southeasterly of Albany Street.
5. The donating site for an open space contribution of approximately fifty-nine thousand (59,000) square feet is located at 82 Pacific Street as shown on lots # 48 and 57, on Assessor's Plat # 95.
6. Open space facilities shall be under the control of, and be programmed and maintained by the City of Cambridge or its designated agent. Transfer of open space facilities to the City shall be by fee simple conveyance, easement, lease (see Paragraph 8 below) or other legal mechanism, and shall be made as a condition precedent to the issuance of the first building permit for a project on a Receiving Lot which utilizes development rights granted by Special Permit for that project. Special Permits granted under this Section 21.30 shall run with the land.
7. The site is physically suitable for the recreational uses proposed and certified by the City to meet environmental standards such as they are applied to other such open spaces in the City at the time of transfer to the City of Cambridge.
8. If the development rights transferred by the Special Permit to a Receiving Lot are not fully utilized or applied in the construction of a project, the remaining development rights shall remain available for use or application, on a phase by phase basis, on the receiving lot. If development rights are applied by a landowner, on a phase by phase basis, the

donating lot (from which the development rights derive) shall be leased, on a completely “net” basis, by the owner of the donating lot to the City of Cambridge, or its designated agent, until such time as the receiving lot has fully utilized or applied the development rights derived from the donating lot. When those development rights are fully utilized or applied, which shall be determined by the issuance of a certificate of occupancy for any building making use of such rights, fee simple title to the donating lot shall be conveyed to the City of Cambridge or its designated agent; in its decision the Planning Board shall determine if fee simple title shall be conveyed in phases as development rights are utilized or applied or when the entire amount of development rights is fully utilized. If development rights are applied or utilized on a phase by phase basis, and if, because of an amendment or other change in the Zoning Ordinance of the City of Cambridge, the owner of the receiving lot is unable to receive the full benefits of those development rights (in the same manner and to the same extent as if the Zoning Ordinance had not been amended or otherwise changed), the lease of the donating lot to the City of Cambridge shall terminate automatically upon the effective date of that amendment or other change in the Zoning Ordinance.

Any special permit issued under the provisions of this Section 21.30 shall be in force and effect for the length of lease of property for open space purposes as required in this Section 21.30. For the purposes of Section 10.46, the use authorized by any special permit issued under this Section 21.30 shall be deemed to have commenced with the granting of the lease of land for open space purposes as defined in this Paragraph 8.

21.32 *Special Permit Conditions.* In granting a special permit under this Section 17.81.5 the Planning Board shall consider the following:

1. The proposed open space is consistent with the objectives of this Section 21.30 to create a private open space or recreational facility addressing the unmet needs of the adjacent residential neighborhood and those of the new residents of the district and, if one is adopted, is consistent with a plan for the distribution and use of open space in the District.
2. If less than one acre, the open space is clearly an element of a plan to be implemented incrementally created through the issuance of additional special permits, or is clearly acceptable as an independent facility.
 1. If it is intended to be a part of a larger facility, the open space is useable on its own, as an independent facility, if intended future special permits are not sought or granted.

21.40 ALEWIFE OVERLAY DISTRICTS 1-6

21.41 *Purpose.* It is the intent of this Section 21.40 (i) to reduce the density of development adjacent to the existing residential neighborhood of the Cambridge Highlands; (ii) to encourage greater development density closer to public transit and to facilitate infrastructure improvements that will make those transit services more widely available in the Alewife Overlay Districts; (iii) to facilitate a more orderly development pattern within the Alewife Overlay Districts, including increasing the opportunities for installation of new circulation pathways for pedestrian, bicycles and vehicles; creation of new public or private open space facilities; and development of new

pedestrian connections from the Quadrangle to the Triangle; (iv) to make additional land surface available for better stormwater management and increased permeability; and (v) to encourage a more attractive pattern of new buildings consistent with the urban design objectives set forth in the Concord-Alewife Plan.

21.42 *Procedure.* The procedures set forth in Section 21.10 above shall apply to this Section 21.20.

21.43 *Limitations, Requirements, and Conditions Applicable Donating Lots.*

21.43.1 Gross Floor Area Available for Transfer from a Donating Lot to a Receiving Lot.

1. Some or all of the Gross Floor area permitted on the Donating Lot, as determined by the applicable base zoning district regulations, any additional development allowed in Section 20.90 by special permit, and by the provisions of Section 5.28.2 as they apply to existing development on the site, may be transferred to a Receiving Lot.

2. Where any legally established Gross Floor Area existing on the lot at the time of application to permit the transfer exceeds that permitted on the lot, that Gross Floor Area shall be available in whole or in part for transfer to the Receiving Lot.

3. Residential Gross Floor Area transferred from a Donating Lot may only be used for residential purposes on the Receiving Lot. Non-residential Gross Floor Area transferred from a Donating Lot may be used for any permitted use on the Receiving Lot.

4. Special Provisions Related to Utility and Railroad Land. As railroad and utility facilities cannot easily be reused for other purposes while the railroad or utility function is active, special limitations shall be imposed for the transfer of any development potential on those sites though the provisions of this Section 21.40. Therefore, Gross Floor Area permitted on a railroad right-of way, railroad freight terminal, railroad yard and shop (Section 4.32 (c)) or utility transformer station, substation, gas regulator station (Section 4.32 (g 2)) may not be transferred to any other lot under the provisions of this Section 21.40 unless the Planning Board finds that the donating lot, after the transfer of GFA, will be substantially improved to the benefit of the general public, consistent with the objectives of the Concord-Alewife Plan. In making that finding the Planning Board shall consider the following:

a. Significant portions of the Donating Lot are redeveloped to housing, technical office uses, or permeable open space as set forth in Section 21.43.2 (1) below.

b. Rights of way or construction of pedestrian and bicycle pathways and roadway segments, elements of the pedestrian bridge across the railroad right of way from the Quadrangle to the Triangle, and water retention/detention systems are provided, consistent with the Plan.

c. The additional GFA on the Receiving Lot can be reasonably accommodated in a positive way with regard to management of the additional traffic created and site and building design proposed in the context of the surrounding pattern of development.

d. In other demonstrable ways the objectives of the Plan are advanced to an extent commensurate with the scale of the GFA transfer being requested.

21.43.2 Restrictions on the Use of the Donating Lot after Transfer is Authorized.

1. Where it is proposed to transfer all development allowed on the Donating Lot, the lot shall be thereafter developed in one of the following ways:

a. As a Public, Green Area, Permeable or Publicly Beneficial Open Space.

- b. For any residential use permitted in a Residence C-1 District in a building or buildings meeting all the dimensional requirements of the Residence C-1 District. An FAR of 0.75 shall be authorized on the site, in addition to that authorized for transfer to the Receiving Lot. Such additional FAR, however, shall not be granted for transfers of GFA that only occur within the boundaries of a single Overlay District.
 - c. Any technical office for research and development, laboratory and research facility, Section 4.34 f, in a building or buildings constructed to meet all the dimensional requirements of the Office 1 District. An FAR of 0.75 shall be authorized on the site, in addition to that authorized for transfer to the Receiving Lot. Such additional FAR, however, shall not be granted for transfers of GFA that only occur within the boundaries of a single Overlay District.
 - i. Where an existing building has a Gross Floor Area at or below an FAR of 0.75 and is occupied by a Technical office for research and development use, such building and use shall be considered to meet the requirements of this Subparagraph c and the full transfer from the lot of permitted FAR shall be permitted.
2. Where it is proposed to retain some of the development potential on the Donating Lot, either in new construction or in existing buildings, the provisions of the applicable base district and Section 20.90 shall apply to that development.

21.43.3 Dimensional and Use Limitations on the Receiving Lot.

The GFA transferred to a Receiving Lot shall be subject to the following provisions:

- 1. The transferred GFA shall not be subject to any FAR or GFA limitations applicable to the Receiving Lot, including lots that already exceed permitted FAR limits.
- 2. Transferred Non-residential GFA may be used for any use permitted on the Receiving Lot
- 3. Transferred Residential GFA shall only be used for residential uses on the receiving lot.
- 4. All other dimensional limitations applicable to the receiving lot shall apply to the transferred GFA.
- 5. The total GFA transferred shall not exceed twenty (20%) percent of the GFA otherwise permitted on the Receiving Lot when the transfer occurs between two or more Overlay Districts.

21.43.4 Location of Donating and Receiving Lots

21.43.41 Transfer of Development Rights within a Single Overlay District. Transfer of GFA shall be permitted within the boundaries of a single Overlay District from any Donating Lot to any Receiving Lot. Where a lot is divided by an Overlay District line, all transferred GFA shall be located within that portion of the lot located within the Overlay District.

21.43.42 Transfer of Development Rights Between Two or More Overlay Districts. Where it is proposed to transfer GFA out of one Overlay District into another the following rules shall apply.

- 1. Overlay Districts 1 and 3 shall contain only Donating Lots. Gross Floor Area from these Districts may only be transferred to Overlay Districts enumerated in Paragraphs (2) and (3) below.

2. Overlay Districts 4, 5 and 6 shall contain only Receiving Lots and may receive transferred GFA only from Overlay Districts 1 and 3.
3. Overlay District 2 shall contain only Receiving Lots and may receive transferred GFA only from Overlay Districts 1 and 3. However, transferred GFA shall only be permitted if it can be demonstrated to the satisfaction of the Planning Board that there is in place a safe and functional pedestrian connection from Overlay District 2 across the railroad tracts to Overlay District 6; or that the development authorized by a Transfer of Development Rights Special Permit will provide physical elements or property right interests that will facilitate the construction of such a pedestrian connection in the future, to include but not be limited to: fee, easement or other property interest sufficient to permit the construction of a pedestrian bridge and to permit the general public access the facility; construction of elements of the bridge on the site or within buildings to be constructed on the site, or actual construction of the pedestrian connection.