

# **Innovations in Land Use Planning – Cutting Edge Practices and Future Trends**

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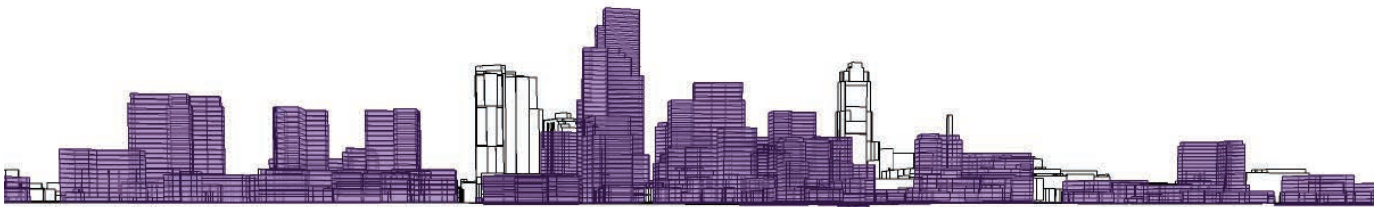
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# City of New Rochelle



## Article XXIII Downtown Overlay Zones Section 331-175

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**SECTION 331-175.01 RESERVED**

**SECTION 331-175.02 INTENT AND PURPOSE**

- A. This Article regulates the location, design, occupancy, and use of structures and the use of land within the area known as the "Downtown Overlay Zones" (hereinafter "DOZ") within the City of New Rochelle.
- B. This Article is intended to promote the health, safety and general welfare of the City by creating a holistic and comprehensive economic development strategy that utilizes the principles of social, economic and environmental responsibility to re-establish the downtown as a center of vibrancy within a mixed-use, transit oriented setting. This Article is intended to create an opportunity for a more economically successful and environmentally responsible City and downtown with a more harmonious and pedestrian-oriented public realm than can be achieved under the regulations in the underlying zoning in effect at the time of adoption of this Article.
- C. The primary purpose of this Article is to institute a legally enforceable form-based code within the DOZ, based upon the City of New Rochelle Comprehensive Plan adopted on July 30, 1996 (hereinafter "the Comprehensive Plan"), the Final Generic Impact Statement (hereinafter "the FGEIS) dated December 8, 2015, and the Findings Statement prepared for the Downtown Overlay Zone, adopted on December 8, 2015, and amended on December 2, 2016, October 30, 2017, December 19, 2017, June 19, 2018, September 20, 2018, January 15, 2019, December 14, 2021, March 14, 2023, and Month XX, 2023 in connection thereto. This Article establishes development rules and procedures that will result in a compact and walkable transit-oriented mixed-use development in the Downtown Overlay Zone area.

**SECTION 331-175.03 APPLICABILITY**

- A. This Article applies to all land, buildings, streets, sidewalks, uses, activities, private improvements, and landscape alterations of any kind occurring within the six Downtown Overlay Zones, as further detailed below in Section 331-175.08.
- B. The eight Downtown Overlay Zones do not replace the underlying zoning rules and regulations that currently exist in the DOZ. They provide an alternative option for landowners to use in developing and redeveloping their land and buildings within the DOZ. All existing rights, allowable uses, and approval procedures under the City of New Rochelle Zoning Ordinance and of the City Code remain in full force and effect, except that if a property owner elects to proceed under the overlay provisions of **this Article and there is a conflict between the overlay zoning and the underlying zoning**, the provisions of the overlay zoning shall control.
- C. This article includes use standards, development standards, street standards, and site planning standards, organized by Downtown Overlay Zone Districts as further described in Section 331-175.04 through Section 331-175.21. **In case of any conflict between this Article and any other provision of the City Code**, this Article shall control, except as provided in subsection D below. Procedural requirements for applications in the DOZ are contained in Section 331-175.14.
- D. **Building Code and Life Safety Codes:** All applications for building construction are required to conform to applicable building code and life safety ordinances, laws, and regulations. Applicants shall be responsible for obtaining all necessary building permits and other approvals from local regulatory agencies with jurisdiction over a project.

**SECTION 331-175.04 DEFINITIONS**

The definitions below describe terms as they appear in this Article that are technical in nature or that otherwise may not reflect common usage. If a term is defined in Section 331-4 of this ordinance and in Section 331-175.04, then the definition in Section 331-175.04 shall apply, unless otherwise specified. In any interpretation of terms used in this Article, the official or officials responsible for making such interpretation shall consult with the Department of Development.

**ACTIVE EDGE**

A combination of doors and glazing designed to stimulate pedestrian activity along a Public Frontage.

**AGRICULTURE, URBAN**

The use of land and buildings including rooftops for one or more of the purposes listed below, where no nuisance is created by such use. Urban Agriculture does not include animal husbandry or the raising of animals by a person for other than domestic use by that person.

**COMMUNITY GARDENS**

Land managed by a public or not-for profit organization or association and used to grow plants or ornamental crops for household use, sale, or donation.

**AQUACULTURE**

Raising aquatic plants or animals for sale to customers.

**ARCADE FRONTAGE**

A Private Frontage Type that has a series of arches or openings carried by columns or piers, and provides a covered walkway with access to adjacent storefronts compliant with Storefront Frontage requirements.

**ARTISAN PRODUCTION**

The production of small-scale art, craft, baked goods, prepared and packaged foods for consumption off-site and similar products produced and/or sold on the premises, including but not limited to arts and crafts, micro breweries, musical instrument makers, toy makers, and custom furniture makers. Artisan Production does not include industrial-scale mass production.

**BLOCK**

The aggregate of private lots and rear access lanes circumscribed by streets.

**BUILD-TO-LINE**

A line parallel to the curb closest to a Street at a distance defined by the Street Type or a line at the edge of an approved Pedestrian Way or Civic Space.

**BUILD-TO-ZONE**

The portion of a lot between the Build-To-Line and a line parallel to the Build-To-Line defined by the Private Frontage Type where the front facade of a building can be located.

**COMMUNITY BENEFIT BONUS (CBB)**

Incentive for Applicants who choose to seek additional height by providing desired community amenities from an approved list of benefits.

**CURB**

The portion of pavement marking the transition from the vehicular to the pedestrian realm. It may be raised, flush or with bollards or similar indications. (See: Face of Curb)

**CURB CUT**

Any point of access along a street where the curb line is broken in order to permit the passage of vehicles to another street, an access lane, a loading area, parking area or parking structure.

**DATA INFORMATION CENTER**

A facility that provides services or management for data processing and houses related equipment.

**DOWNTOWN OVERLAY ZONES (DOZ)**

As plotted on the Official Zoning Map of the City of New Rochelle.

**EDGING ELEMENTS**

Structures, walls, or landscaping along the edges of public spaces and the public realm that define and enclose the public realm.

**EDUCATIONAL USE**

Provision of educational services, including but not limited to primary and secondary schools, nursery schools, colleges and universities, music schools, dance schools, vocational schools, apprenticeship programs, and facilities designed to provide instruction in any other recognized skill or vocation.

**SECTION 331-175.04 DEFINITIONS**

**ENTERTAINMENT/CULTURAL/ARTS FACILITY**  
Any facility for public entertainment including theaters, museums, galleries, cinemas and indoor amusement establishments.

**EXPRESSION LINE**  
Architectural elements that define the base, middle and top of a building and unify different buildings along a public frontage through use of horizontal expression elements, such as moldings, shading devices, changes of material and cornices, that complement and continue the prevailing character of adjacent and nearby buildings.

**FACADE**  
The face of a building fronting on a Street, civic space or Pedestrian Way.

**FACE OF CURB (F.O.C.)**  
The vertical side of a curb at the edge of the traveled way.

**FORECOURT FRONTAGE**  
Private Frontage type, where a portion of the building façade is set back to allow for large private gardens, bio-retention areas, or similar uses.

**FRONTAGE OCCUPANCY**  
The percentage of the Site Frontage that is occupied by a Street Wall or approved civic space within the Build-To-Zone.

**FRONTAGE, PRIMARY**  
Frontage facing the street type with the highest priority where A streets are the highest and F streets are the lowest. P Streets shall have priority equivalent to A Streets.

**FRONTAGE, PRIVATE**  
A zone provided within a site between the Build-To-Line and a line parallel to it ten feet behind the Street Wall, except where there is no Street Wall, the Private Frontage shall be the Build-To-Zone.

**FRONTAGE TYPES, PRIVATE**  
The Private Frontage Types, as further defined in this Section, are:  
Storefront Frontage  
Arcade Frontage  
Urban Frontage  
Stoop Frontage  
Porch Frontage

Lightwell Frontage  
Forecourt Frontage  
Mid-Block Frontage

**FRONTAGE, PUBLIC**  
A zone provided between the face of curb and the Build-To-Line.

**FRONTAGE, SITE**  
The length of a Site fronting on a Street, Pedestrian Way, or Civic Space, measured in feet along the Build-To-Line.

**FRONTAGE, TOTAL SITE**  
The sum of all Site Frontages facing one or more Streets, measured in feet, located on one contiguous Development Site, excluding frontages along Pedestrian Ways.

**FRONTAGE TRANSITION ZONE**  
The portion of the Public Frontage between the Pedestrian Clearway and a building facade allowing for doorways, open storefront service areas, outdoor dining areas, building fixtures (e.g. lighting, signage, projected architectural moldings), landscaping, removable planters, signage boards and similar.

**HOTEL**  
A facility offering transient lodging accommodations to the general public containing suites or condominium units and providing additional guest amenities or services, such as restaurants, meetings rooms, banquet halls, entertainment, and recreational facilities (excluding inns and bed and breakfast establishments).

**INDEPENDENT LIVING**  
Multifamily housing designed for adults aged 55 and older who do not require assistance with daily activities or skilled nursing but may benefit from special amenities, age-friendly surroundings, and increased social opportunities that independent senior living offers.

**INDOOR RECREATION**  
A business and/or club, which for compensation and/or dues, offers indoor recreational services, including but not limited to gyms, health clubs, martial arts studios, educational use, indoor sports, children's play facilities, bowling alleys, rock climbing gyms, indoor tennis clubs and similar establishments.

**SECTION 331-175.04 DEFINITIONS**

**LANDSCAPE AND FURNISHING ZONE**

The area of sidewalk where placement of street furniture, lighting and landscaping, outdoor dining areas or similar items (regulated by the Public Frontage) is allowed.

**LIGHTWELL FRONTAGE**

Private Frontage Type, typically residential, where the façade is set back to allow for below-grade entrances or windows designed to allow light into basements.

**LINER BUILDING**

A building designed to screen a building without an Active Edge, a parking lot or parking structure from a Build-To-Zone, street or civic space.

**LIVE-WORK**

A residential dwelling unit with a permitted accessory non-residential use such as retail, professional and/or artisan production facilities in excess of what is allowed as a home based business.

**MEAN HIGH WATER LINE**

The line on an engineered site plan submitted for review, for sites in the waterfront adjacent area, which represents the intersection of the land with the water surface at the elevation of mean high water. Mean high water is a tidal datum, defined as the average of all the high water heights observed over the National Tidal Datum Epoch.

**MEDICAL OFFICE**

Offices of physicians and dentists, including outpatient medical and surgical services and facilities, medical labs, and also including animal hospitals.

**MID-BLOCK FRONTAGE**

Private Frontage type with lower Frontage Occupancy, that permits courtyard, drop-off and parking areas with incorporated edging elements to screen the view from the street.

**MIXED USE**

A building or site designed for and containing more than one permitted use in Section 175.11A(2)

**MULTI-FAMILY DWELLING**

Three or more dwelling units in a building.

**PARAPET LINE**

A continuous horizontal projection for most of a facade. The parapet can be a designated location for measure of building height.

**PEDESTRIAN CLEARWAY**

An area within the sidewalk that must remain clear of obstructions to allow public passage.

**PEDESTRIAN WAY**

A Street Type that is intended for use primarily by pedestrians.

**PEDESTRIAN TRAIL**

A civic space located along a shoreline or through open space, that provides access primarily for pedestrians, and is integrated and connected to other public ways, such as Streets, Civic Spaces, or pedestrian ways.

**PROMENADE, WATERFRONT**

See Waterfront Promenade.

**PORCH FRONTAGE**

Private Frontage type, typically residential, where the façade is set back from an attached porch that may not be screened or glazed, and is no less than 5 feet deep.

**PRINCIPAL ENTRANCE**

The main point of access for pedestrians into a building.

**PRIVATE FRONTAGE**

See Frontage, Private.

**PRIVATE OPEN SPACE**

A privately owned outdoor open space located at ground level or on upper floors, designed to provide outdoor dining, active or passive recreation, gardens, urban agriculture, plaza space, sitting areas, landscaped courtyards, green roof, balconies, or similar spaces for regular occupant use, not including parking areas, roofs not designed for regular occupant use, loading areas or mechanical areas.

**PROFESSIONAL SERVICES**

Services rendered by a Professional Person or Persons.

**PUBLIC FRONTAGE**

See Frontage, Public.



**SECTION 331-175.04 DEFINITIONS**

**RESEARCH AND DEVELOPMENT**

The systematic study and application of knowledge or understanding, directed toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements, excluding High Hazard Group H occupancies, per New York State Building Code, Chapter 3, Section 307.

**RESIDENTIAL CARE FACILITY**

An adult care facility that provides long-term, non-medical residential services to adults who are substantially unable to live independently due to physical, mental, or other limitations associated with age or other factors, where compensation and/or reimbursement of costs is paid to an operator, pursuant to State or Federal standards, licensing requirements, or programs funding residential care services.

**RETAIL USE**

Sale of goods and/or provision of personal services directly to the ultimate consumer.

**SETBACK**

The distance between a lot line and the front, side, or rear of a building.

**SIGNIFICANT CORNER**

A corner location, at the intersection of two streets, providing a distinguishing architectural element, building massing, or a composition of architectural elements to signify the importance of the corner. Architectural elements may include distinguishing materials, textures, colors, fenestrations, cornices, balconies, or similar elements designed to feature a corner.

**SITE / DEVELOPMENT SITE**

An assemblage of one or more contiguous Lots controlled through an individual owner, contract vendee, or a group of owners acting together to develop under the provisions of this Article.

**SMALL-SCALE RENEWABLE ENERGY**

Use of a structure or Improvement for the generation of energy from renewable resources, including, but not limited to, wind, solar, hydroelectric, methane, wood, biomass and alcohol, not to exceed a generating capacity of 100 Kilowatts.

**STEPBACK**

A portion of a building set back above a height along the

Private Frontage before the total height of the building is achieved.

**STOOP FRONTAGE**

Private Frontage type, typically residential, with an elevated first floor to sufficiently secure privacy for the windows, with entrance accessed from an exterior stair and landing that may be a perpendicular or parallel to the sidewalk, located within Build-To-Zone.

**STOREFRONT FRONTAGE**

A Private Frontage primarily for retail or restaurant use, with substantial glazing and Active Edge, complying with Storefront Frontage requirements.

**STORY**

That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. An intermediate floor between the floor and ceiling of any story, and covering less than one-third of the floor area immediately below the intermediate floor shall be considered a mezzanine, which shall not be counted as a story. A basement shall be counted as a story when the basement structural ceiling level, as measured from the lowest point of that structural ceiling level, is four or more feet above the average level of the finished grade surrounding the basement.

**STREET**

A public right-of-way, bounded by lot lines on both sides.

**STREET TYPE**

A classification assigned to a Street or Pedestrian Way denoting the standards of Public Frontages and Private Frontages.

**STREET WALL**

The building facade located within the Build-To-Zone, up to the Street Wall Height, facing a Street, Pedestrian Way or Civic Space.

**STREET WALL HEIGHT**

The vertical distance from the mean grade of a sidewalk

**SECTION 331-175.04 DEFINITIONS**

at the Street Wall to the highest point of a cornice or roof line before a required Stepback.

**SUPPORTIVE HOUSING**

A combination of affordable housing and support services designed to help individuals and families use permanent, independent housing for health and recovery following a period of homelessness, hospitalization or incarceration, physical disability or for youth aging out of foster care.

**TERMINATING VISTA**

A location at the axial conclusion of a street providing a distinguishing architectural element, building massing, or a composition of architectural elements, to signify the importance of such location. Architectural elements may include distinguishing materials, textures, colors, fenestrations, cornices, balconies, or similar elements designed to feature a location.

**TOWNHOUSE**

A single-family dwelling unit attached by a common party wall to another building in which each unit has a separate entrance.

**TRAVELED WAY**

The portion of a Street between the curbs that is available for vehicular transportation.

**URBAN FRONTAGE**

A Private Frontage type with less substantial Active Edge and glazing at the sidewalk level than Storefront Frontage.

**UTILITIES**

Facilities and structures used for production, generation, transmission and distribution of services including but not limited to electric, gas, water, sewer, telephone, cable TV, and internet access services, excluding local services directly provided to buildings by cables, wires, poles and pipes.

**WATERFRONT ACTIVATION AREA**

A general area between a Mean High Water Line and the nearest landward Build-To-Line along the waterfront, as indicated on the DOZ Standards Map Section 175.08, which must contain the Waterfront Promenade, a continuous publicly accessible Civic Space that physically and visually connects the adjacent areas to the waterfront.

**WATERFRONT PROMENADE**

A civic space as defined in Section 175.10E(1)(d).

**WATERFRONT BOARDWALK**

A civic space, a walkway raised to protect wetlands, sensitive or flood plane areas.

**WHOLESALE USE**

The sale of goods to other businesses or individuals not open to the general public, generally offering goods in larger volume than customary for retail sales.

**SECTION 331-175.05 RESERVED**

**SECTION 331-175.06 RESERVED**

**SECTION 331-175.07 RESERVED**

**SECTION 331-175.08 DOZ STANDARDS MAP**

- A. The DOZ is divided into the following Overlay Zones, shown as "DO-1," "DO-2," "DO-3," "DO-4," "DO-5," "DO-6," "DO-7," and "DO-8". The boundaries of these Overlay Zones are shown on the Official Zoning Map of the City of New Rochelle and the DOZ Standards Map 175.08G.
- B. If a parcel is located in more than one DOZ overlay district, each portion of the parcel shall conform to Development Standards of the applicable district.
- C. A DOZ Standards Map is hereby established and incorporated into this Article, with designated DO-1, DO-2, DO-3, DO-4, DO-5, DO-6, DO-7, and DO-8 zoning districts as shown on the Official Zoning Map of the City of New Rochelle.
- D. The DOZ Standards Map, because of its level of detail, is available on both one sheet and in a series of tiled maps, along with a legend and key map.
- E. The DOZ Standards Map designates a series of zoning standards elements to regulate the building forms most appropriate for each Overlay District, street, block and lot. This map regulates DOZ Street Types, Terminating Vistas, Significant Corners and Required Frontage Types.

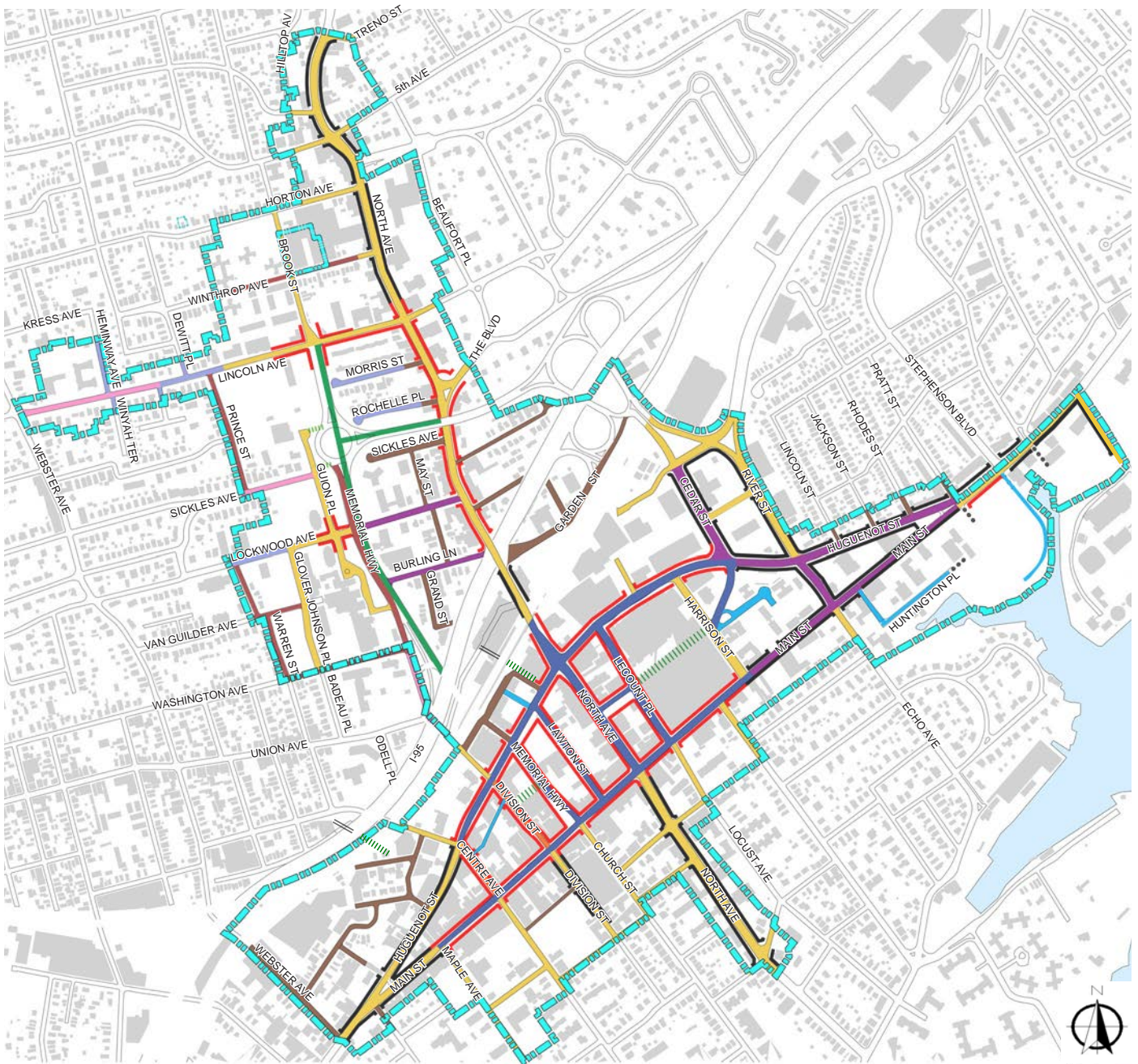
- (1) DOZ Street Types  
The Downtown Overlay Zones permit seven Street Types, which regulate the allowable Frontage Types:
  - (a) A Street
  - (b) B Street
  - (c) C Street
  - (d) D Street
  - (e) E Street
  - (f) F Street
  - (g) G Street
  - (h) H Street
  - (i) I Street
  - (j) J Street
  - (k) P Street - Pedestrian Way

See Section 175-09 for Public Frontage Standards and Section 175-11.D for Private Frontage Standards.
















- (2) Terminating Vistas  
The DOZ Standards Map designates locations of required and permitted Terminating Vistas, as defined in 331-175.11E(9).
- (3) Significant Corners

- (4) Required Frontage Types  
The DOZ Standards Map designates certain locations where Storefronts or Frequent Entryways are required according to the standards established in Section 331-175.11.E(5). Certain limitations on permitted residential uses located on the first floor also apply to these designated Storefront locations, as provided in Section 331-175.11. A(2)

175.08F DOZ STREET TYPES MAP



**LEGEND**

- |  |   |
|--|---|
|  DOWNTOWN OVERLAY DISTRICT BOUNDARY |  H STREET  |
|  A STREET                           |  I STREET  |
|  B STREET                           |  J STREET  |
|  C STREET                           |  P STREET -PEDESTRIAN WAY   |
|  D STREET                           |  STOREFRONTS REQUIRED   |
|  E STREET                           |  FREQUENT ENTRYWAYS REQUIRED  |
|  F STREET                           |  FUTURE NEW STREET, EXTENSION OF EXISTING STREET, TYPE & PRECISE LOCATION AS APPROVED BY THE PLANNING BOARD |
|  G STREET                           |   |

**175.08F(1) DOZ STREET TYPE STANDARDS**

(1) The DOZ Street Types Table designates the Street Types, Storefront requirements and Maximum Door Separation requirements associated with each Street or portion of Street within the Downtown Overlay Zones.

(a) The designated Street Type establishes the width of the Public Frontage and the types of Private Frontages permitted.

(b) Certain streets are designated as “Storefront Required” requiring the Private Frontage to comply with either Storefront Frontage or Arcade Frontage requirements.

(c) Those streets designated as “Storefront Required” or “Frequent Entryways Required” on the DOZ Street Types Map establish a maximum door entryway separation measured in feet along the Build-To-Line as shown in 175.08F(2) and required in Section 175.11E(5). See 175.11E(5)(e) for conditions that permit greater maximum door separations.

(d) Where Max Door Separation states “N/A” the standard is not applicable.

(2) New Streets shall receive a designated Type with Planning Board approval.

**175.08F(2) DOZ STREET TYPES TABLE**

Street Name	Street Type	Storefront <sup>2</sup> Required	Max Door Separation <sup>1</sup>
5th Ave	D Street	N	N/A
Bally Pl	D Street	N	N/A
Bartels Pl	E Street	N	N/A
Bonneyfof Pl	D Street	N	N/A
Brook St	D Street	N	N/A
Bridge St	E Street	N	60'
Burling Ln	C Street	N	N/A
Cedar St			
From I-95 to Spring St	D Street	N	N/A
From Spring St to Huguenot St	C Street	N	80'
From Huguenot St to Harrison St	A Street	N	N/A
Centre Ave			
From I-95 to Huguenot St	D Street	N	N/A
From Huguenot St to Main St	B Street	Y	60'
From Main St to Prospect St	D Street	N	N/A
Chauncey Ave	D Street	N	N/A
Church St	D Street	N	N/A
Clinton Pl	D Street	N	N/A
Cognoli Ave	D Street	N	N/A

Street Name	Street Type	Storefront <sup>2</sup> Required	Max Door Separation
Columbus Ave	E Street	N	N/A
Cottage Pl	E Street	N	N/A
Dewitt Pl	H Street	N	N/A
Division St			
From Station Pl to Huguenot St	D Street	N	N/A
From Huguenot St to Main St	B Street	Y	60'
From Main St to Prospect St	D Street	N	80'
Echo Ave			
Huguenot St to Main St	C Street	N	80'
Main St to Lafayette St	D Street	N	N/A
Evans St	F Street	N	N/A
Fountain Pl	F Street	N	N/A
Franklin Ave	D Street	N	N/A
Garden St	E Street	N	N/A
Glover Johnson Pl	D Street	N	N/A
Grand St	E Street	N	N/A
Guion Pl	D Street	N	N/A
Harrison St	D Street	N	N/A
Heminway Ave	H Street	N	N/A

<sup>1</sup> Where a single retail occupancy is provided for 20,000 SF or greater see Section 175.11 E(5)(e) for provisions permitting greater door separations.

<sup>2</sup> Where a Storefront is required, either a Storefront Frontage type or Arcade Frontage type is required.

<sup>3</sup> Pedestrian Ways designated on the DOZ Standards Maps in Section 175.08G(3) through (7) shall comply with the standards in 175.09A(4).

175.08F(2) DOZ STREET TYPES TABLE (CONT'D)

Street Name	Street Type	Storefront Required <sup>2</sup>	Max Door Separation <sup>1</sup>
Horton Ave	D Street	N	N/A
Huguenot St			
From Main St to Centre Ave	D Street	N	80'
From Centre Ave to F St	A Street	Y	60'
From F St to Bridge St	F Street	N	60'
From Bridge St to Cedar St	A Street	Y	60'
From Cedar St to Pratt St	C Street	N	80'
Huntington Pl	F Street	N	N/A
Jackson St	E Street	N	N/A
Lathers Park	H Street	N	N/A
Lawn Ave	E Street	N	N/A
Lawton St	A Street	Y	60'
Lecount Pl	A Street	Y	60'
Leroy Pl	E Street	N	N/A
Le Fevres Ln	D Street	N	N/A
Lincoln Ave			
From Manor Pl to Memorial Hwy	D Street	N	N/A
From Memorial Hwy to 99 Lincoln Ave	D Street	Y	N/A
From 105 Lincoln Ave to 133 Lincoln Ave	H Street	N	N/A
From 137 Lincoln Ave to Webster Ave	G Street	N	N/A
Lincoln St	E Street	N	N/A
Lockwood Ave			
From North Ave to Memorial Hwy	C Street	N	N/A
From Memorial Hwy to Glover Johnson	D Street	Y	N/A
From Glover Johnson Pl to Warren St	H Street	N	N/A
Locust Ave	D Street	N	N/A
Main Street			
From Webster Ave to Maple Ave	D Street	N	80'
From Maple Ave to Harrison St	A Street	Y	60'
Main Street North Side			
From Harrison St to Pratt	C Street	N	80'
Main Street South Side			
From Rhodes St* to Pratt St*	D Street	N	60'

Street Name	Street Type	Storefront Required <sup>2</sup>	Max Door Separation <sup>1</sup>
From Pratt St* to Stephenson Blvd*	D Street	Y	60'
From Stephenson Blvd* to Le Fevres Ln	D Street	N	80'
Manor Pl	D Street	N	N/A
Maple St	D Street	N	N/A
May St	E Street	N	N/A
Memorial Highway			
From Railroad Pl to Huguenot St	E Street	N	N/A
From Huguenot St to Main St	A Street	Y	60'
From Washington Ave to Sickles Ave	I Street	N	N/A
Future LINC	J Street	N	N/A
Morris St			
From North Ave to 9 Morris St	E Street	N	N/A
From 11 Morris St to End	H Street	N	N/A
North Ave			
From Treno St to 1 Parcel North of Lincoln Ave & Manor Pl	D Street	N	80'
From 1 Parcel North of Lincoln & Manor Pl to I-95	D Street	Y	60'
From I-95 to Railroad Tracks	D Street	N	80'
From Railroad Tracks to Main St	A Street	Y	60'
From Main St to Union St	D Street	N	80'
Park Pl	E Street	N	N/A
Pedestrian Way <sup>3</sup>			
From Station Plz to Huguenot St	F Street	N	60'
From Lecount Pl to Harrison St	P Street	Y	60'
From Division St to Memorial Hwy	P Street	Y	60'
Pine Court	E Street	N	N/A
Pine Street	E Street	N	N/A
Pintard Ave	E Street	N	N/A
Pratt St	E Street	N	N/A
Prince St	I Street	N	N/A
Prospect St	D Street	N	80'

\* Extension of the existing street, precise location as approved by the Planning Board

<sup>1</sup> Where a single retail occupancy is provided for 20,000 SF or greater see Section 175.11 E(5)(e) for provisions permitting greater door separations.  
<sup>2</sup> Where a Storefront is required, either a Storefront Frontage type or Arcade Frontage type is required.  
<sup>3</sup> Pedestrian Ways designated on the DOZ Standards Maps in Section 175.08G(3) through (7) shall comply with the standards in 175.09A(4).

**175.08F(2) DOZ STREET TYPES TABLE (CONT'D)**

Street Name	Street Type	Storefront Required <sup>2</sup>	Max Door Separation <sup>1</sup>
Renewal Pl	D Street	N	N/A
Reylea Pl	E Street	N	N/A
Rhodes St	E Street	N	N/A
River St	D Street	N	80'
Rochelle Pl			
From North Ave to 15 Rochelle Pl	E Street	N	N/A
From 19 Rochelle Pl to End	H Street	N	N/A
Sheraton Plz	E Street	N	N/A
Sickles Ave			
From North Ave to May St	E Street	N	N/A
From May St to End	F Street	N	80'
From Guion Place to Prince St	G Street	N	N/A
Station Plaza South			
From Division St to Pedestrian Way	E Street	N	N/A
From F Street to Bridge St	E Street	N	60'
The Blvd- parcels adjoining the DOZ boundary	D Street	N	N/A
The Blvd- parcels with frontage on North Ave	D Street	Y	60'
Treno St	D Street	N	N/A
Union St	D Street	N	N/A
Van Guilder Ave	I Street	N	N/A
Warren St	I Street	N	N/A
Washington Ave			
From Division St to Warren St	I Street	N	N/A
Webster Ave	E Street	N	N/A
Winthrop Ave			
From North Ave to 10 Winthrop Ave	D Street	N	N/A
From 14 Winthrop Ave to 51 Winthrop Ave	I Street	N	N/A
Winyah Terrace	H Street	N	N/A

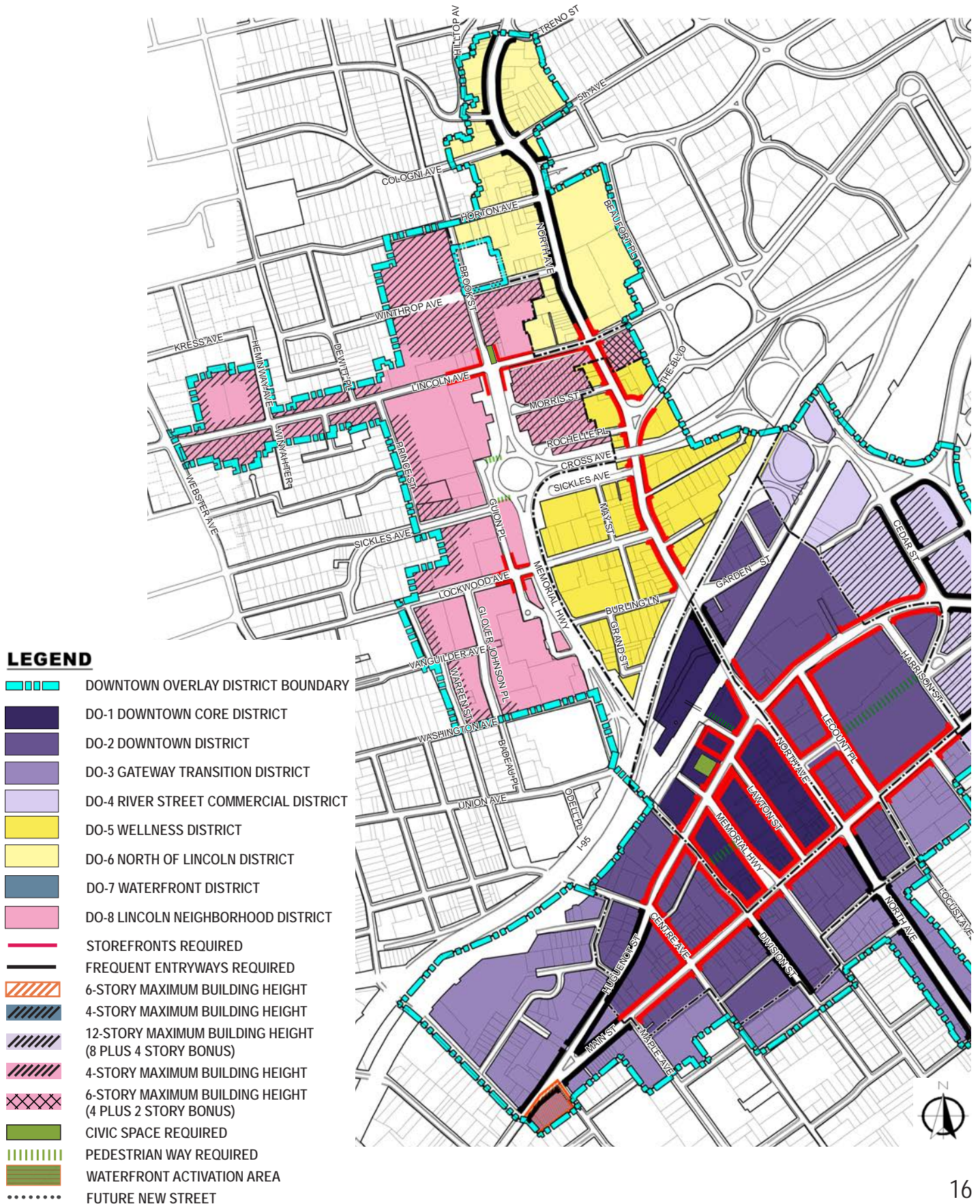
<sup>1</sup> Where a single retail occupancy is provided for 20,000 SF or greater see Section 175.11 E(5)(e) for provisions permitting greater door separations.

<sup>2</sup> Where a Storefront is required, either a Storefront Frontage type or Arcade Frontage type is required.

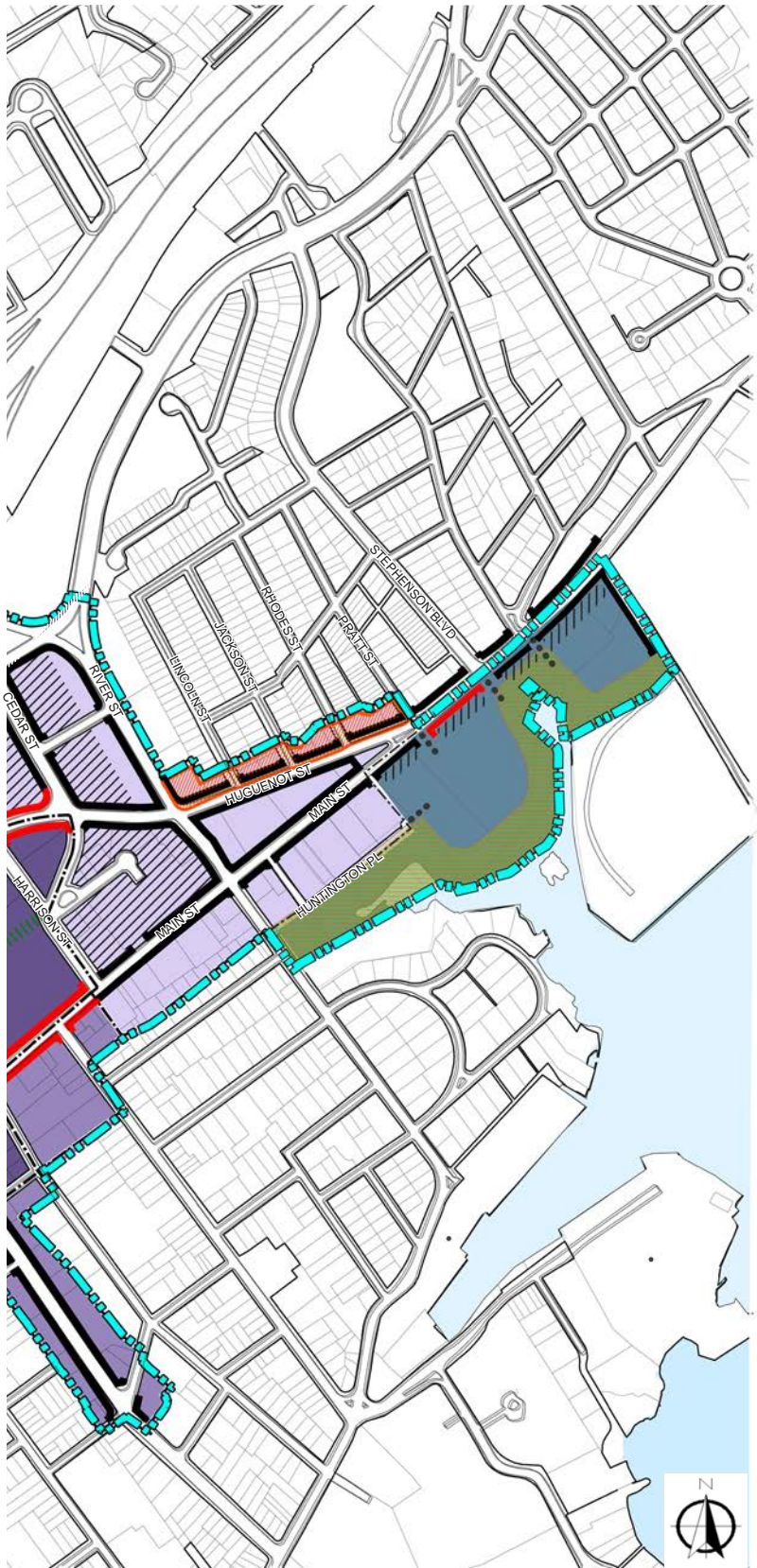
<sup>3</sup> Pedestrian Ways designated on the DOZ Standards Maps in Section 175.08G(3) through (7) shall comply with the standards in 175.09A(4).























175.08G DOWNTOWN OVERLAY ZONES DISTRICT MAP



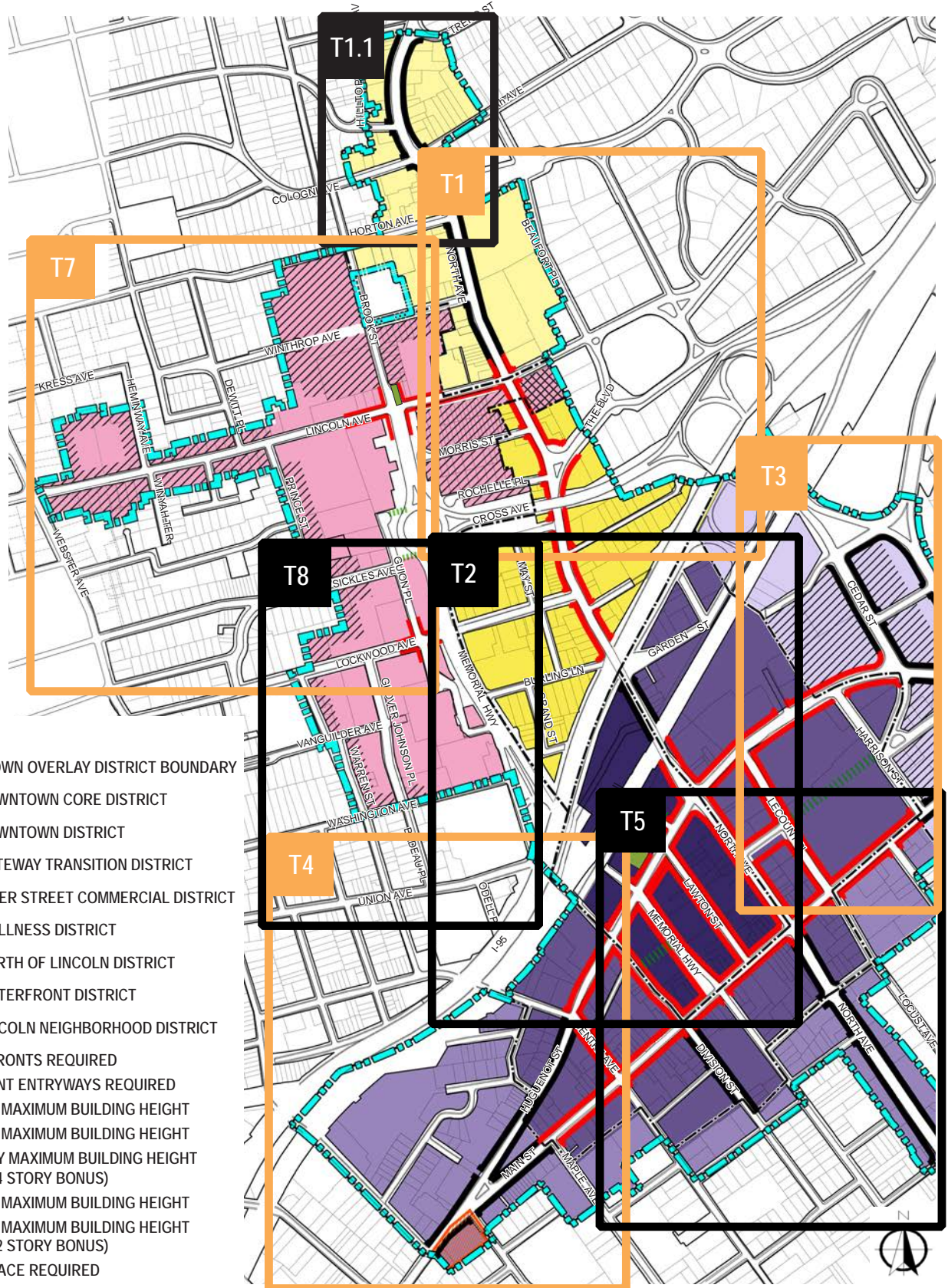
175.08G DOWNTOWN OVERLAY ZONES DISTRICT MAP



**LEGEND**

-  DOWNTOWN OVERLAY DISTRICT BOUNDARY
-  DO-1 DOWNTOWN CORE DISTRICT
-  DO-2 DOWNTOWN DISTRICT
-  DO-3 GATEWAY TRANSITION DISTRICT
-  DO-4 RIVER STREET COMMERCIAL DISTRICT
-  DO-5 WELLNESS DISTRICT
-  DO-6 NORTH OF LINCOLN DISTRICT
-  DO-7 WATERFRONT DISTRICT
-  DO-8 LINCOLN NEIGHBORHOOD DISTRICT
-  STOREFRONTS REQUIRED
-  FREQUENT ENTRYWAYS REQUIRED
-  6-STORY MAXIMUM BUILDING HEIGHT
-  4-STORY MAXIMUM BUILDING HEIGHT
-  12-STORY MAXIMUM BUILDING HEIGHT (8 PLUS 4 STORY BONUS)
-  4-STORY MAXIMUM BUILDING HEIGHT
-  6-STORY MAXIMUM BUILDING HEIGHT (4 PLUS 2 STORY BONUS)
-  CIVIC SPACE REQUIRED
-  PEDESTRIAN WAY REQUIRED
-  WATERFRONT ACTIVATION AREA
-  FUTURE NEW STREET

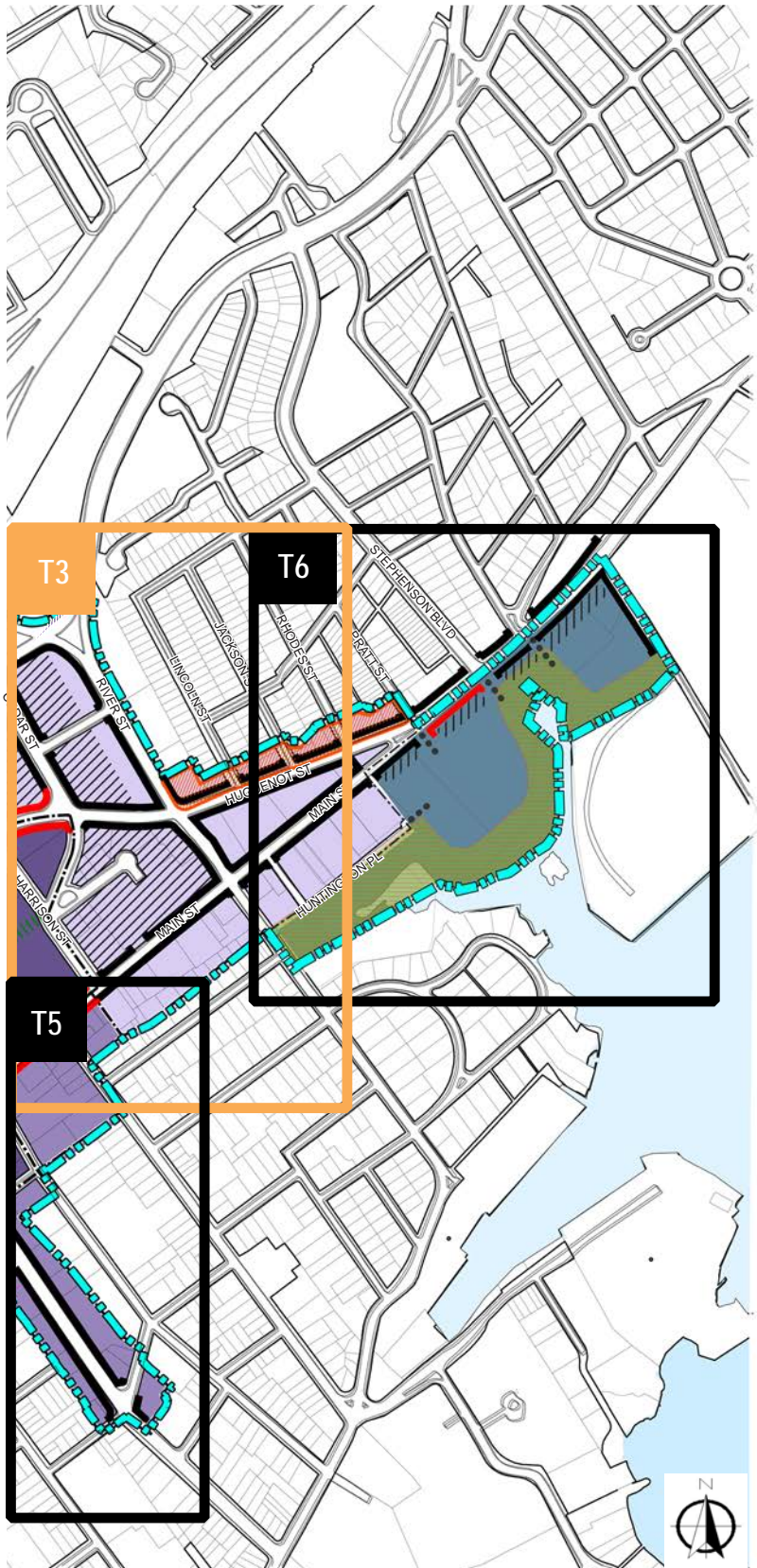
175.08G DOWNTOWN OVERLAY ZONES DISTRICT MAP







**LEGEND**

-  DOWNTOWN OVERLAY DISTRICT BOUNDARY
-  DO-1 DOWNTOWN CORE DISTRICT
-  DO-2 DOWNTOWN DISTRICT
-  DO-3 GATEWAY TRANSITION DISTRICT
-  DO-4 RIVER STREET COMMERCIAL DISTRICT
-  DO-5 WELLNESS DISTRICT
-  DO-6 NORTH OF LINCOLN DISTRICT
-  DO-7 WATERFRONT DISTRICT
-  DO-8 LINCOLN NEIGHBORHOOD DISTRICT
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-  6-STORY MAXIMUM BUILDING HEIGHT
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-  4-STORY MAXIMUM BUILDING HEIGHT
-  6-STORY MAXIMUM BUILDING HEIGHT (4 PLUS 2 STORY BONUS)
-  CIVIC SPACE REQUIRED
-  PEDESTRIAN WAY REQUIRED
-  WATERFRONT ACTIVATION AREA
-  FUTURE NEW STREET

175.08G DOWNTOWN OVERLAY ZONES DISTRICT MAP



**LEGEND**

-  DOWNTOWN OVERLAY DISTRICT BOUNDARY
-  DO-1 DOWNTOWN CORE DISTRICT
-  DO-2 DOWNTOWN DISTRICT
-  DO-3 GATEWAY TRANSITION DISTRICT
-  DO-4 RIVER STREET COMMERCIAL DISTRICT
-  DO-5 WELLNESS DISTRICT
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-  STOREFRONTS REQUIRED
-  FREQUENT ENTRYWAYS REQUIRED
-  6-STORY MAXIMUM BUILDING HEIGHT
-  4-STORY MAXIMUM BUILDING HEIGHT
-  12-STORY MAXIMUM BUILDING HEIGHT (8 PLUS 4 STORY BONUS)
-  4-STORY MAXIMUM BUILDING HEIGHT
-  6-STORY MAXIMUM BUILDING HEIGHT (4 PLUS 2 STORY BONUS)
-  CIVIC SPACE REQUIRED
-  PEDESTRIAN WAY REQUIRED
-  WATERFRONT ACTIVATION AREA
-  FUTURE NEW STREET

175.08G(2) DOZ STANDARDS MAP LEGEND

-  DOWNTOWN OVERLAY DISTRICT BOUNDARY
-  DO-1 DOWNTOWN CORE DISTRICT
-  DO-2 DOWNTOWN DISTRICT
-  DO-3 GATEWAY TRANSITION DISTRICT
-  DO-4 RIVER STREET COMMERCIAL DISTRICT
-  DO-5 WELLNESS DISTRICT
-  DO-6 NORTH OF LINCOLN DISTRICT
-  DO-7 WATERFRONT DISTRICT
-  DO-8 LINCOLN NEIGHBORHOOD DISTRICT
-  6-STORY MAXIMUM
-  4-STORY MAXIMUM
-  12-STORY MAXIMUM (8 PLUS 4 STORY BONUS)
-  4-STORY MAXIMUM
-  6-STORY MAXIMUM (4 PLUS 2 STORY BONUS)
-  PROPERTY LINE
-  BLOCK NUMBER
- ZONING STANDARDS REQUIREMENTS**
-  STOREFRONT REQUIRED<sup>1</sup>
-  FREQUENT ENTRYWAYS REQUIRED<sup>2</sup>
-  PEDESTRIAN WAY REQUIRED
-  CIVIC SPACE REQUIRED
-  STREET TYPE
-  HIGH PRIORITY SIGNIFICANT CORNER
-  SIGNIFICANT CORNER
-  HIGH PRIORITY TERMINATING VISTA
-  TERMINATING VISTA
-  WATERFRONT ACTIVATION AREA<sup>3</sup>
-  AREA FOR BONUS HEIGHT PLACEMENT IN DO-7
-  FUTURE NEW STREET, EXTENSION OF EXISTING STREET, TYPE & PRECISE LOCATION AS APPROVED BY THE PLANNING BOARD

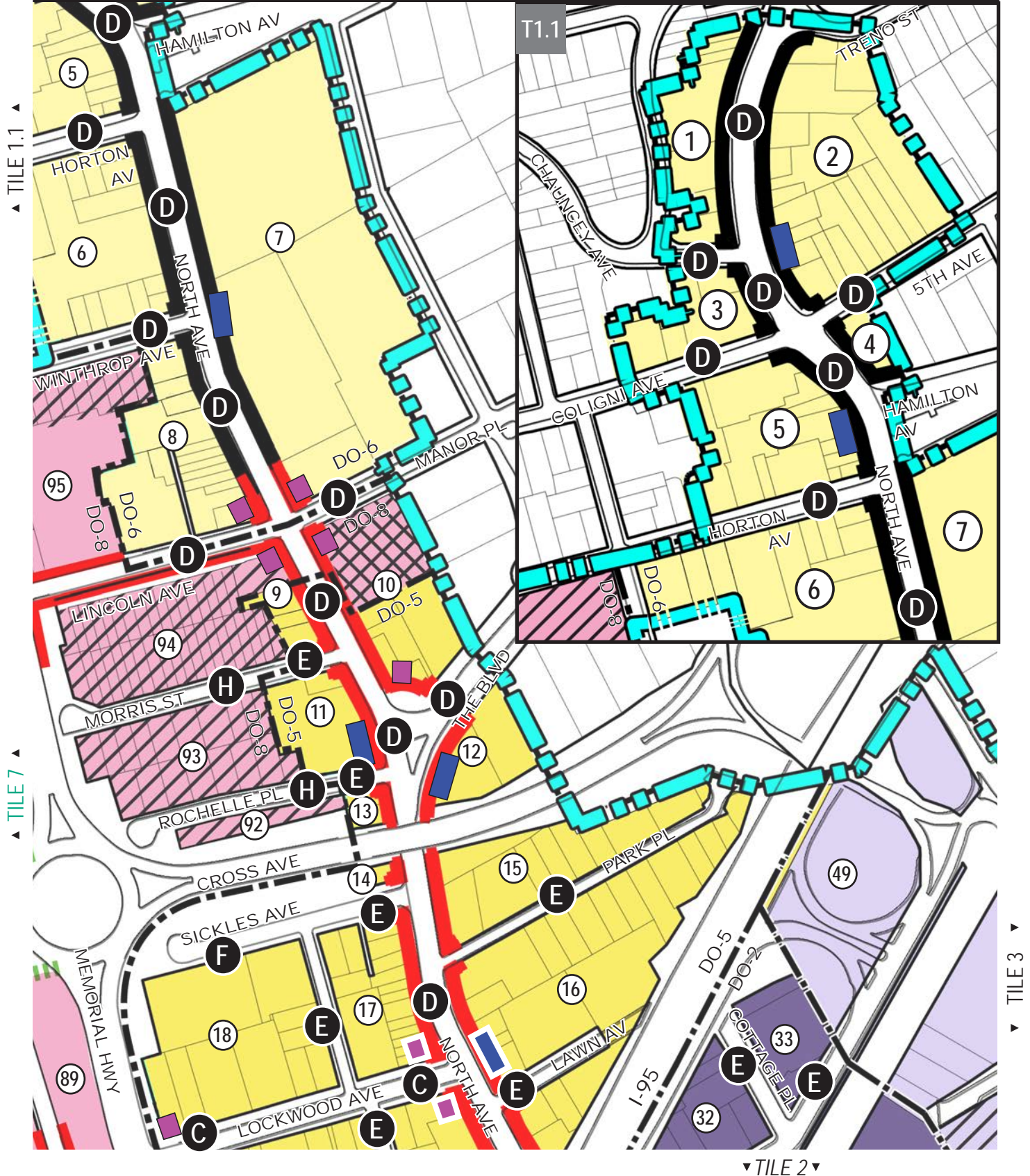
1 Where Storefront Required is designated along a Site on the DOZ Standards Map, a Storefront Frontage or Arcade Frontage shall be provided and Active Frontage standards in Section 175.11(5)(c) shall apply.

2 Where Frequent Entryways Required is designated along a Site on the DOZ Standards Map, Active Frontage standards in Section 175.11E(5)(d) shall apply.

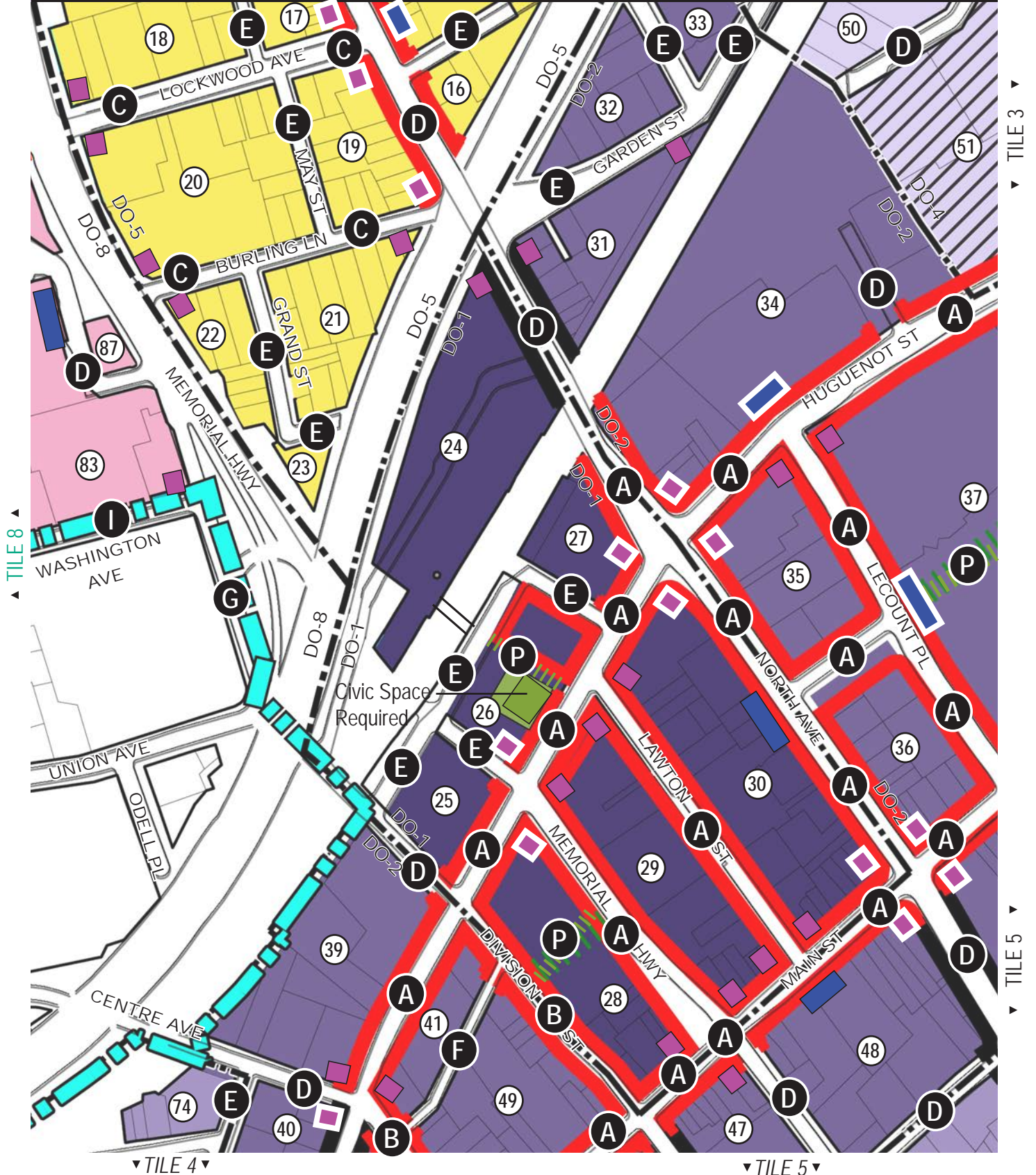
3 In Waterfront Activation Area, maximum 4 stories and minimum 30' Stepback required at Build-To-Line, as approved by the Planning Board.

175.08G(3) DOZ STANDARDS MAP TILE 1 AND TILE 1.1

T1

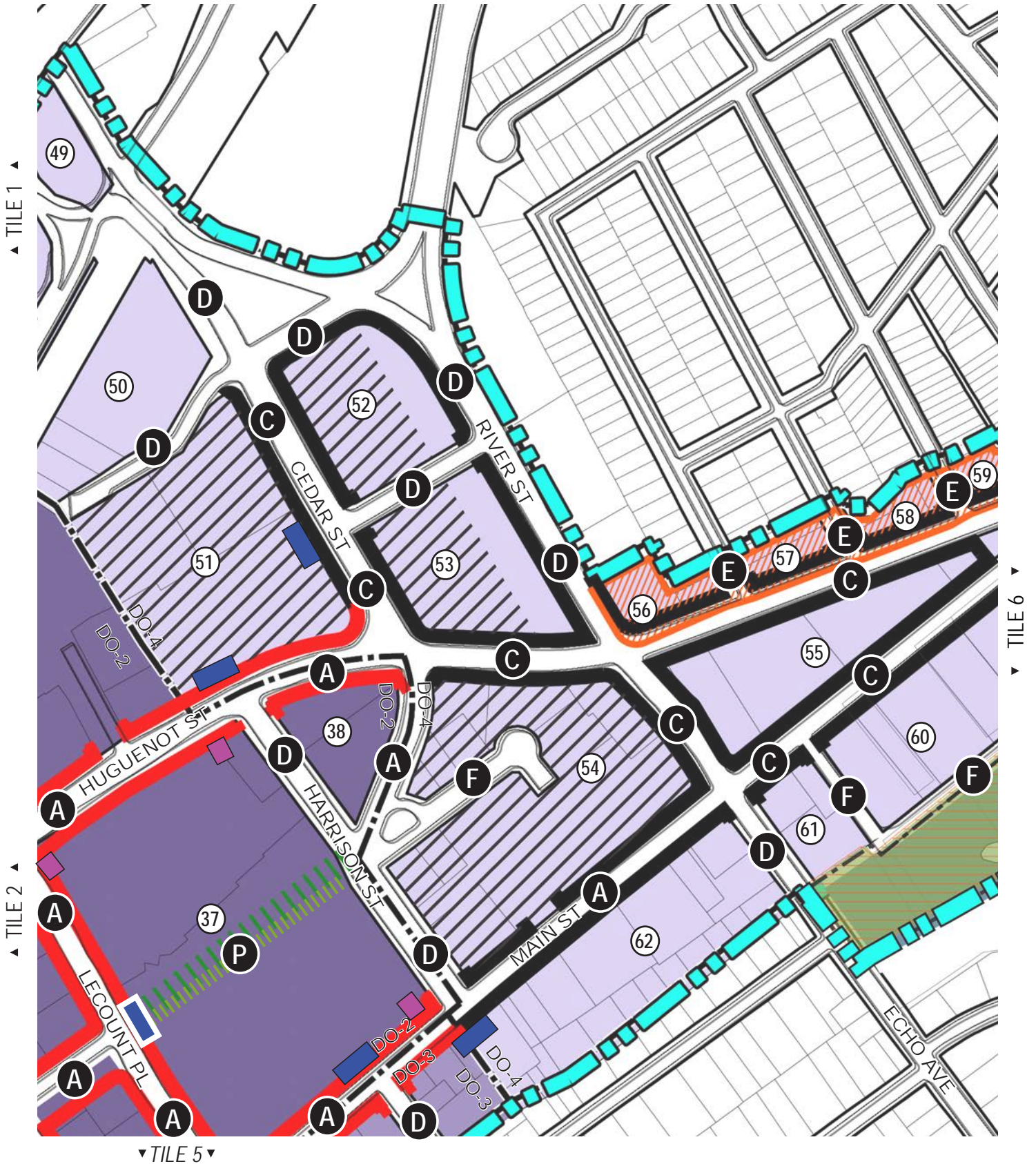


175.08G(4) STANDARDS MAP TILE 2 ▲ TILE 1 ▲ T2



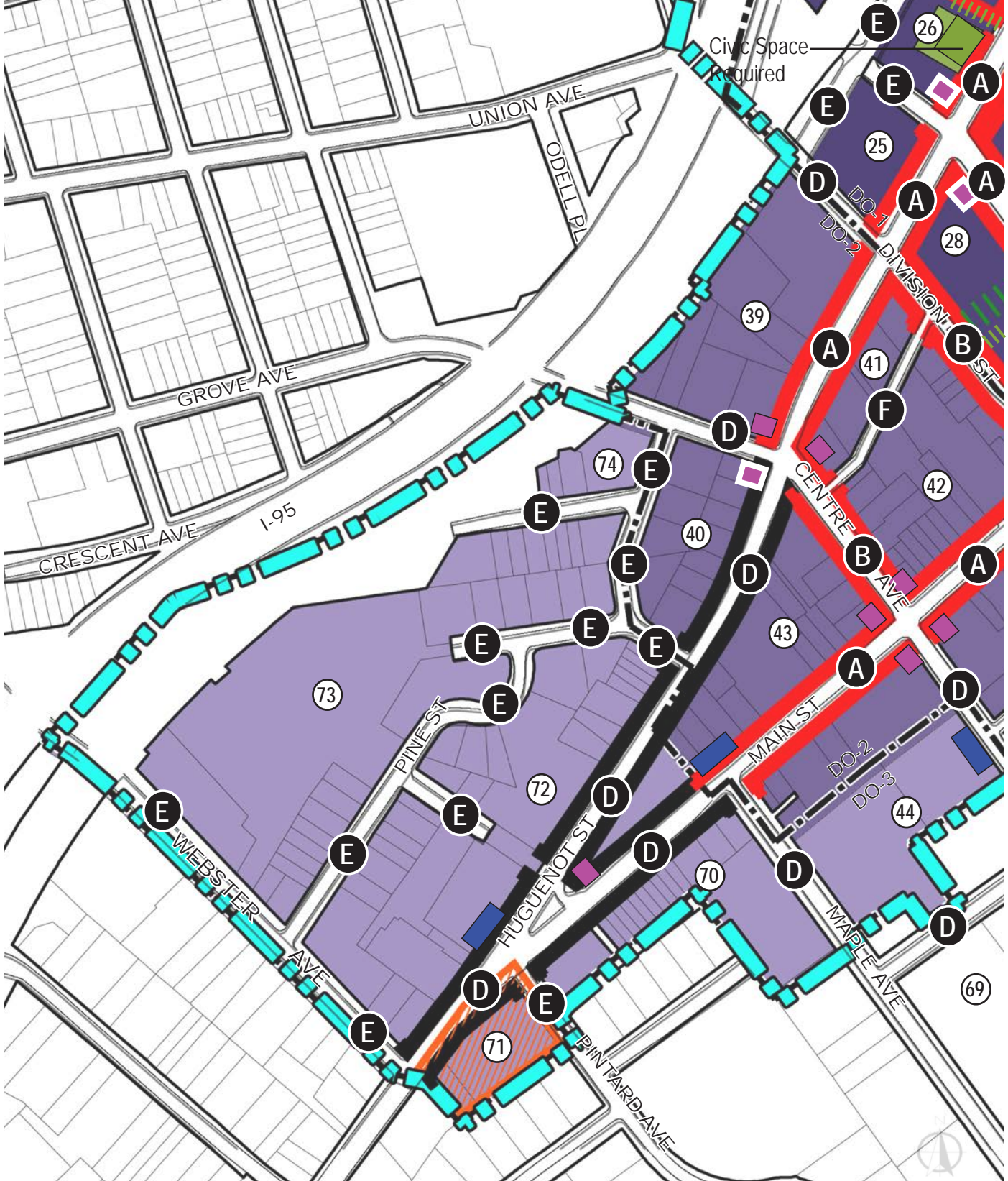
175.08G(5) DOZ STANDARDS MAP TILE 3

T3





175.08G(6) DOZ STANDARDS MAP TILE 4



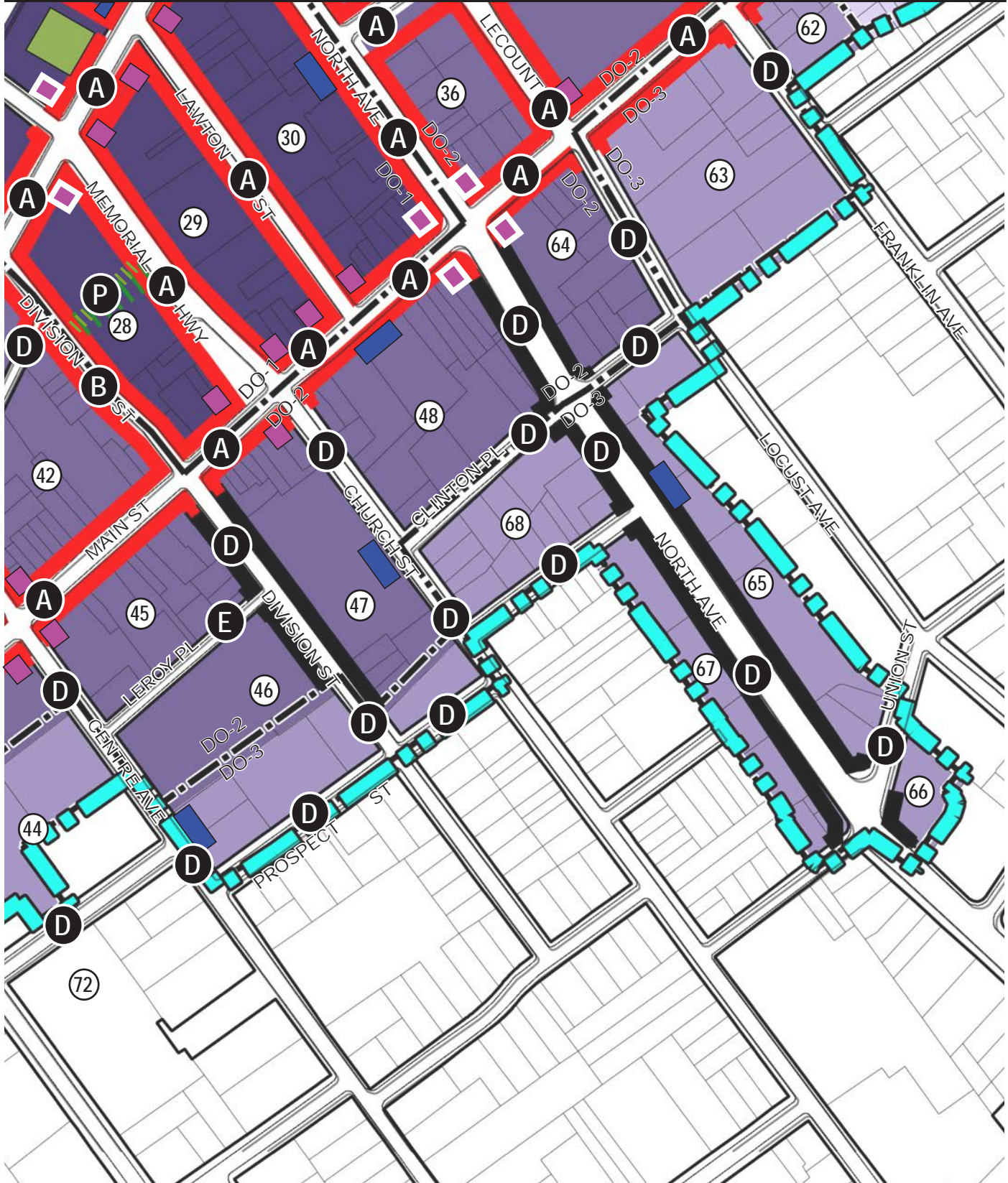
175.08G(7) DOZ STANDARDS MAP TILE 5

▲ TILE 2 ▲

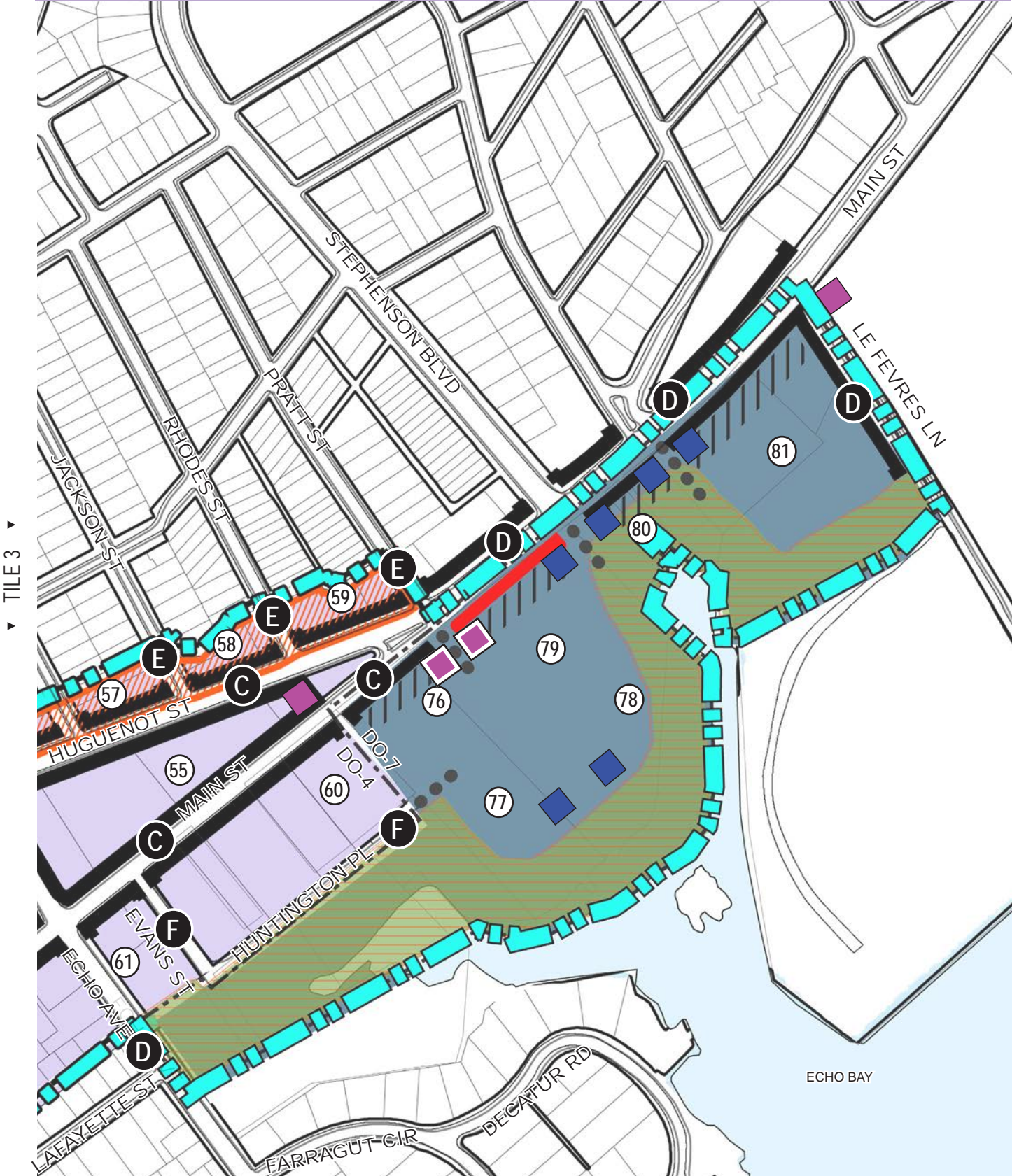
▲ TILE 3 ▲

T5

▲ TILE 4 ▲



175.08G(8) DOZ STANDARDS MAP TILE 6 T6



DOWNTOWN OVERLAY ZONES

City of New Rochelle

Section 331  
175.08

TILE 7

175.08G(9) DOZ STANDARDS MAP TILE 7

T7



TILE 8

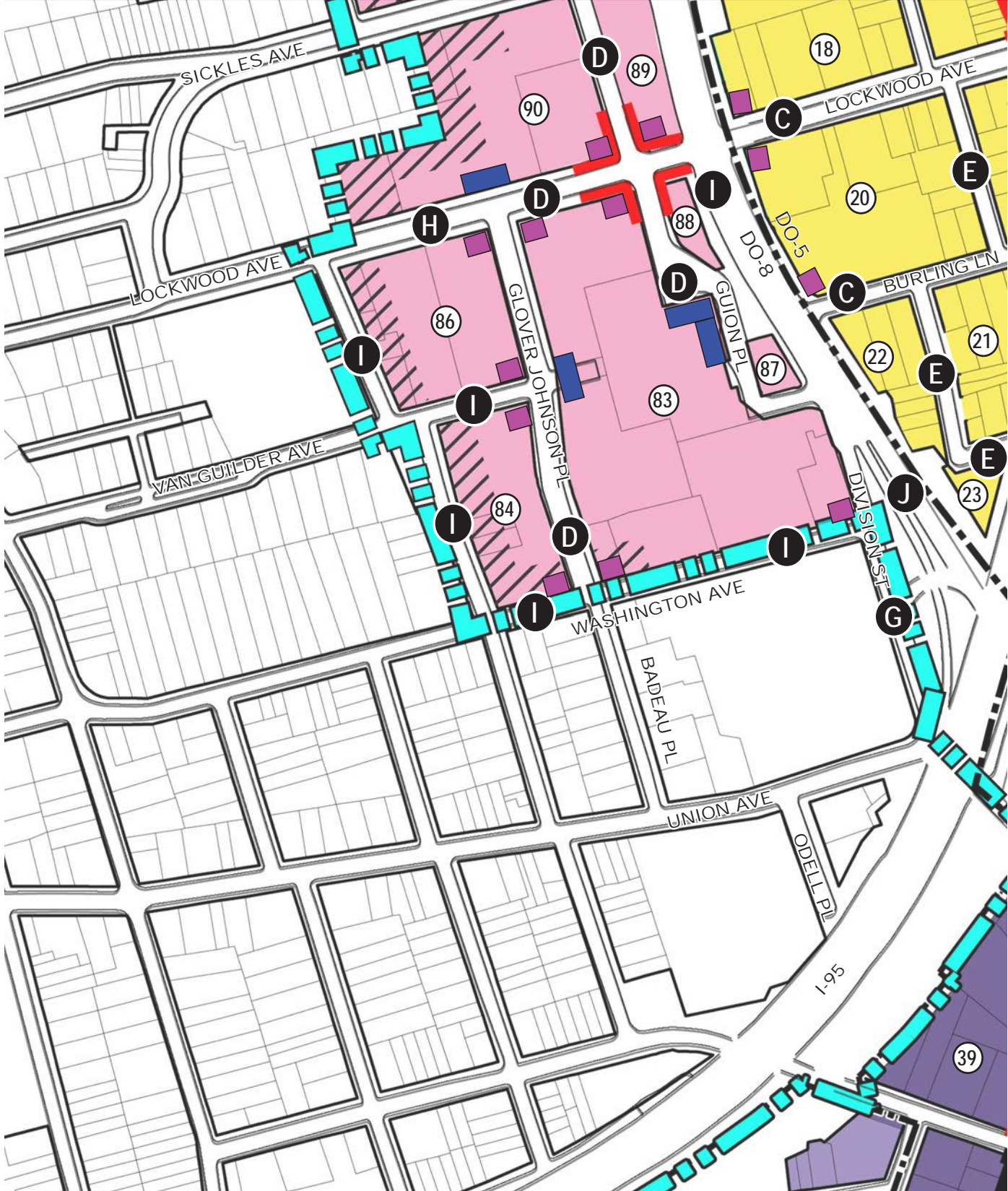
DOWNTOWN OVERLAY ZONES

City of New Rochelle

Section 331  
175.08

TILE 8

175.08G(10) DOZ STANDARDS MAP TILE 8    ▲ TILE 7 ▲    T8



▼ TILE 2 ▼

▼ TILE 4 ▼

**SECTION 175.09 STREET AND PUBLIC FRONTAGE STANDARDS**

- (1) The combination of the Traveled Way, Public Frontage, and Private Frontage defines the character of the public realm.
- (2) The Street Type is a classification assigned to a Street or Pedestrian Way that determines the width of the Public Frontage as distance of a Build-To-Line from the Face of Curb, regulates the width of the Pedestrian Clearway, the type of the associated permitted Private Frontages, and the Street Wall Height.
- (3) The Private Frontage Type regulates the depth of the Build-To-Zone and the Minimum Frontage Occupancy, minimum clear glazing area, dimensional depth of the visible use of the ground floor, allowable placement of parking, and the combination of allowed Frontage Edging Elements.

**175.09A STREET STANDARDS**

- (1) Street Type Designations
  - (a) DOZ Street Types Map in Section 175.08F assigns Street Types to each existing street and mandated new Pedestrian Ways.
  - (b) Through the process of block development and land subdivision or re-subdivision as described in this Article, the Planning Board shall designate, upon the recommendation of the Commissioner of Development, all new streets as A Streets through J Streets or P Streets as Pedestrian Ways to reflect the importance of pedestrian and commercial activity, the intended form of development, and the need for traffic management along each street.
- (2) Street Responsible Parties
  - (a) The design, maintenance and rehabilitation of an existing street shall be the responsibility of the owner of such traveled way (e.g. City, County, State or Private Owner).
  - (b) The design and construction of new streets shall be the responsibility of the applicant proposing new streets. New Streets shall comply with the street standards required by the City of New Rochelle and shall be offered for dedication to the City of New Rochelle.
- (3) New Streets
  - (a) Design of Streets and Access Lanes
    - [1] The Planning Board may prepare a Design Guidelines Manual with provisions to establish standards and guidance on the design of new or the re-design of existing Streets and Access Lanes. The Planning Board may require applicants to comply with the provisions of this Manual.
  - (b) Site Access Standards
    - [1] The Planning Board may require sites to provide for pedestrian access, service access, and loading access within a reasonable distance from a public street or access lane.
- (c) The Planning Board may require, where appropriate and necessary to provide adequate access to a Site, a minimum 16 foot wide access easement at one or more locations within the site, at the side(s) of the site or at the rear of the site on the street level, with a 14 foot clear height.
- (d) The Planning Board may require the Applicant to design streets and access lanes to connect to other access lanes, streets, loading areas or parking areas or parking structures on the applicant's site or on adjacent sites.
- (e) The Planning Board may require the Applicant to create Pedestrian Ways, Access Lanes, or Streets within the designated access easements, and may require these ways, lanes or streets to connect to existing streets. The Planning Board may also require adjoining property owners to combine access easements from adjoining sites to create an interconnected network of streets, access lanes and pedestrian ways.
- (4) Pedestrian Ways
  - (a) For those Sites facing a Pedestrian Way designated as Street Type P on the DOZ Street Types Map in Section 175.08, the applicant shall provide such Pedestrian Way at the approximate location shown on the map by establishing a Build-To-Line at a location acceptable to the Planning Board. The Planning Board may approve Pedestrian Ways at other locations.
  - (b) Where a Pedestrian Way is required, the Applicant may choose to provide a Pedestrian Way complying with either Option 1 or Option 2. Alternatively, applicant may choose to satisfy the requirement for Street Type P by providing an A Street, B Street, C Street or D Street.
  - (c) Pedestrian Ways shall provide an access easement, accessible to public at least 16 hours a day, and a portion of it may be located within the building provided that it maintains the intent of the permitted frontages specified in Section 175.09B.

175.09B. PUBLIC FRONTAGE AND PRIVATE FRONTAGE STANDARDS

		Street Type A	Street Type B	Street Type C	Street Type D	Street Type E	Street Type F							
PUBLIC FRONTAGE	Distance from Face of Curb to Build-To-Line <sup>9</sup>	15'-0"	12'-0"	15'-0"	12'-0"	9'-0"	6'-0"							
	Landscape and Furnishing Zone Minimum	2'-0"	2'-0"	2'-0"	2'-0"	no min.	no min.							
	Pedestrian Clearway Minimum	6'-0"	5'-6"	6'-0"	5'-6"	5'	5'							
	Transition Zone Minimum	2'-0"	2'-0"	2'-0"	2'-0"	no min.	no min.							
		Street Type A	Street Type B	Street Type C	Street Type D	Street Type E	Street Type F							
PRIVATE FRONTAGE	Private Frontage Types	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	
	Storefront Frontage <sup>1</sup>	65% <sup>5</sup>	5'-0"	80% <sup>2</sup>	5'-0"	80% <sup>2</sup>	5'-0"	60% <sup>3</sup>	5'-0"	60% <sup>3</sup>	5'-0"	50%	5'-0"	0%
	Arcade Frontage <sup>1</sup>	65% <sup>5</sup>	15'-0" <sup>4</sup>	80% <sup>2</sup>	15'-0" <sup>4</sup>	80% <sup>2</sup>	15'-0" <sup>4</sup>	60% <sup>3</sup>	15'-0" <sup>4</sup>	60% <sup>3</sup>	15'-0" <sup>4</sup>	50%	15'-0" <sup>4</sup>	0%
	Urban Frontage	50% <sup>5</sup>	5'-0"	80% <sup>2</sup>	5'-0"	80% <sup>2</sup>	5'-0"	60% <sup>3</sup>	5'-0"	60% <sup>3</sup>	5'-0"	50%	5'-0"	0%
	Stoop Frontage	20% <sup>6</sup>	5'-0"	80% <sup>2</sup>	5'-0"	80% <sup>2</sup>	5'-0"	60% <sup>3</sup>	5'-0"	60% <sup>3</sup>	5'-0"	50%	5'-0"	0%
	Porch Frontage	20% <sup>6</sup>	10'-0"	80% <sup>2</sup>	10'-0"	80% <sup>2</sup>	10'-0"	60% <sup>3</sup>	10'-0"	60% <sup>3</sup>	10'-0"	50%	10'-0"	0%
	Lightwell Frontage	20% <sup>6</sup>	10'-0"	80% <sup>2</sup>	10'-0"	80% <sup>2</sup>	10'-0"	60% <sup>3</sup>	10'-0"	60% <sup>3</sup>	10'-0"	50%	10'-0"	0%
	Forecourt Frontage	20% <sup>6</sup>	10'-0"	50%	10'-0"	50%	10'-0"	50%	10'-0"	50%	10'-0"	50%	10'-0"	0%
	Mid-Block Frontage	10% <sup>6</sup>	X	X	X	X	X	X	X	X	10'-0"	0%	10'-0"	0%
	<sup>1</sup> On Streets designated on the DOZ Standards Map as "Storefront Required" (see Section 175.08), a Storefront Frontage or Arcade Frontage is required. <sup>2</sup> For Sites in DO-4, the minimum Frontage Occupancy shall be 60% <sup>3</sup> For Sites in DO-4, the minimum Frontage Occupancy shall be 50% <sup>4</sup> Provided that the structural columns or piers are located within 5 feet of the Build-To-Line <sup>5</sup> Minimum clear glazing area required between 2' and 8' above the sidewalk. <sup>6</sup> Minimum clear glazing area required between the first floor slab and underside of the second floor slab. <sup>7</sup> Pedestrian Way shall require a Private Frontage on one side <sup>8</sup> Pedestrian Way shall require Private Frontages on both sides <sup>9</sup> The minimum width and Occupancy of Public Frontage at Build-to-Line located within the Waterfront Activation Area shall be as approved by the Planning Board X - Frontage Not Permitted NR - Frontage Not Required but Permitted													
Stepback Requirements		Street Type A	Street Type B	Street Type C	Street Type D	Street Type E	Street Type F							
10 foot Stepback Required per 175.11E(4) <sup>10</sup>		Above Street Wall	Above Street Wall	Above Street Wall	Above Street Wall <sup>11</sup>	Above 28 feet	None							
<sup>10</sup> Minimum 30 foot Stepback required where maximum 4 stories allowed in Waterfront Activation Area <sup>11</sup> Minimum 25 foot Stepback required on Main Street in DO-7														

175.09B. PUBLIC FRONTAGE AND PRIVATE FRONTAGE STANDARDS

		Street Type G	Street Type H	Street Type I	Street Type J	Street Type P-Pedestrian Way								
PUBLIC FRONTAGE	Distance from Face of Curb to Build-To-Line <sup>9</sup>	40'-0"	26'-0"	18'-0"	NR	16'-0"								
	Landscape and Furnishing Zone Minimum	7'-0"	3'-0"	2'-0"	5'-0" <sup>12</sup>	2'-0"								
	Pedestrian Clearway Minimum	5'-0"	5'-0"	5'-0"	NR <sup>13</sup>	8'-0"								
	Transition Zone Minimum	No Min.	No Min.	No Min.	NR	2'-0"								
		Street Type G	Street Type H	Street Type I	Street Type J	Street Type P								
Private Frontage Types	Min. Clear Glazing Area Required	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy	Build-To-Zone (BTZ) Width	Min Frontage Occupancy for Option 1	Min Frontage Occupancy for Option 2	Min Frontage Occupancy for Option 3	
Storefront Frontage <sup>1</sup>	65% <sup>5</sup>	X	X	X	X	5'-0"	60%	NR	0%	5'-0"	80% <sup>2,7</sup>	60% <sup>3,8</sup>	60% <sup>9,7</sup>	
Arcade Frontage <sup>1</sup>	65% <sup>5</sup>	X	X	X	X	15'-0"	60%	NR	0%	15'-0" <sup>4</sup>	80% <sup>2,7</sup>	60% <sup>3,8</sup>	60% <sup>9,7</sup>	
Urban Frontage	50% <sup>5</sup>	5'-0"	50%	5'-0"	50%	5'-0"	60% <sup>3</sup>	NR	0%	5'-0"	80% <sup>2,7</sup>	60% <sup>3,8</sup>	60% <sup>9,7</sup>	
Stoop Frontage	20% <sup>6</sup>	X	X	X	X	5'-0"	60% <sup>3</sup>	NR	0%	X	X	X	60% <sup>9,7</sup>	
Porch Frontage	20% <sup>6</sup>	10'-0"	50%	10'-0"	50%	10'-0"	60% <sup>3</sup>	NR	0%	X	X	X	60% <sup>9,7</sup>	
Lightwell Frontage	20% <sup>6</sup>	10'-0"	50%	10'-0"	50%	10'-0"	60% <sup>3</sup>	NR	0%	X	X	X	X	
Forecourt Frontage	20% <sup>6</sup>	10'-0"	50%	10'-0"	50%	10'-0"	50%	NR	0%	X	X	X	X	
Mid-Block Frontage	10% <sup>6</sup>	X	X	X	X	X	X	NR	0%	X	X	X	X	
PRIVATE FRONTAGE	<sup>1</sup> On Streets designated on the DOZ Standards Map as "Storefront Required" (see Section 175.08), a Storefront Frontage or Arcade Frontage is required.													
	<sup>2</sup> For Sites in DO-4, the minimum Frontage Occupancy shall be 60%													
	<sup>3</sup> For Sites in DO-4, the minimum Frontage Occupancy shall be 50%													
	<sup>4</sup> Provided that the structural columns or piers are located within 5 feet of the Build-To-Line													
	<sup>5</sup> Minimum clear glazing area required between 2' and 8' above the sidewalk.													
	<sup>6</sup> Minimum clear glazing area required between the first floor slab and underside of the second floor slab.													
	<sup>7</sup> Pedestrian Way shall require a Private Frontage on one side													
	<sup>8</sup> Pedestrian Way shall require Private Frontages on both sides													
	<sup>9</sup> The minimum width and Occupancy of Public Frontage at Build-to-Line located within the Waterfront Activation Area shall be as approved by the Planning Board													
	X - Frontage Not Permitted													
NR - Frontage Not Required but Permitted														
Stepback Requirements	Street Type G	Street Type H	Street Type I	Street Type J	Street Type P									
10 foot Stepback Required per 175.11E(4) <sup>10</sup>	Stepback required of at least 10 ft above 40 ft where 4 stories or less are permitted, and at least 10 ft above 50 ft where there are more than 4 stories	Stepback required of at least 10 ft above 40 ft where 4 stories or less are permitted, and at least 10 ft above 50 ft where there are more than 4 stories	Above Street Wall	None	Above Street Wall									
<sup>10</sup> Minimum 30 foot Stepback required where maximum 4 stories allowed in Waterfront Activation Area														
<sup>11</sup> Minimum 25 foot Stepback required on Main Street in DO-7														
<sup>12</sup> Provide ornamental fencing, trees and/or plantings along property frontage to separate private land from public land (e.g., LINC Park). Other frontage types, especially those that contribute positively to the pedestrian environment, as outlined in this Code, may be considered by the Planning Board.														
<sup>13</sup> Pedestrian movement shall be accommodated in the LINC Park														



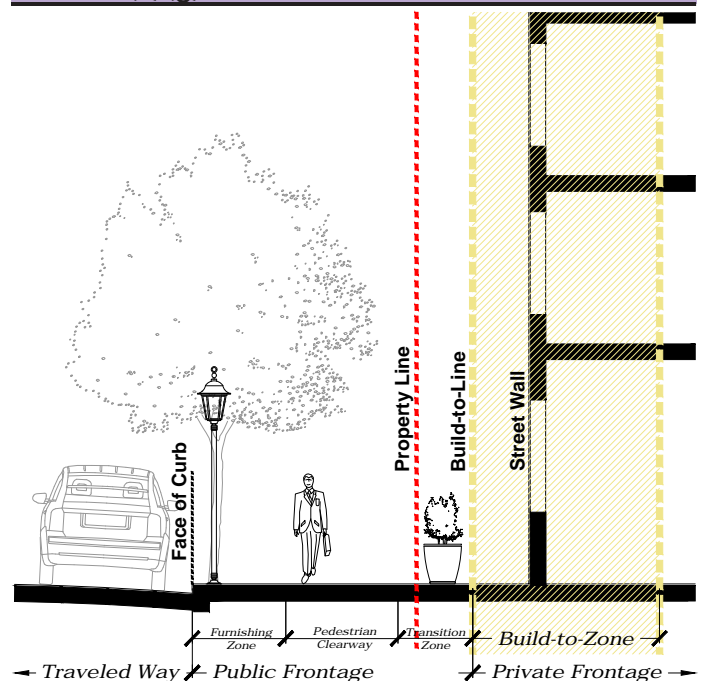
**175.09C. PUBLIC FRONTAGE**

(1) Public Frontage Standards

- (a) The design, rehabilitation and construction of public frontages within the public right-of-way, including curbs, shall be the responsibility of the Applicant, according to the design standards established in this Article and any associated design guidelines adopted by the Planning Board. The Applicant is responsible for obtaining approval of such improvements from all agencies with jurisdiction over the public right-of-way.
- (b) All Sites shall provide Public Frontages along Streets.
- (c) Where the required Build-To-Line as identified herein would be located within the public street right-of-way, the Build-To-Line shall instead be placed at the front lot line(s).
- (d) No building or portion thereof shall be located within the Public Frontage, except as provided in 175.11H Projections and Encroachments. The Planning Board may modify these minimum standards to address existing or proposed conditions where:
  - [1] Existing buildings are closer than the required Build-To-Line
  - [2] Pedestrian demand for a narrower Pedestrian Clearway is demonstrated and mitigated.
  - [3] The Landscape and Furnishing Zone requires additional space for transit facilities.
- (e) To qualify for development using the provisions of this Article, all sites shall meet the minimum Site Area and Site Frontage requirements as defined in Section 175.11B(2) and comply with the Build-To-Line in Section 175.09 and Build-To-Zone requirements in Section 175.11.
- (f) All Public Frontages shall provide a Landscape and Furnishing Zone, Pedestrian Clearway Zone and a Transition Zone according to the minimum dimensions established in 175.09B. for the designated Street Type along each Public Frontage.
  - [1] The Landscape and Furnishing Zone establishes an area for the placement of parking fee meters, street signage, street lighting, bike racks, refuse receptacles, street trees and bio-retention areas, transit stop waiting and enclosure areas, seating furniture, extended outdoor dining areas or similar items.
  - [2] The Pedestrian Clearway Zone establishes an area for the clear passage of pedestrians.

- [3] The Transition Zone establishes an area for placement of building fixtures (lighting, signage, projected architectural molding etc), grade transitions, removable planters, and signage board, seating furniture, extended outdoor dining, access to open storefronts, landscaped areas or similar items while it serves as an extended entrance and storefront interaction area.
- (g) The width of Public Frontage at established Build-to-Line located within the Waterfront Activation Area shall be measured from the Build-to-Line.
- (h) Where structures having less than the required front yard exist on a majority of nonconforming lots of record that share common side property lines, the required front yard on each nonconforming lot, whether or not improved, shall be reduced to the average front yard of all such structures in the same block and on the same side of the street.

**175.09C(1)(g) PUBLIC FRONTAGE DIAGRAM**



**175.09D BUILD-TO-LINE**

- (1) Build-To-Line Standards
  - (a) The Build-To-Line shall be set parallel to the face of a curb for a distance regulated by Section 175.09B Public Frontage and Private Frontage Standards, and Street Types Map in Section 175.08F.
  - (b) All existing and new streets within the Downtown Overlay Zone district shall require a Build-To-Line.
  - (c) Where an existing building is closer to the Street than the designated Build-To-Line, the Planning Board has the authority to establish an alternate Build-To-Line at a location to allow the existing Street Wall to remain within the Build-To-Line.
  - (d) Where a Pedestrian Way is provided according to Section 175.09A(4), the Planning Board may permit the Build-To-Line to be placed at alternate locations it deems appropriate.
  - (f) Build-To-Line shall be required where buildings are proposed within the Waterfront Activation Area, placed at locations as recommended by the Commissioner of Development and approved by the Planning Board, to establish the location of Public Frontages.

**SECTION 175.10. CIVIC SPACE STANDARDS**

- A. **Applicability:** This Section 331-175.10 applies to those developments that:
  - (1) Choose to provide civic space of a certain size and location to qualify for a Community Benefit Bonus from the list of approved bonuses or
  - (2) Choose to develop civic space on an approved development site in compliance with these standards of 175.10 to achieve greater flexibility in the placement of buildings or
  - (3) Area required to develop a civic space where designated on the DOZ Standards Map.
- B. **Minimum Civic Space Standards**  
 To qualify for approval by the Planning Board as a civic space during the site plan review process, the space shall:
  - (1) Be in a form of ownership acceptable to the City Council.
  - (2) Provide public access at least 16 hours per day.
  - (3) Be located at the ground level or within one floor of the ground level and provide clear visual connections to pedestrians on an adjacent public sidewalk.
  - (4) Adhere to the standards established for civic spaces in this Section.
- C. **Maintenance**
  - (1) Privately-Owned civic space shall be maintained by its owner or a private entity such as a Property Owners Association, Municipal Improvement District or Business Improvement District.
  - (2) Publicly-Owned civic space shall be maintained by its public owner or a contracted entity such as a Property Owners Association, Municipal Improvement District or Business Improvement District as approved by the applicable government agency.
- D. **Civic Space Programming, Placement and Design Criteria**
  - (1) The following programming and design considerations, among others, shall be evaluated by the Commissioner of Development in the course of site plan and/ or subdivision approval and design as considerations in determining the acceptable location for civic space:
    - (a) Solar orientation of civic space
    - (b) Amenities such as water features, public bathrooms, informational kiosks, drinking fountains, play & entertainment areas
  - (c) Facilities for the use, retention and recharging of rainwater
  - (d) Projected public access and likelihood of use
  - (e) Seasonal programming of the space
  - (f) Intensity of adjacent private frontage(s)
  - (2) The Planning Board shall consider the following during its site plan review process to determine whether the civic space design is acceptable:
    - (a) All civic spaces shall provide pedestrian access from a public sidewalk, via a publicly accessible Pedestrian Way, Pedestrian Trail, Waterfront Boardwalk or a private walkway open to the public at least 16 hours per day.
    - (b) A civic space may be indoors or outdoors. However, it must provide active or passive uses designed to bring regular pedestrian, civic and/or commercial activity to the Site.
    - (c) The Applicant may seek approval from the Planning Board for an alternate placement of a required Build-To-Zone to permit a civic space along a Street or within a Waterfront Activation Area.
      - [1] Where a civic space is proposed on a development site adjacent to an existing building not controlled by the Applicant, the Applicant shall provide Edging Elements as defined in Section 175.11F and landscaping to buffer any adjacent areas of blank walls or service uses.
      - [2] A civic space may include buildings provided that they are designed to activate the civic use of the space and provide public access.
      - [3] Buildings and temporary structures within civic spaces may be as low as one story in height.
  - (3) **Civic Space Frontage Occupancy**
    - (a) Civic spaces shall be mapped and measured on the site plan to designate a Build-To-Zone with a total linear length along the edges of the proposed civic space excluding the length of the edge along the street and/ or the length of the Pedestrian Way conforming to its Private Frontage requirements.

**175.10 CIVIC SPACE STANDARDS**

- (b) Civic spaces shall provide a minimum 60% civic space frontage occupancy, unless the Planning Board determines that a lower standard is permitted. Civic space frontage occupancy shall be calculated by measuring the length of the Street Wall in the civic space Build-To-Zone divided by the length of the perimeter of the civic space established above in 175.10D(3)a.
  - (c) The minimum Frontage Occupancy within the Waterfront Activation Area shall be as recommended by the Commissioner of Development and approved by the Planning Board.
- (4) New buildings contiguous to a civic space shall provide Build-To-Zone(s) and Street Wall(s) as required by the Street Type designated on the nearest Street on the DOZ Standards Map, except within the Waterfront Activation Area as defined in 175.08G(2), 175.09B.
- (5) Where existing buildings front onto a civic space, the Planning Board shall determine the minimum standards for civic space frontage occupancy consistent with the intent of 175.10, while recognizing the challenges of retrofitting existing buildings.

175.10E. PERMITTED CIVIC SPACE TYPES

(1) To qualify for designation as a civic space each proposed civic space must comply with the intent of one of the following permitted forms and fulfill the requirements associated with that civic space:

175.10E(1)(a) COURT



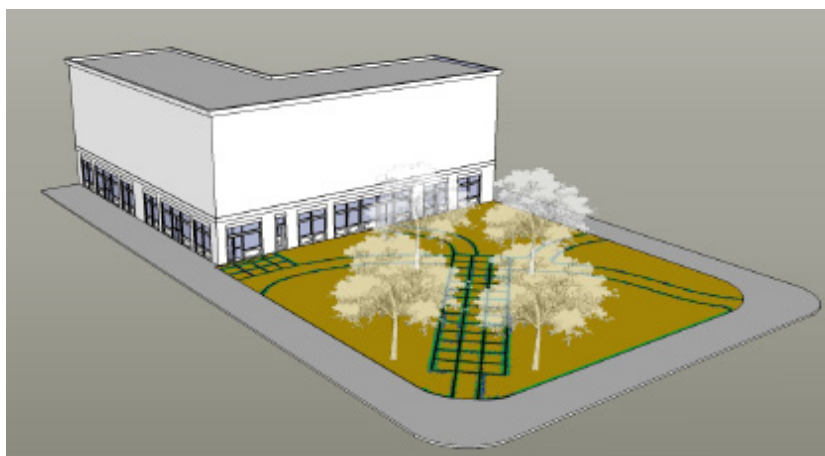
A civic space framed by buildings with Build-To-Zones on 3 or more sides and at grade access contiguous to a Public Frontage or an approved Pedestrian Way.

175.10E(1)(b) CORNER PLAZA



A civic space framed by buildings with Build-To-Zones on 2 sides and at grade access contiguous to a Public Frontage or an approved Pedestrian Way.

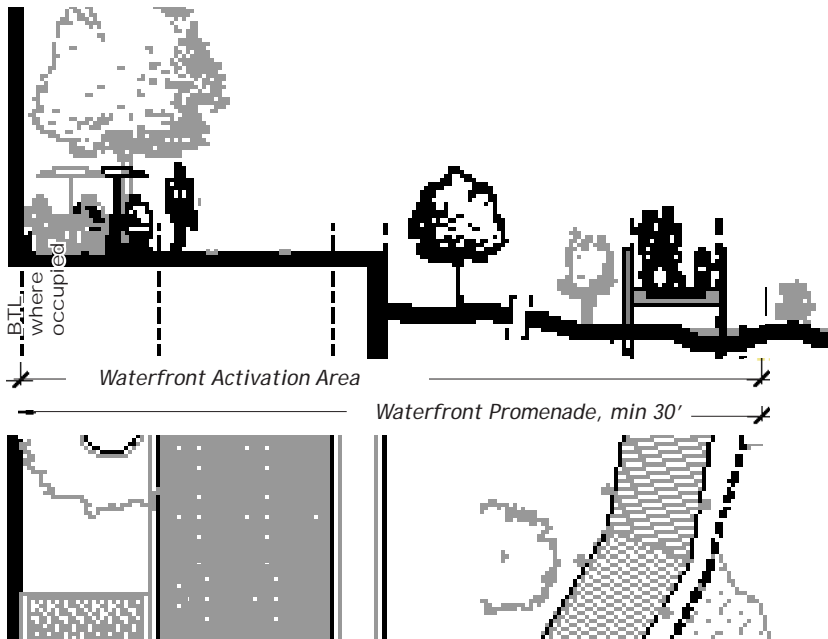
175.10E(1)(c) PLAZA



A civic space surrounded by streets on all sides or framed by buildings with Build-To-Zones on 1 or more sides and at grade access contiguous to a Public Frontage or an approved Pedestrian Way.

**175.10E(1)(d) WATERFRONT PROMENADE**

A required civic space located in Waterfront Activation Area that provides a continuous public access along waterfront, and integrates a combination of Waterfront Boardwalk, Pedestrian Trail, other civic spaces, and Public Frontages, with nearby sidewalks and parkland

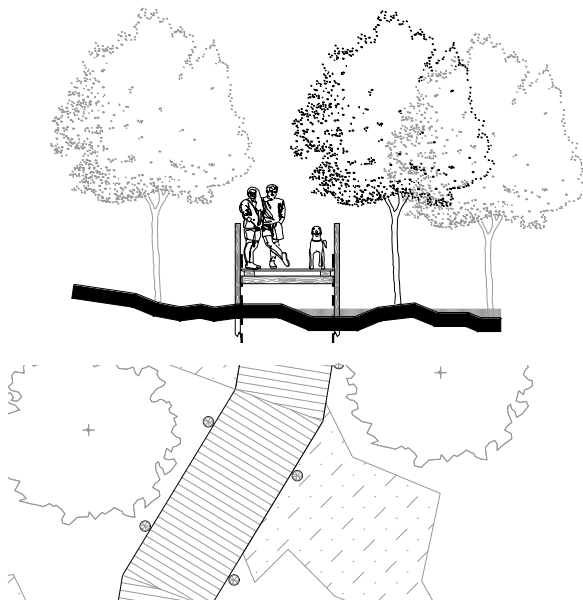


Waterfront Promenade shall:

- [1] be a minimum of 30' wide and include shoreline restoration and beneficially improved landscaping areas planted by native species
- [2] provide a continuous pedestrian path of 8 feet minimum width along water's edge, providing views and access to the water at different locations
- [3] be located between the mean-high water line (or property line if mean-high water line doesn't exist) and Build-to-Line
- [4] provide diverse landscaping, furnishing, and programmed activities and recreation areas

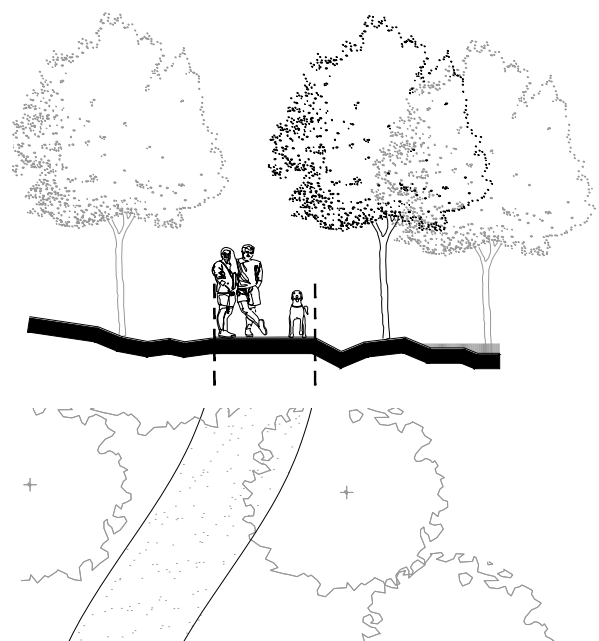
**175.10E(1)(e) WATERFRONT BOARDWALK**

A walkway providing access to the waterfront, raised to protect wetlands, sensitive or floodplain areas, and is integrated with other public ways, such as Public Frontages, Civic Spaces, or Pedestrian Ways.



**175.10E(1)(f) PEDESTRIAN TRAIL**

An outdoor pedestrian access way located along a shoreline or through open space that provides access primarily for pedestrians, and is integrated with other public ways, such as Public Frontages, Civic Spaces, or Pedestrian Ways.



**SECTION 175.11. USES AND DEVELOPMENT STANDARDS**

**175.11A. PERMITTED USES BY DISTRICT**

- (1) The schedule of uses permitted within the DOZ is shown in Section 175.11A(2) Table of Uses. Principal uses are listed as Permitted (P), Prohibited (X), Allowed by Special Permit (SP), or Accessory (A). (a) Accessory Uses customarily associated with Uses, including home based business, shall be permitted. (b) All uses require site plan approval. See Section 331-175.14 for Administration.

**175.11A(2) TABLE OF USES**

	DO-1	DO-2	DO-3	DO-4	DO-5	DO-6	DO-7	DO-8
<b>MIXED USE <sup>(1)</sup></b>								
Mixed Use	P	P	P	P	P	P	P	P
<b>RETAIL</b>								
Retail	P	P	P	P	P	P	P	P
Restaurant	P	P	P	P	P	P	P	P
Wholesale	P	P	P	P	P	P	P	P
<b>OFFICE</b>								
Office	P	P	P	P	P	P	P	P
Medical Office	P	P	P	P	P	P	P	P
Research & Development	P	P	P	P	P	P	P	P
Professional Service	P	P	P	P	P	P	P	P
<b>RESIDENTIAL <sup>(1)</sup></b>								
Multifamily Dwelling	P	P	P	P	P	P	P	P
Townhouse	P	P	P	P	P	P	P	P
Live-Work	P	P	P	P	P	P	P	P
Independent Living	P	P	P	P	P	P	P	P
<b>ENTERTAINMENT/CULTURE/ARTS</b>								
Entertainment/Culture/Arts <sup>(2)</sup>	P	P	P	P	P	P	P	P
Catering Hall/Event Space	P	P	P	X	X	X	P	X
Cabaret	*	*	*	*	*	*	*	*
Micro-brewery <sup>(3)</sup>	A	A	A	A	A	A	A	A

- P Permitted
- SP Allowed by Special Permit from the Planning Board
- A Accessory to a Permitted Principal Use
- X Prohibited
- \* Allowed if and to the extent permitted by the underlying district

- (1) Suites/units associated with Hospitality Uses and residential dwellings are prohibited within the Private Frontage area on the first floor of Storefront Frontages and Arcade Frontages. Common areas of residential and hospitality building such as lobbies, gyms and similar spaces servicing the primary use may occupy the ground floor of a storefront as long as it complies with the active edge requirements.
- (2) Entertainment/ Cultural/ Arts includes theater, museum, gallery, cinema, indoor amusement establishments
- (3) When accessory to a restaurant

**SECTION 175.11. USES AND DEVELOPMENT STANDARDS**

**175.11A(2) TABLE OF USES (CONT'D)**

	DO-1	DO-2	DO-3	DO-4	DO-5	DO-6	DO-7	DO-8
<b>HOSPITALITY <sup>(1)</sup></b>								
Hotel	P	P	X	X	X	X	P	X
Inn / Bed & Breakfast	P	P	P	P	P	P	P	P
Residential Care Facility	SP	SP	SP	SP	SP	SP	SP	SP
<b>INSTITUTIONAL / CIVIC</b>								
Institutional	P	P	P	P	P	P	P	P
Municipal	P	P	P	P	P	P	P	P
Library	P	P	P	P	P	P	P	P
Community Facility	P	P	P	P	P	P	P	P
Indoor Recreation	P	P	P	P	P	P	P	P
Educational Use	P	P	P	P	P	P	P	P
<b>LIGHT INDUSTRIAL</b>								
Artisan Production	P	P	P	P	P	P	P	P
Data Information Center	P	P	P	P	P	P	P	P
Urban Agriculture	P	P	P	P	P	P	P	P
Small-Scale Renewable Energy	SP	SP	SP	SP	SP	SP	SP	SP
<b>PARKING FACILITIES</b>								
Parking Structure	P	P	P	P	P	P	P	P
Parking Lot	A	A	P	P	P	P	P	P
<b>UTILITIES</b>								
Utilities	P	P	P	P	P	P	P	P

- P Permitted
- SP Allowed by Special Permit from the Planning Board
- A Accessory to a Permitted Principal Use
- X Prohibited
- \* Allowed if and to the extent permitted by the underlying district
- (1) Suites/units associated with Hospitality Uses and residential dwellings are prohibited within the Private Frontage area on the first floor of Storefront Frontages and Arcade Frontages. Common areas of residential and hospitality building such as lobbies, gyms and similar spaces servicing the primary use may occupy the ground floor of a storefront as long as it complies with the active edge requirements.
- (2) Entertainment/ Cultural/ Arts includes theater, museum, gallery, cinema, indoor amusement establishments
- (3) When accessory to a restaurant



**175.11B. SITE DEVELOPMENT STANDARDS AND INCENTIVES**

(1) Sites may qualify for the provisions of this article by meeting the site frontage and site area minimum requirements of one of the three development standards established in Section 175.11B(2). The building height requirements listed in Section 175.11B(2) under each development standard shall apply to those sites meeting the minimum requirements thereof.

(a) In DO-7 Waterfront Activated Area, per DOZ Standards Map in Section 175.08, the development sites are required to provide waterfront public access.

(b) In DO-7, the density of up to 45 units per acre, exclusive of any proposed condominium units, shall be calculated for each proposed site plan. Acreage used in this calculation shall exclude City-owned Parkland. Density may be increased to 50 units per acre, exclusive of any proposed condominium units, where the additional 5 units per acre are restricted to Veterans housing. For the purpose of calculating density, private and state owned lands can be included, but not land underwater. Further, in no case shall a developer include more than 10 acres of land for the purpose of calculating residential density, exclusive of condominium units.

175.11B(2). DEVELOPMENT STANDARDS FOR DO-1, DO-2, DO-3, DO-4, DO-5, DO-6, DO-7, DO-8 <sup>8</sup>				
		Development Standard 1	Development Standard 2	Development Standard 3
Site and Building Height Requirements				
Total Site Frontage Min. <sup>1</sup>	All Districts	50 feet	100 feet	150 feet
Site Area Minimum	All	5,000 SF	10,000 SF	30,000 SF <sup>2</sup> (40,000 SF in DO-1)
Building Height <sup>3,4</sup>	DO-1	2 stories min 8 stories max	2 stories min 24 stories max	2 stories min 40 stories max and 605 feet max
	DO-2	2 stories min 4 stories max	2 stories min 12 stories max	2 stories min 24 stories max and 245 feet max
	DO-3	2 stories min, 2 stories max	2 stories min 4 stories max	2 stories min 6 stories max and 65 feet max
	DO-4	2 stories min, 2 stories max	2 stories min 4 stories max	2 stories min 6 stories max and 65 feet max <sup>4,5</sup>
	DO-5	2 stories min, 2 stories max	2 stories min 4 stories max	2 stories min 6 stories max and 65 feet max
	DO-6	2 stories min, 2 stories max	2 stories min 4 stories max, and 55 feet max	Not available
	DO-7	2 stories min, 2 stories max	2 stories min 3 stories max, and 45 feet max	2 stories min 4 stories max and 55 feet max <sup>6</sup>
	DO-8	2 stories min, 3 stories max	2 stories min 4 stories max, and 55 feet max	2 stories min 6 stories max, and 65 feet max <sup>4,7</sup>
Street Wall Height & Stepback		See Street Wall Height at Sec 175.11E(3) and Stepbacks at Sec 175.11E(4)		
Parking	All Districts	Standards - See Article XIV - Off-Street Parking and Loading		
		Placement - See DOZ minimum requirements in Sec 175.111		
Min side yard from residential districts	All Districts	No building may be constructed within 20 feet of a side yard adjoining a parcel in the R2-7.0 or RMF-0.4 Districts.		
Rear yard setback at residential districts		Where any parcel is contiguous to a parcel within the R2-7.0 or RMF-0.4 district, the rear yard shall be a minimum of 30 feet.		

<sup>1</sup> Total sum of all Site Frontages facing Streets, excluding those Site Frontages along Pedestrian Ways.

<sup>2</sup> Except in DO-1 where minimum site area is 40,000 SF

<sup>3</sup> Additional Bonus Height may be achieved according to Community Benefit Bonuses Figure 175.11C. See Section 175.11G & H for building height standards, exceptions and permitted projections and encroachments.

<sup>4</sup> Except: 6 story and 65 feet maximum building height where shown on the DOZ Standards Map in Section 175.08

<sup>5</sup> Except: 8 story and 85 feet maximum building height where shown on the DOZ Standards Map in Section 175.08

<sup>6</sup> If on City owned property in DO-7, the 4th story is subject to the same CBB fees as 5th story in Development Standard 3 Bonus

<sup>7</sup> Except: 4 stories, 55' maximum building height where shown on the DOZ Standards Map in Section 175.08

<sup>8</sup> Any displacement of residential units within DO-8 must be replaced in kind within the DO-8 District.

**175.11C. COMMUNITY BENEFIT BONUSES (CBB)<sup>1</sup>**

(1) Community Benefit Bonuses offer the ability to develop beyond the individual development standards for each district in exchange for investment in public benefits, up to a maximum building height, measured in feet and stories, defined in Section 175.11C(3).

(2) To ensure the fulfillment of the community benefit goals of the City, all CBB development within the DOZ that is approved under this Article shall comply with the requirements of any adopted Community Benefit Bonus policies in effect as of the date such policies have been

adopted or modified by resolution of the City Council. Compliance with the terms of these policies shall be made a condition of any site plan approval within the DOZ after adoption of such policies, and such compliance shall be monitored and enforced as set forth in the Community Benefit Bonus Policies and as conditions of approval of a site plan under this ordinance. Where such conditions have been imposed on site plan approvals, no building permit, certificate of occupancy, or business license or business license renewal shall be issued unless the Applicant has demonstrated compliance with these policies.

**175.11C(3). TABLE OF COMMUNITY BENEFIT BONUSES (CBB)<sup>1</sup>**

		For developments that satisfy all of the requirements of a Development Standard as defined in Section 175.11B(2), the following standards shall apply:		
		Development Standard 1 Bonus <sup>*,*****</sup>	Development Standard 2 Bonus <sup>*,*****</sup>	Development Standard 3 Bonus <sup>*,*****</sup>
DO-1	The total building height with Community Benefit Bonuses shall be a maximum of 605 feet	up to 2 Bonus stories	up to 4 Bonus stories	up to 8 Bonus stories
DO-2	The total building height with Community Benefit Bonuses shall be a maximum of 285 feet	up to 1 Bonus story	up to 2 Bonus stories	up to 4 Bonus stories
DO-3	The total building height with Community Benefit Bonuses shall be a maximum of 105 feet <sup>**</sup>	No Bonus Available	up to 2 Bonus stories	up to 4 Bonus stories <sup>**</sup>
DO-4	The total building height with Community Benefit Bonuses shall be a maximum of 85 feet	No Bonus Available	up to 1 Bonus stories <sup>***</sup>	up to 2 Bonus stories <sup>***</sup>
DO-5	The total building height with Community Benefit Bonuses shall be a maximum of 85 feet	No Bonus Available	up to 1 Bonus stories	up to 2 Bonus stories
DO-6	The total building height with Community Benefit Bonuses shall be a maximum of 55 feet	No Bonus Available	up to 1 Bonus stories	No Bonus Available
DO-7	The total building height with Community Benefit Bonuses shall be a maximum of 65 feet, and 75 feet for Additional Bonus stories	No Bonus Available	No Bonus Available	up to 1 Bonus story <sup>****</sup> up to 1 Additional Bonus stories <sup>*****</sup>
DO-8 <sup>1</sup>	The total building height with Community Benefit Bonuses shall be a maximum of 85 feet	No Bonus Available	up to 2 Bonus stories	up to 2 Bonus stories

\* Where a site has been designated on the DOZ Standards Map as a Six Maximum Building Height, the total building height including Community Benefit Bonuses shall be a maximum of 6 stories and 65 feet.

\*\* If on City owned property in DO-3, the DS3 shall be granted up to 6 Bonus stories, and maximum 125 feet

\*\*\* Except: 2 Bonus Stories under Development Standard 2, and 4 Bonus Stories under Development Standard 3 (125 feet maximum building height) where shown on the DOZ Standards Map in Section 175.08.

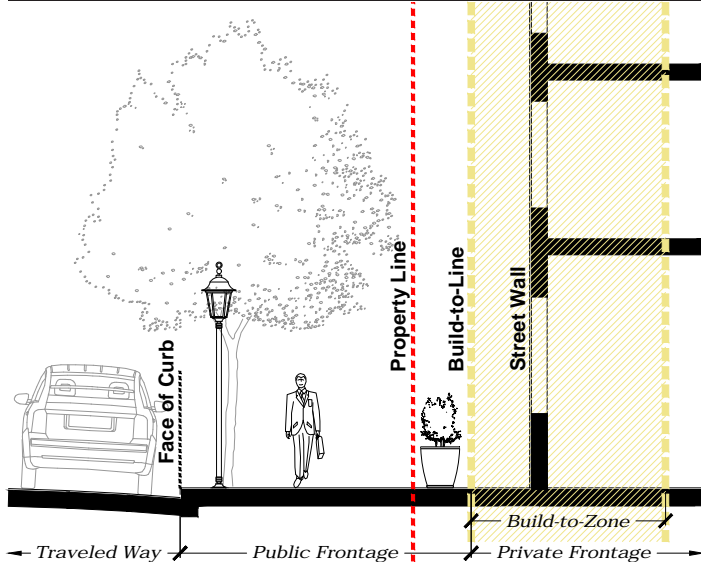
\*\*\*\* Except: 4 story and 55 feet maximum building height where shown on the DOZ Standards Map in Section 175.08

\*\*\*\*\* Additional Bonus story may be granted at the discretion of the City Council prior to Planning Board as part of site plan review, see Section 331-175.14.

\*\*\*\*\* Where a site has been designated on the DOZ Standards Map as a Four Story Maximum Building Height, the total building height including Community Benefit Bonuses shall be a maximum of 4 stories and 55 feet.

<sup>1</sup> CBBs Fees generated in DO-8 must be invested or applied within the DO-8 District.

**175.11D(1) PRIVATE FRONTAGE DIAGRAM**



**175.11D(2) PRIVATE FRONTAGE STANDARDS**

- (2) Private Frontage Standards
  - (a) All Sites shall provide a Private Frontage along each Street and each Pedestrian Way, except:
    - [1] On F Streets Private Frontages are not required.
    - [2] Where a Site with multiple frontages has provided at least one Private Frontage of a minimum 100 feet in length along the Primary Frontage and complied with the Frontage Occupancy, the Site's other frontages of less than 55 feet in length are not required to provide a Frontage Occupancy on a Private Frontage.
    - [3] Where a Site has three Site Frontages, and two of the highest priority Site Frontages comply with its Frontage Occupancy or where a Site has four Site Frontages, and three of the highest priority Site Frontages comply with its Frontage Occupancy, the Planning Board may reduce or remove the Frontage Occupancy requirement for one Site Frontage that it deems to be of the lowest priority.
  - (b) All buildings shall provide a Principal Entrance on the Primary Frontage.
- (3) All Sites shall provide Private Frontages composed of one or more of the permitted Private Frontage Types as defined in Section 175.09B Public Frontage and Private Frontage Standards Private Frontage Types are: Storefront Frontage, Arcade Frontage, Urban Frontage, Stoop Frontage, Porch Frontage, Lightwell Frontage, Forecourt Frontage, Mid-Block Frontage
- (4) Private Frontage Type standards are established in the definitions Section 175.04, regulated in Section 175.09B Public Frontage and Private Frontage Standards and further clarified below:
  - (a) Arcade Frontage Standards
    - [1] A clear distance for pedestrian access between the outer and inner arcade elevations shall be minimum of 6'
    - [2] A minimum clear vertical height between sidewalk and the arcade ceiling shall be 10'
  - (b) Urban Frontage Standards
    - [1] Where a development provides a parking structure facing any Street Type except an A or B Street, a minimum of 50% of the street-level, street facing building area located between 2' & 8' above the sidewalk shall provide architectural openings designed to appear as windows, however glass may be replaced with non-glazed openings designed to look like windows.

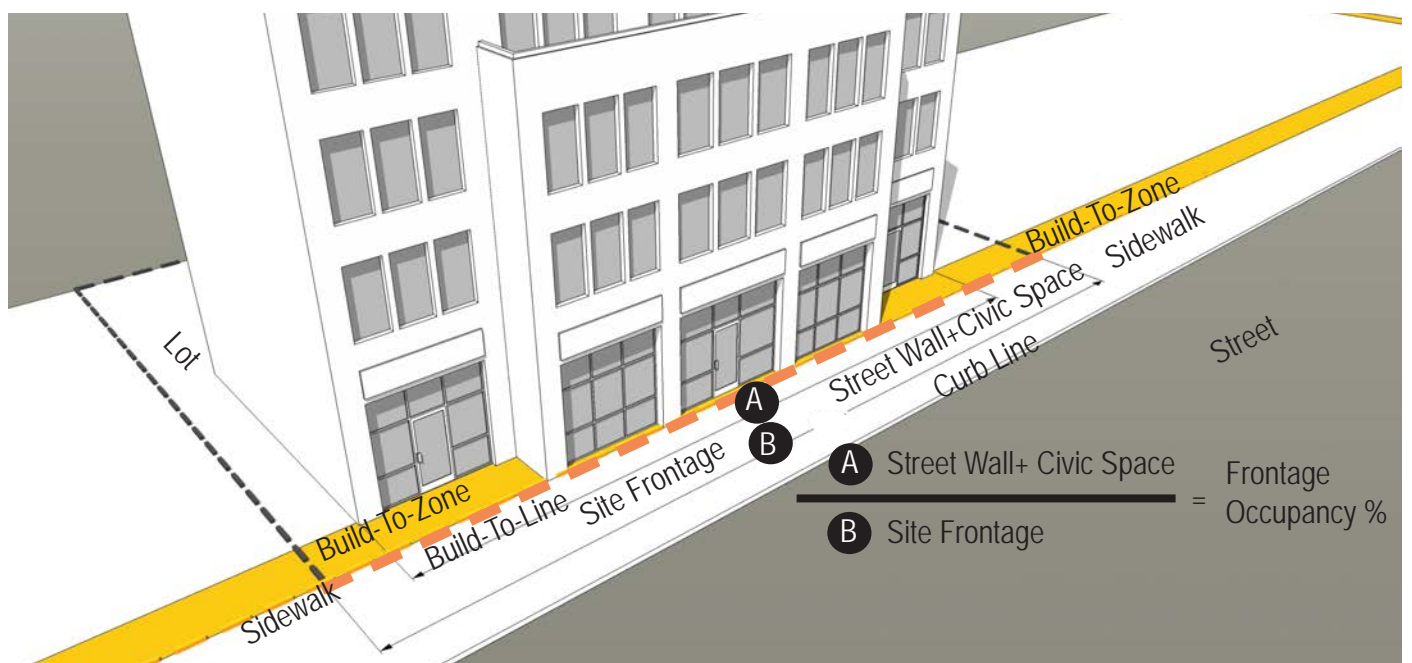
**175.11E(1). BUILD-TO-ZONE**

- (a) Structural elements of a front building facade, known as a Street Wall, shall be located within the Build-To-Zone.
- (b) To satisfy Frontage Occupancy requirements the face of the building for the required minimum Street Wall Height and minimum length of the building shall occupy the Build-To-Zone as defined by frontage requirements in Section 175.09B. Where a Site complies with the Significant Corner and Terminating Vista standards defined in 175.11E(8) and 175.11E(9) certain portions of the Street Wall shall permit the maximum Street Wall to be taller than otherwise required.
- (c) The Build-To-Zone allows building entrance alcoves and expanded sidewalk area for outdoor dining, building facade articulation, inclusion of projected and/or recessed building elements, and building alignment with existing neighboring buildings.

**175.11E(2). FRONTAGE OCCUPANCY**

- (a) All developments in the Downtown Overlay Zone require buildings to occupy a minimum Frontage Occupancy within the Build-To-Zone as defined by the DOZ Standards Map (Sec 175.08G) and DOZ Street Types (Sec 175.08F).
- (b) Frontage Occupancy shall be calculated as a percentage by measuring the length of a Street Wall or approved civic space measured along the Build-To-Line within the Build-To-Zone divided by the Site Frontage.
- (c) Where the Planning Board approves a civic space along a Street or Pedestrian Way, that portion of the Site Frontage shall be considered 100% occupied, provided that the civic space conforms to the standards established in 175.10.

**175.11E(2)(d) BUILD-TO-ZONE AND FRONTAGE OCCUPANCY DIAGRAM**



**175.11E(3). STREET WALL**

(a) Where a Street Wall is required, accept in Waterfront Activation Area as defined by 175.09B and 175.08G(2), it shall comply with the following:

[1] Minimum Street Wall Height shall be 50% of largest perpendicular horizontal distance between the two opposing Build-To-Lines on either side of a street.

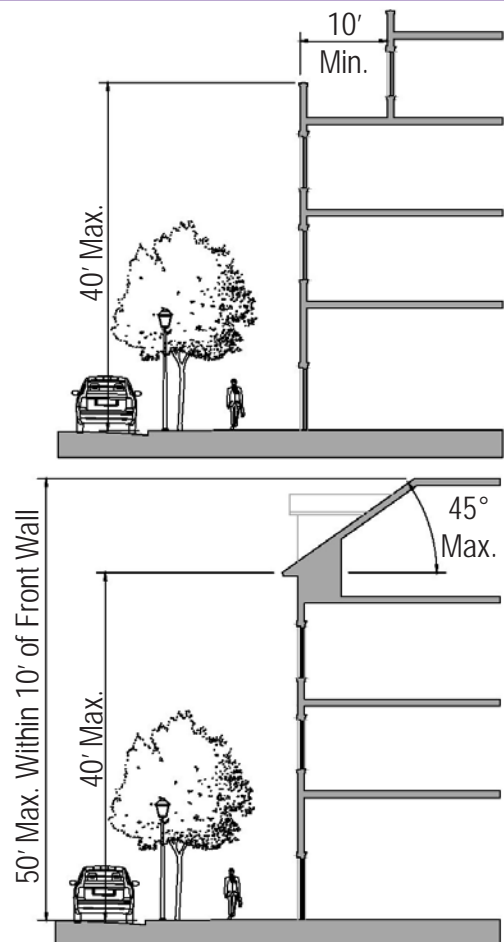
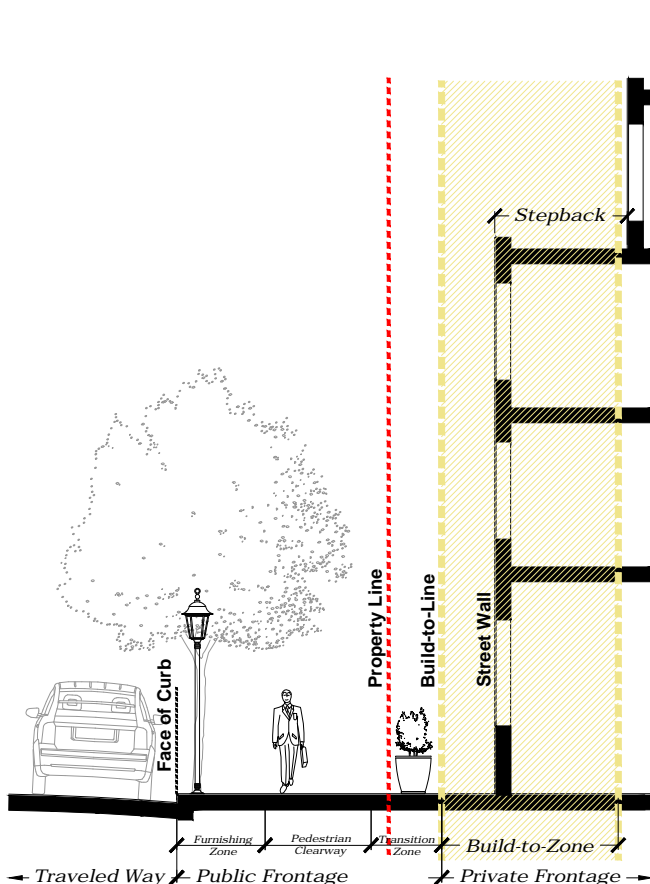
[2] Maximum Street Wall Height shall be equal to the largest perpendicular distance between two opposing Build-To-Lines on either side of a Street.

**175.11E(4). STEPBACK**

- (a) Those Sites designated on the DOZ Street Types Standards Map in Section 175.08F as Street Type A, B, C, D, E, F or P shall require a Stepback from the Street Wall above the maximum Street Wall Height as defined by the applicable Street Type in Section 175.11.E(3).
- (b) Where the DOZ Standards Map in Section 175.08 designates a Significant Corner, the development may qualify for an exemption from the Stepback requirement for up to 30 percent of the Site Frontage, provided they meet the standards in Sec 175.11E(8).
- (c) Where the DOZ Standards Map in Section 175.08 designates a Terminating Vista, the development may qualify for an exemption from the Stepback requirement for up to 30 percent of the Site Frontage, provided they meet the standards in Sec 175.11E(9).

- (d) Where the Planning Board determines Sites qualify for more than one Stepback exemption, up to 60 percent of the site frontage may qualify for a Stepback exemption.
- (e) For buildings facing Street Types G, H or I, the required stepback shall be defined by 175.11E(4)(g).

**175.11E(4)(ef) STEPBACK DIAGRAM FIGURE      175.11E(4)(g) STEPBACK STREET TYPES G,H & I**



**175.11E(5) ACTIVE EDGE FRONTAGE REQUIREMENTS**

(a) All sites shall endeavor to create an active edge along streets and sidewalks through the design and frequent placement of entryways and clearglazing to promote pedestrian activity and commerce in the DOZ.

(b) Applicants shall provide a minimum separation between entryways to promote pedestrian activity on sidewalks as defined by this Section.

(c) Storefront Required: Those Public Frontages designated on the Section 175.08 DOZ Standards Map as "Storefronts Required" shall comply with the following standards:

[1] A development shall comply with minimum standards of either a Storefront Frontage or an Arcade Frontage as defined in Figure 175.09B.

[2] The Private Frontage area within a Site behind the glazing at the Street Wall shall provide an Active Edge including frequent placement of entrances, storefronts, display areas and/or areas designed for multiple users designed to stimulate and concentrate pedestrian activity along the Public Frontage

[3] A Storefront Frontage shall be provided at the designated street and shall extend a minimum of 20 feet around the corner along the Build-To-Zone of the intersecting Streets and Pedestrian Ways.

[4] The architectural design for the ground floor street level shall provide frequent entryways no further than 60 feet from the end of the building at the Street Wall and the edge of each entryway shall be no greater than 60 feet from a consecutive entryway as measured along the Build-To-Line.

(d) Frequent Entryways Required: Those Public Frontages des-

ignated on the Section 175.08 DOZ Standards Map as "Frequent Entryways Required" shall comply with the following standards:

[1] The architectural design for the ground floor street level shall provide frequent entryways no further than 80 feet from the end of the Street Wall and the edge of each entryway shall be no greater than 80 feet from an adjacent entryway as measured along the Build-To-Line.

(e) Large Retail Occupancy Standard: Where a site requires either Frequent Entryways or Storefronts and where a single retail occupancy is provided for 20,000 SF or greater the architectural design for the ground floor street level shall provide frequent entryways no further than 100 feet from the end of the building at the Street Wall and the edge of each entryway shall be no greater than 100 feet from a consecutive entryway as measured along the Build-To-Line.

**175.11E(6) GLAZING REQUIREMENTS**

(a) The first story of all Street Walls shall provide a minimum area of window glazing according to standards established in Section 175.09B for the permitted Private Frontage Types as further defined below:

[1] The window glazing shall be clear, transparent glass unless otherwise provided in Section 331-175D(3)(b).

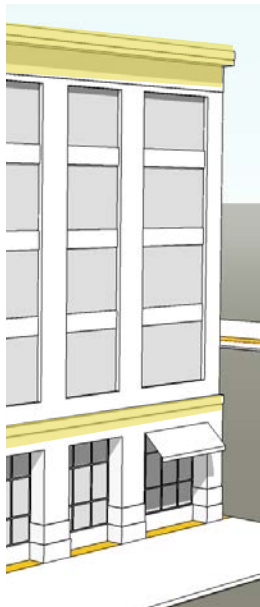
[2] At Storefront Frontage, Arcade Frontage and Urban Frontage the Glazing area percentage shall be determined by measuring the surface area of the Glazing divided by the surface area of the Street Wall located between 2' and 8' above the elevation of the nearest sidewalk.

[3] At Stoop Frontage, Porch Frontage, Lightwell Frontage, Forecourt Frontage, and Mid-Block Frontage the Glazing area percentage shall be determined by measuring the Glazing surface area divided by the surface area of the Street Wall located between the first floor elevation and the underside of the second floor slab.

**175.11E(7) EXPRESSION LINES**

- (a) The Expression Lines guidelines provided below may be considered by the Professional Architectural Review Committee during its review of a site plan and proposed architectural design.
- (b) All buildings should provide horizontal expression lines in order to:
  - [1] differentiate between the base, middle or top of buildings.
  - [2] emphasize a massing transition or change of use.
- (c) Expression lines should be articulated through the use of moldings, shading devices, changes of material, changes of color, cornices, and other similar architectural elements.

**175.11E(7)(d) EXPRESSION LINES DIAGRAM**



**175.11E(8) SIGNIFICANT CORNER**

- (a) With respect to the Sites depicted as Significant Corners on the DOZ standards Map in Section 175.08, [1] for those sites depicted as High Priority Significant Corners, the Professional Architectural Review Committee shall, in all cases, include a review of the design of the applicable corner as part of its review of the site plan and proposed architectural design of the overall project of which it is a part, and [2] for all other sites depicted as Significant Corners on the DOZ Standards Map, the Professional Architectural Review Committee shall include an analysis of the design of the applicable corner as part of its review of the site plan and proposed architectural design of the overall project of which it is a part if requested by the Applicant, provided that, in the case of this clause [2], if the Applicant does not request such a review, then the Applicant will not be permitted to take advantage of the benefits described in 175.11E(8)(b).
- (b) Those sites designated as Significant Corners shall qualify for exemption from the Stepback requirements for up to 30 percent of the Site Frontage at the corner, provided that the additional height above the Street Wall is located at the corner.
- (c) Where a civic space is proposed at a designated Significant Corner, the requirement for the Significant Corner shall be permitted at locations outside the Build-To-Zone where approved by the Planning Board.
- (d) The location of the architectural features shall be expressed within a portion of the Street Wall and may be expressed above the Street Wall.

**175.11E(8)(e) SIGNIFICANT CORNER DIAGRAM**





**175.11E(9) TERMINATING VISTA**

(a) With respect to the Sites depicted as Terminating Vistas on the DOZ Standards Map in Section 175.08, [1] for those sites depicted as High Priority Terminating Vistas, the Professional Architectural Review Committee shall, in all cases, include a review of the design of the applicable terminating vista as part of its review of the site plan and proposed architectural design of the overall project of which it is a part, and [2] for all other sites depicted as Terminating Vista on the DOZ Standards Map, the Professional Architectural Review Committee shall include an analysis of the design of the applicable Terminating Vista as part of its review of the site plan and proposed architectural design of the overall project of which it is a part if requested by the Applicant, provided that, in the case of this clause [2], if the Applicant

does not request such a review, then the Applicant will not be permitted to take advantage of the benefits described in 175.11E(9)(b).

- (b) Those sites designated as Terminating Vistas shall qualify for exemption from the Stepback requirements for up to 30 percent of the Site Frontage, provided that the additional height for the Street Wall is located at the Terminating Vista.
- (c) Where a civic space is considered at a designated Terminated Vista, the requirement for the Terminated Vista shall be met at the Street Wall.
- (d) The location of the architectural features shall be expressed within a portion of the Street Wall and may be expressed above the Street Wall.

**175.11E(9)(e) TERMINATING VISTA DIAGRAM**



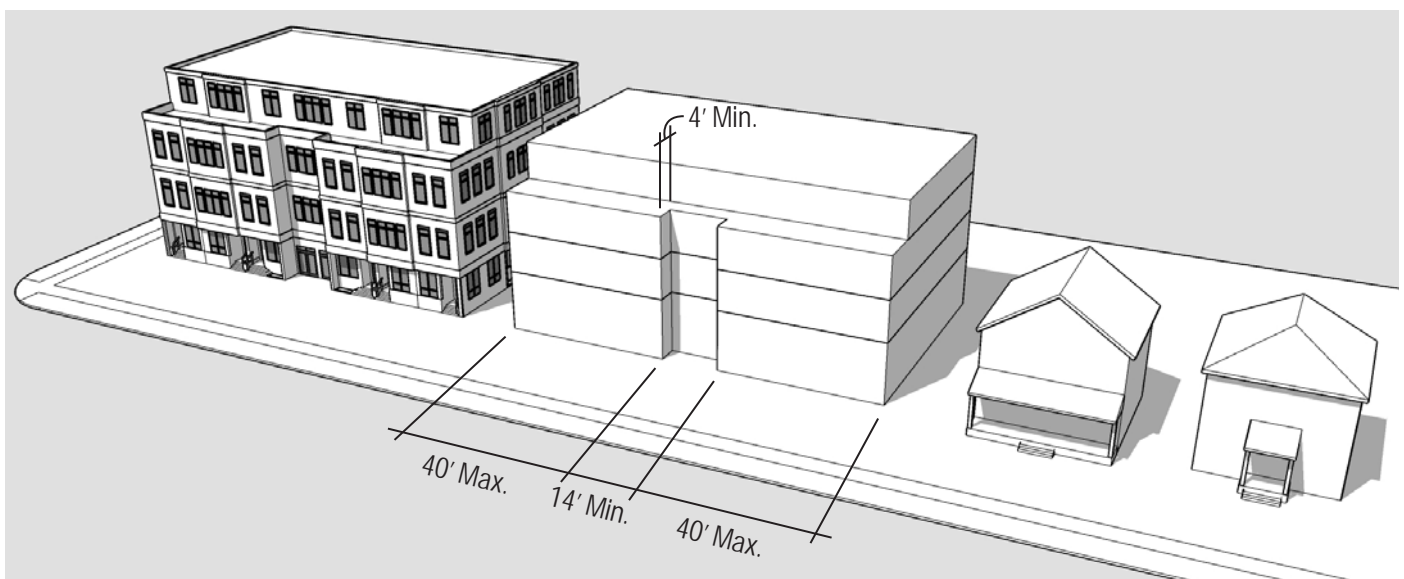
**175.11E(10) NEIGHBORHOOD MASSING**

- (a) At sites designated as Four-Story Maximum Building Height on the map 175.08G, all buildings with Private Frontages shall comply with the following standards:
  - (1) The length any one face of building shall not exceed 40'-0".
  - (2) The gap between each building face shall be a minimum of 14'-0" wide and a setback of at least 4'-0" behind the front face of the building wall.
  - (3) The above standards are not required on the upper floors where a setback is required.

**175.11E(11) GARAGE PLACEMENT**

- Within the DO-8 Lincoln Neighborhood District, the predominate character of the existing neighborhood is to provide parking and private garages within the rear yard or side yard. Typical streets provide on-street parking to accommodate visitor parking. The following standards shall guide and determine the placement of parking and garages within the DO-8 District.
- (a) Parking shall be prohibited between the curb and Build-To-Line unless the Planning Board determines such use is incidental.
  - (b) Private garage doors shall be prohibited within the Build-To-Zone unless the Planning Board determines such use is incidental.
  - (c) Where a single family or two family lot is located on a corner lot, the Planning Board may permit parking to be located within a portion of the front yard if it determines such placement is incidental.
  - (d) Shared driveways and rear lanes shall be encouraged to allow for more efficient and discrete parking in rear yards.
  - (e) On-street parking shall be encouraged to provide access for both visitor parking and commercial parking.
  - (f) Up to one garage door for a multi-tenant parking garage is permitted along a Public Frontage provided that the minimum Frontage Occupancy, as defined in Section 175.09B. Public Frontage and Private Frontage Standards has been fulfilled without including the garage door in the calculation. Where possible, driveways shall be located on a secondary street and garage doors shall be encourage to face the rear of the site or the side of the lot away from a street.

**175.11E(10) NEIGHBORHOOD MASSING DIAGRAMS**



**175.11F. EDGING ELEMENT STANDARDS**

(1) Permitted Edging Elements shall be provided within the Build-To-Zone for 100% of the Site Frontage except where approved Street Walls, curb cuts, Pedestrian Ways, entryways and civic spaces are provided. Edging elements must conform to the requirements of Section 331-175.11F(2) and 175.11F(3).

**331-175.11F(2) TABLE OF PERMITTED EDGING ELEMENTS**

Private Frontage Type	Edge Structure	Ornamental Fence	Privacy Fence	Planters	Landscaped Edge
	EE-1	EE-2	EE-3	EE-4	EE-5
Storefront	P	P	X	P	P
Arcade	P	P	X	P	P
Urban	P	P	X	P	P
Stoop	P	P	X	P	P
Porch	P	P	X	X	P
Lightwell	P	P	X	X	X
Forecourt	P	P	X	P	P
Mid Block	P	P	P	P	P

P = Permitted; X = Prohibited

\* Additional building standards for railing may apply.

\*\* Privacy fences shall be used for screening of utility and service areas and shall be no taller than 6 feet.

**331-175.11F(3) EDGING ELEMENT STANDARDS**

Edging Elements shall be designed to define and enclose the edge of the Public Frontage and create a transition onto a site.

Edging elements	ID	Description	Maximum Height	Prohibited Material
Edge Structure	EE-1	A low masonry wall, platform or stair.	42"	-
Ornamental Fence	EE-2	A semi-transparent fence.	42"	Chain Link
Privacy Fence	EE-3	An opaque fence or wall for screening utility and service areas.	72"	Chain Link
Planters	EE-4	Landscaped planters with spacing of not less than 8' clear.	72"	-
Landscaped Edge	EE-5	A hedge or row of plants and/or flowers.	42"	-

**175.11G BUILDING HEIGHT**

- (1) Ground floor uses with Storefront, where required, shall have a minimum clear height of 10 feet.
- (2) The following Height Exceptions shall be permitted:
  - (a) Buildings less than two stories shall be permitted by the Planning Board only when located in areas of civic space.
  - (b) Open railings, planters, skylights, church steeples, greenhouses, parapets, and firewalls may extend up to 4 feet above the maximum height limit with unlimited rooftop coverage.
  - (c) Solar collectors may extend up to 7 feet above the maximum height limit, with unlimited rooftop coverage.
  - (d) The following structures may extend up to 20 feet above the maximum height limit, as long as the combined total coverage of all features listed in this subsection does not exceed 20 percent of the roof area including one or more of the following:
    - [1] "green" energy production or reduction equipment (e.g. -solar collectors, wind turbines, solar hot water systems)
    - [2] stair and elevator penthouses
    - [3] mechanical equipment
    - [4] greenhouses, urban agriculture structures, and solariums
    - [5] play equipment and open-mesh fencing that encloses it, as long as fencing is at least 15 feet from the roof edge
    - [6] minor communication utilities and accessory communication devices
    - [7] cupolas and church steeples
- (3) Building Height at Stepbacks
  - (a) See Sec 175.11E(4) for maximum building height at building stepbacks.

**175.11H PROJECTIONS AND ENCROACHMENTS**

- (1) Building projections shall be permitted to encroach into a required front, side or rear yard setback, or across a Build-To-Line provided that:
  - (a) Structural encroachments shall provide a minimum of 14 feet of clearance over a public sidewalk or right of way.
  - (b) Architectural encroachments such as cornices or canopies that are not occupied space shall provide a minimum of 10 feet of clearance over a public sidewalk or right of way.
  - (c) Projections shall not be included in the calculation of building or impervious coverage.
- (d) Signs, awnings, overhangs and similar elements, if determined by the Planning Board to be consistent with the regulations and intent of the frontages, may encroach beyond a Build-To-Line.
- (e) Stairs and hand railings may project beyond the Build-To-Line for up to 2 feet provided they do not project into the Pedestrian Clearway and they are not closer to the street than the front lot line.
- (f) Porches and stoops may project beyond the Build-To-Line for up to 3 feet provided they do not project into the Pedestrian Clearway and they are not closer to the street than the front lot line.

**175.11I. PARKING REQUIREMENTS**

(1) Parking requirements for development in the Downtown Overlay Zone District shall be determined by Article XIV - Off-Street Parking and Loading. Section 331-126 identifies an overlay district called the Central Parking Area (CPA) that establishes alternate parking standards appropriate for the Downtown Overlay Zone in Section 331-125 through 331-126.G.

(2) On-Site Parking Placement

- (a) There shall be no parking at the sidewalk level within the Build-To-Zone unless the Planning Board determines that such parking is incidental.
- (b) There shall be no parking within a building at the sidewalk level within the Private Frontage unless the Planning Board determines that such parking is incidental.

**175.11J SUSTAINABLE DEVELOPMENT STANDARDS**

(1) All Sites shall comply with Potable Water Consumption Reduction and Heat Island Reduction standards.

**175.11J(2) POTABLE WATER CONSUMPTION REDUCTION**

(a) Outdoor Potable Water Consumption

[1] Minimum reduction for potable water consumption for outdoor landscape irrigation shall be 50% from a calculated midsummer baseline case.

[2] Reductions may be attributed to any, but not limited to, combination of the following items:

- [a] Plant species, density and microclimate factor
- [b] Irrigation efficiency
- [c] Use of captured rainwater

[d] Use of recycled wastewater

[e] Use of water treated and conveyed specifically for non-potable uses.

[f] Use of other non-potable water sources such as storm-water, air conditioning condensate, and foundation drain water.

(b) Indoor Potable Water Consumption shall be limited to use of WaterSense high-efficiency products for faucets, toilets, and shower heads.

**175.11J(3) HEAT ISLAND REDUCTION**

(a) Minimum requirement of 50% heat island reduction for non-roof site hardscape (including sidewalks, courtyards, parking lots, parking structures, and driveways) shall be achieved through any combination of the following strategies:

- [1] Provide shade from open structures such as those supporting solar photovoltaic panels, canopied walkways, and pergolas
- [2] Have open grid pavement system (at least 50% pervious)
- [3] Provide shade from tree canopy (within five years of landscape installation)

(b) Minimum requirement for heat island reduction for roof areas shall be achieved through any combination of the following strategies:

[1] Use roofing materials that have a Solar Reflectance Index (SRI) equal to or greater than the values in the table below

for a minimum of 75% of the roof area surface of all new buildings within the project

Roof Type	Slope	SRI
Low-Sloped Roof	≤ 2:12	78
Steep-Sloped Roof	> 2:12	29

[2] Install a vegetated roof for at least 50% of the roof area of all new buildings within the project.

[3]. Combinations of SRI compliant and vegetated roof can be used provided that they collectively cover 75% of the roof area of all new buildings.

**175.11K. WATERFRONT ACCESS FEE**

In order to ensure adequate access to the City's waterfront, a waterfront access fee shall be required on a per unit basis, initially set at \$5,000 per residential dwelling unit in DO-1 -through DO-6 and \$10,000 per residential dwelling unit in DO-7, and adjusted by the City Council as needed.

**175.11L. RESERVED**

**SECTION 331-175.12 RESERVED**

**SECTION 331-175.13 RESERVED**

**SECTION 331-175.14 ADMINISTRATION**

**175.14A APPLICATION REVIEW PROCESS FOR THE DOZ**

Prior to the filing of an application for site plan approval for a use or development under the Downtown Overlay Zone regulations, the Applicant or designated representative shall meet in person with the Commissioner of Development, or designated representative, to discuss the proposed site plan, so that the necessary steps may be undertaken with a clear understanding of the Planning Board's attitude and requirements in matters of site development.

A site plan and accompanying documents, as specified in § 331-119, shall be prepared by the Applicant or designated representative in accordance with the general requirements and design standards specified in the Downtown Overlay Zone. The Applicant shall also submit preliminary worksheet, and Environmental Disclosure per 175.14C, in a format acceptable to the Department of Development, identifying which development standards from Section 175.11C the Applicant is seeking approval and which Community Benefit Bonuses from 175.11C the Applicant is seeking approval.

In DO-7, applicants seeking to use Community Benefit Bonuses from 175.11C under Development Standard 3 for additional height of a 6th story shall submit viewshed and shadow analyses

prepared in accordance with the Future Actions section of the SEQRA Statement of Findings associated with this zoning for City Council review.

The Applicant shall submit the required preliminary architectural facade elevations and plans to the Department of Development for preliminary review comments by the Professional Architectural Review Committee.

The Commissioner of Development, or designated representative, shall review the site plan and accompanying documents to ascertain what development standard will apply to the project, and determine general conformity with the Downtown Overlay Zone regulations. The Commissioner of Development, or designated representative, will meet with the Applicant or designated representative with regard to changes deemed advisable and the kind and extent of improvements to be made and with regard to the need for applying to the Zoning Board of Appeals prior to submitting official application to the Department of Development.

**175.14B PLANNING BOARD REVIEW**

After the required pre-submission meeting outlined in Section 175.14-A, formal application for site plan approval shall be submitted to the Department of Development. The Department of Development shall promulgate administrative procedures for formal details on submission requirements. The Department may distribute prints to City departments for review and comments.

Where required, the Board shall hold a public meeting on the site plan which shall be coordinated with any hearings held pursuant to the State Environmental Quality Review Act.

**175.14C ENVIRONMENTAL DISCLOSURE REPORTING**

- (1) To achieve practical, results-oriented, and realistic goals in lowering greenhouse gas emissions, each Applicant seeking Site Plan Review shall include environmental disclosure on project-related emissions.
- (2) The disclosure reporting period starts at the site plan review, and continues during construction and building occupancy, and requires annual reporting and monitoring of energy, water, and waste usage. The disclosure needs to identify opportunities for improvements, goals for further greenhouse gas emission reductions, and, where applicable, an explanation as to why further reductions are not feasible.
- (3) These disclosures should be mandatory with fines for non-compliance.



**175.14C RESERVED**

**175.14D SUBMISSION REQUIREMENTS**

- |   |  |
|---|--|
| <p>(1) A Pre-Submission meeting as identified in Section 331-175.14.A is required.</p> <p>(2) The site plan and accompanying documents, shall be prepared as specified in Section 331-119.</p> <p>(3) All Site Plan applications shall comply with Section 331-117.1 Architectural Review of site plans and Major Subdivisions by professional architects required.</p> | <p>(4) All developments shall comply with the Fee schedule established and amended from time to time in Section 133.</p> |
|---|--|

**175.14E SITE PLAN AMENDMENTS**

Proposed amendments to site plans shall be presented first to the Commissioner of Development, or designated representative, who shall determine whether they will require a pre-submission conference and review and approval by the Planning Board (for major amendments) or an expedited review and administrative approval by the Commissioner of Development (for minor amendments).

The Planning Board may establish and adopt criteria for determining the degree of change to a site plan that triggers the need for a new application and full approval process.

**175.14F DURATION OF APPROVALS**

All development proposals approved under this Article shall remain valid for a period of two years from the date of site plan approval and an Applicant shall obtain necessary building permits and other approvals from permitting agencies and commence construction within such time period. Such approvals shall expire after two years unless the Applicant can show good cause for its failure to obtain a building permit, in which case an extension of up to one year may be granted by the Planning Board. If construction is

suspended for a period greater than six months, the Planning Board shall be empowered to notify the Applicant and revoke the approval if such suspension is not found to be for good cause.

**SECTION 331-175.15. RESERVED**

**SECTION 331-175.16. COMPLIANCE WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)**

- A. In accordance with the State Environmental Quality Review Act (SEQRA) and the regulation issued thereunder, the City Council has accepted and approved a Draft and Final Generic Environmental Impact Statement (SGEIS) and a Statement of Findings which analyze the potential environmental impacts of adoption of this DOZ. The Statement of Findings, summarizes the City Council’s findings on these potential impacts and establishes conditions and thresholds for development under this Article and the extent to which further SEQRA review may be required for site-specific impacts of projects to be built under the terms of this Article.
- B. The Findings Statement includes conditions and thresholds for the entire DOZ. All development within the DOZ that is subject to SEQRA shall comply with the conditions and thresholds in the Findings Statement.

**SECTION 331-175.17 RESERVED**

**SECTION 331-175.18 AMENDMENTS TO THIS ARTICLE**

This Article may be amended from time to time in accordance with State Environmental Quality Review Act. Prior to adopting an amendment, the City Council shall refer such proposed amendment to the Planning Board and the Master Developer (if the Master Developer Agreement remains in full force and effect) for comment. If comments are not received within 30 days of such referral, the City Council may enact the amendment without receiving such comment. All such amendments shall be consistent with the Recommended Action Plan and the Statement of Findings.

**SECTION 331-175.19 RESERVED**

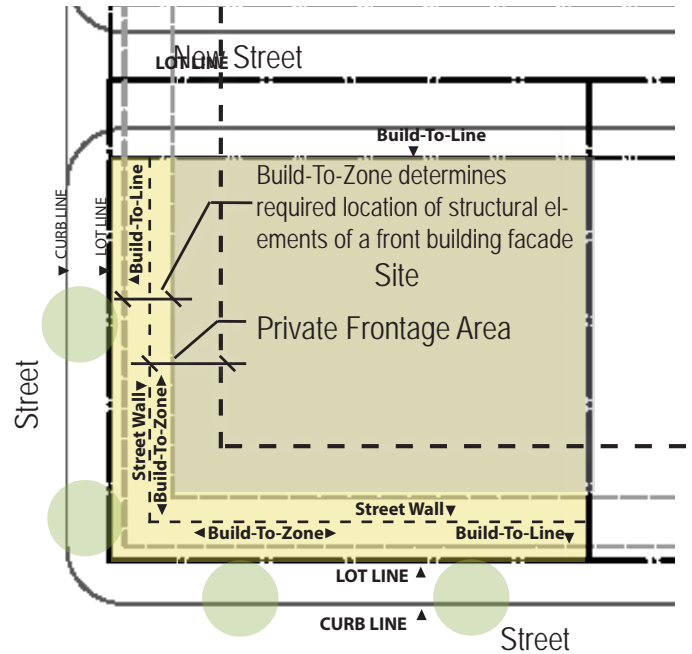
**SECTION 331-175.20 RESERVED**

SECTION 331-175.21 DOZ ILLUSTRATIONS - FOR REFERENCE ONLY

175.21 DOZ ILLUSTRATIONS

A. Section 175.21 provides illustrations, for reference only, to assist applicants in applying the standards for the Downtown Overlay Zone. The figures in this section are provided as a courtesy to applicants and do not supersede or modify the standards established in other sections of 331-175.

175.21B SITE DEVELOPMENT DIAGRAM



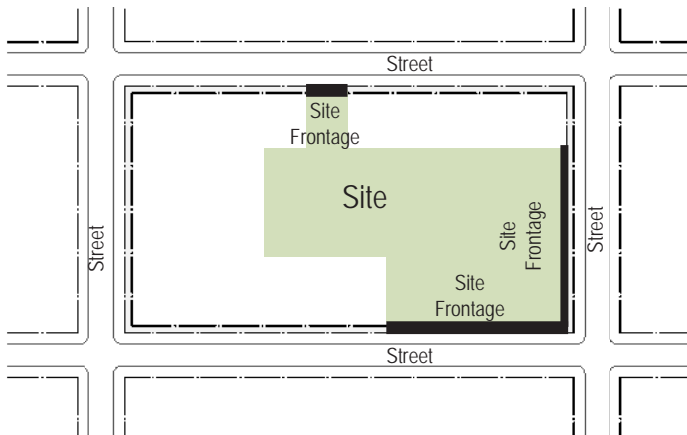
175.21C SITE FRONTAGE

FRONTAGE, SITE

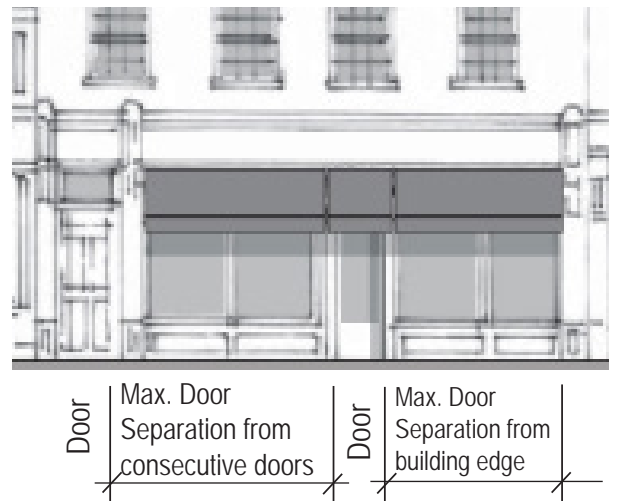
The length of a Site fronting on a Street or Pedestrian Way, measured in feet along the Build-To-Line.

FRONTAGE, TOTAL SITE

The sum of all Site Frontages facing one or more Streets, measured in feet, located on one contiguous Development Site, excluding frontages along Pedestrian Ways.

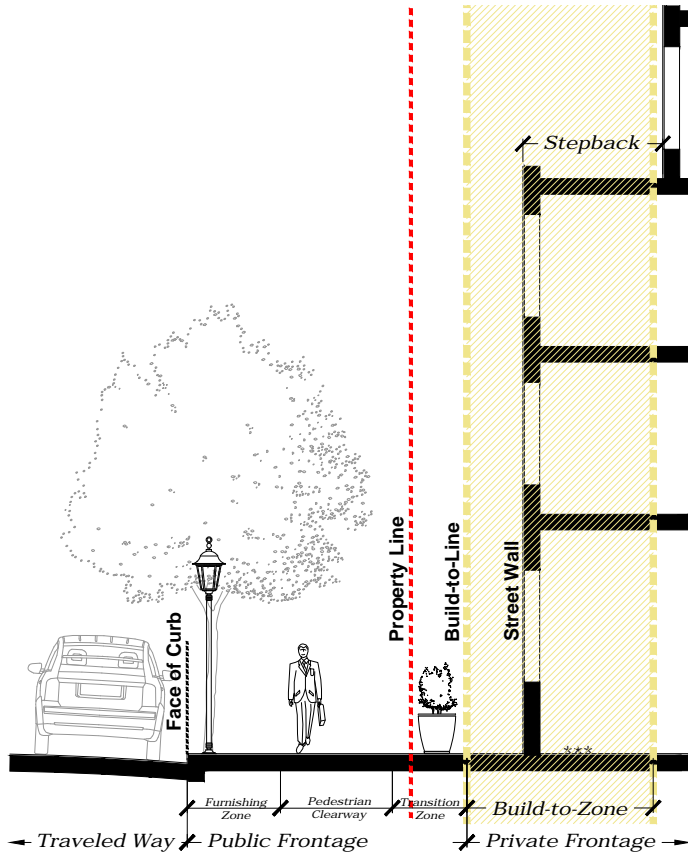


175.21D FREQUENT ENTRYWAYS



**175.21E PUBLIC FRONTAGE**

(1) Public Frontages shall consist of the following elements:



(2) LANDSCAPE AND FURNISHING ZONE

- (a) The area closest to the face of curb determined by the Street Type.
- (b) Allows for placement of parking fee meters, street signage, street lighting, bike racks, refuse receptacles, etc.
- (c) Allows for street trees and bio-retention areas.
- (d) Allows for transit stop waiting and enclosure areas.
- (e) Allows for seating furniture (benches) and extended outdoor dining areas.

(3) PEDESTRIAN CLEARWAY ZONE

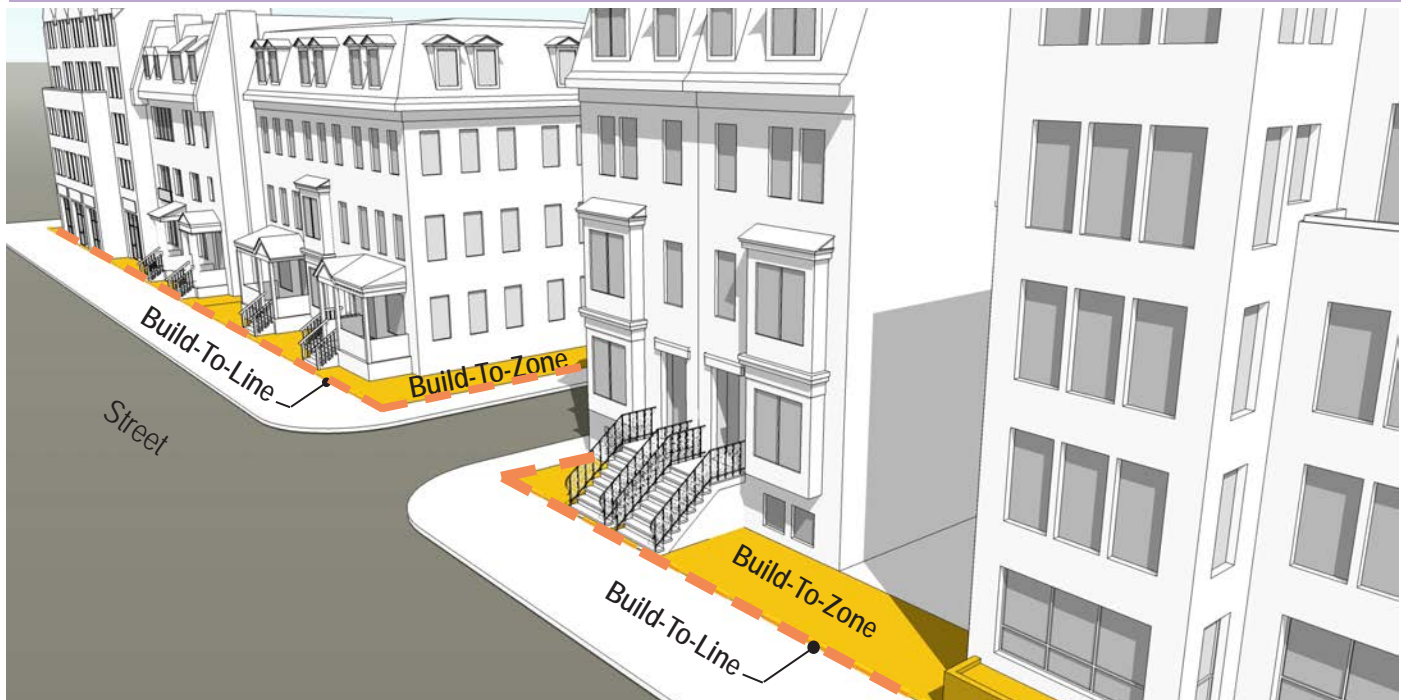
- (a) The area between the Landscape and Furnishing Zone and Transition Zone as determined by Street Type
- (b) Allows for the clear passage of pedestrians

(4) TRANSITION ZONE

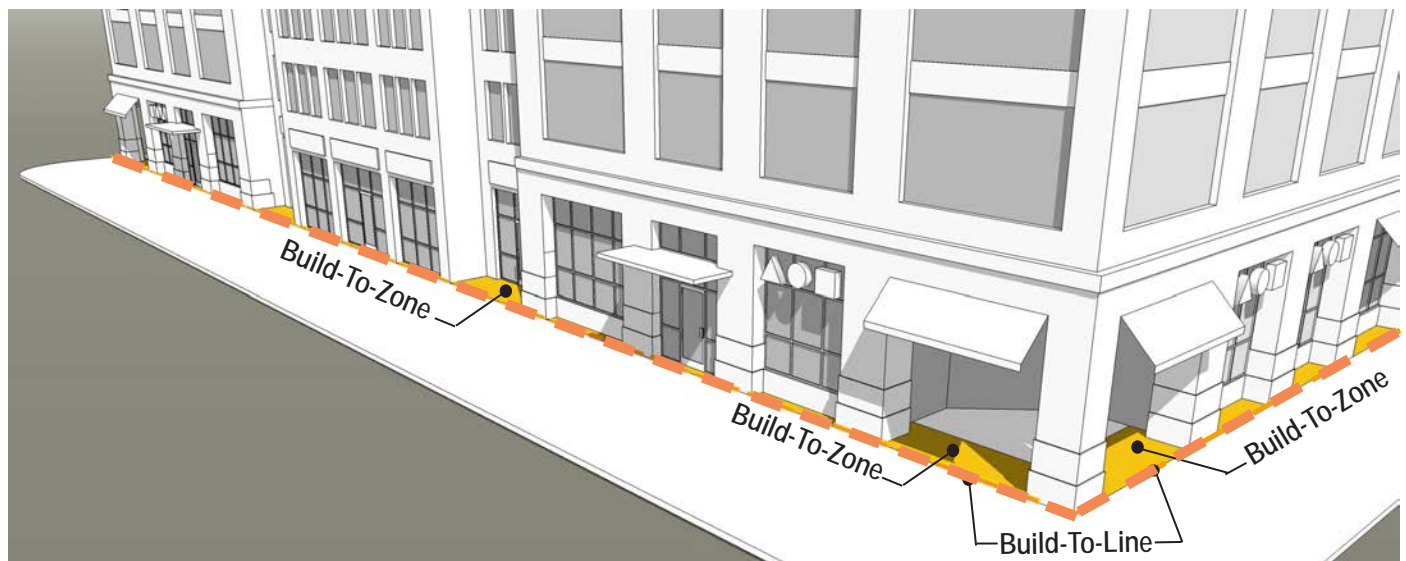
- (a) The area between the Pedestrian Clearway and the Build-To-Line.
- (b) Allows for placement of building fixtures (lighting, signage, projected architectural moulding etc), removable planters, and signage boards.
- (c) Serves as an extended entrance and storefront interaction area.
- (d) Allows for seating furniture (benches) and extended outdoor dining or landscaped areas.

(5) BUILD-TO-ZONE

175.21F BUILD-TO-ZONE



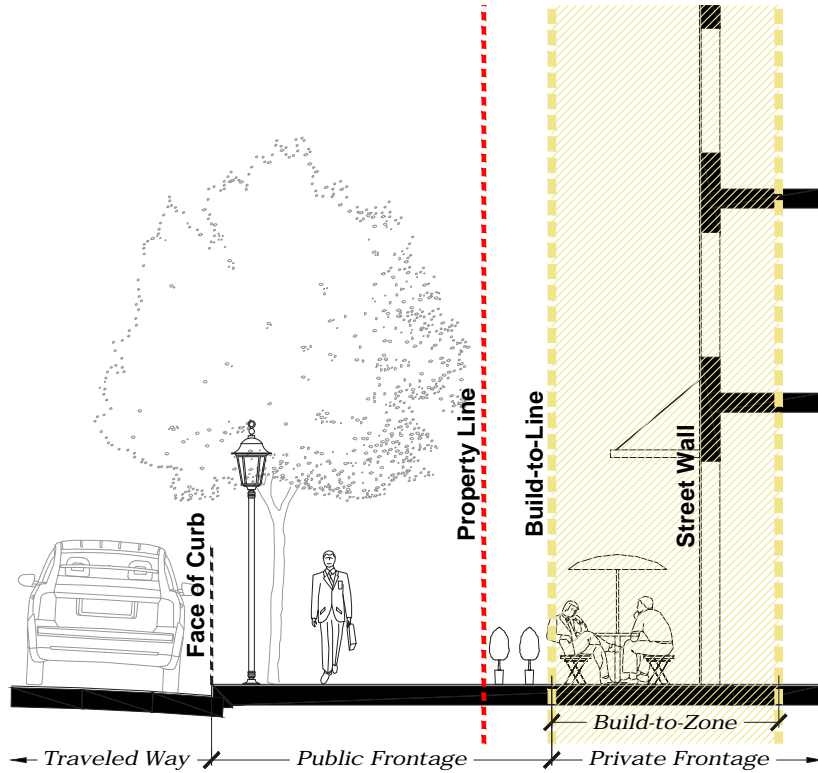
Street Frontages showing a typical Ten Foot Build-To-Zone on a typical residential street



Street Frontages showing a typical Five Foot Build-To-Zone

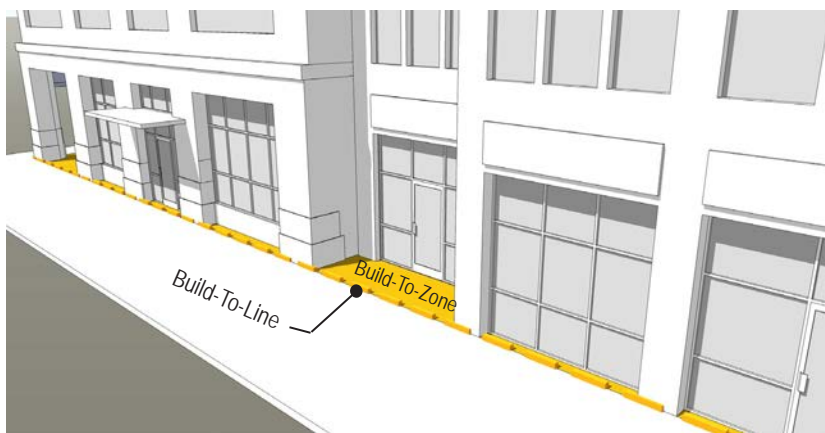
175.21G(1) STOREFRONT FRONTAGE

175.21G(1)(a) STOREFRONT FRONTAGE

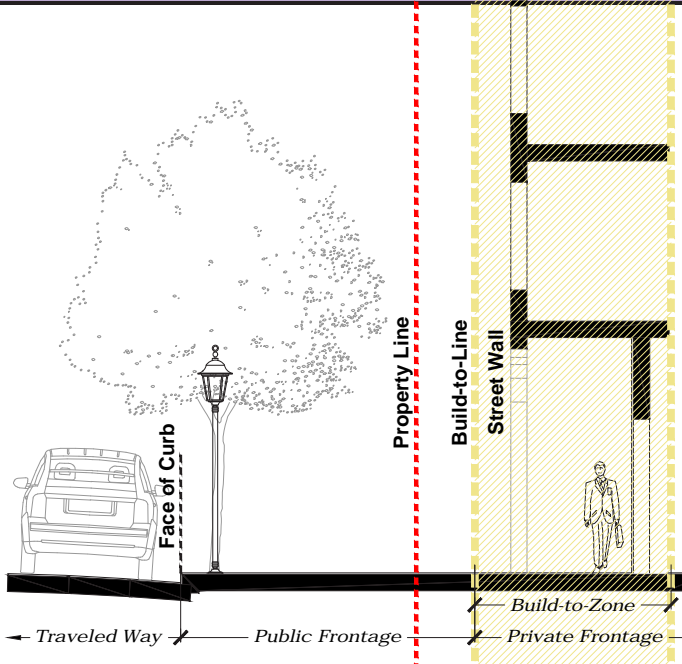


(c) Storefront Frontage is a private Frontage primarily for retail or restaurant use, with substantial glazing and Active Edge, complying with Storefront Frontage or Arcade Frontage requirements.

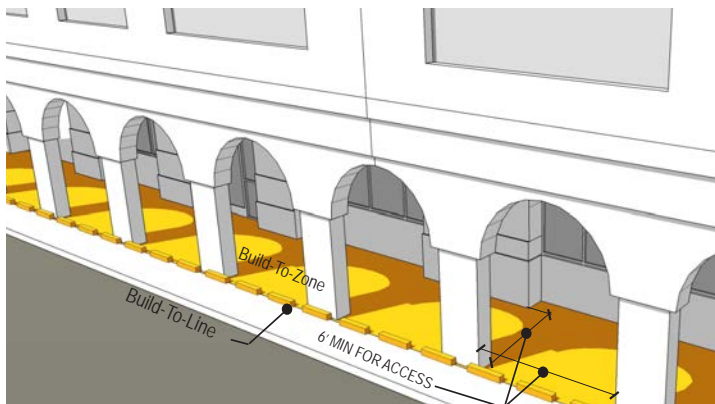
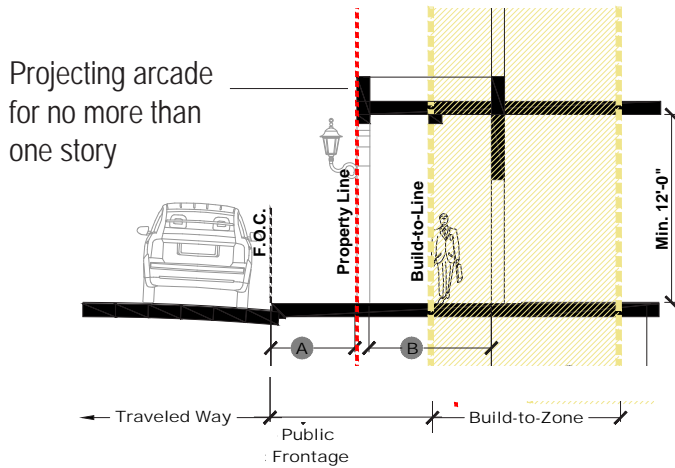
175.21G(1)(b) STOREFRONT FRONTAGE & BTZ



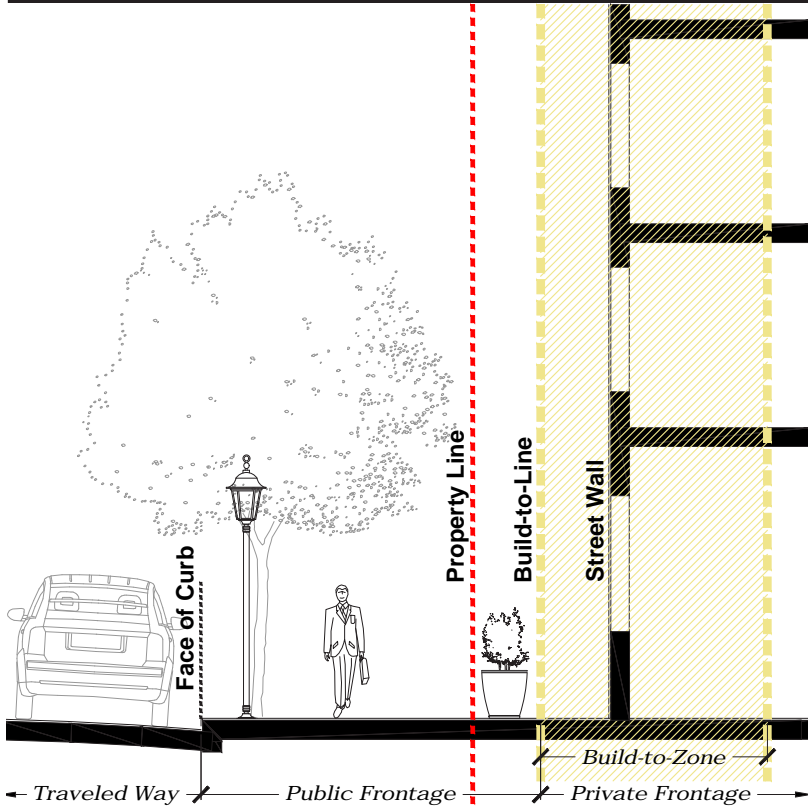
175.21G(2) ARCADE FRONTAGE



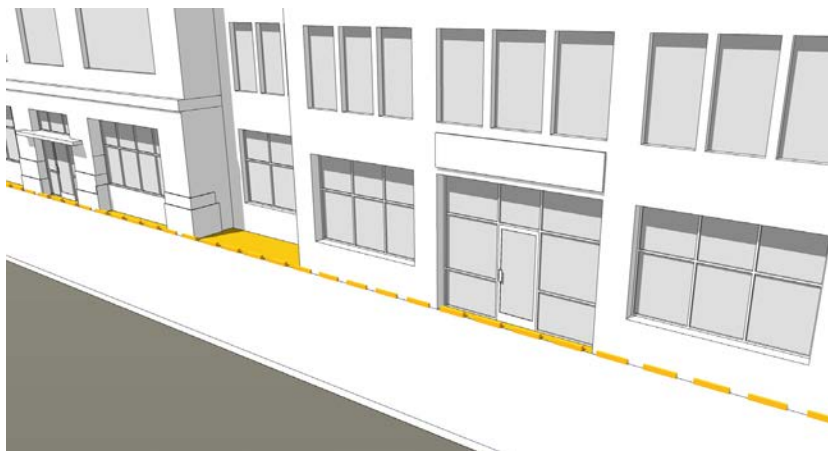
Arcade Frontage is a Private Frontage Type that has a series of arches or openings carried by columns or piers, and provides a covered walkway with access to adjacent storefronts.



175.21G(3) URBAN FRONTAGE

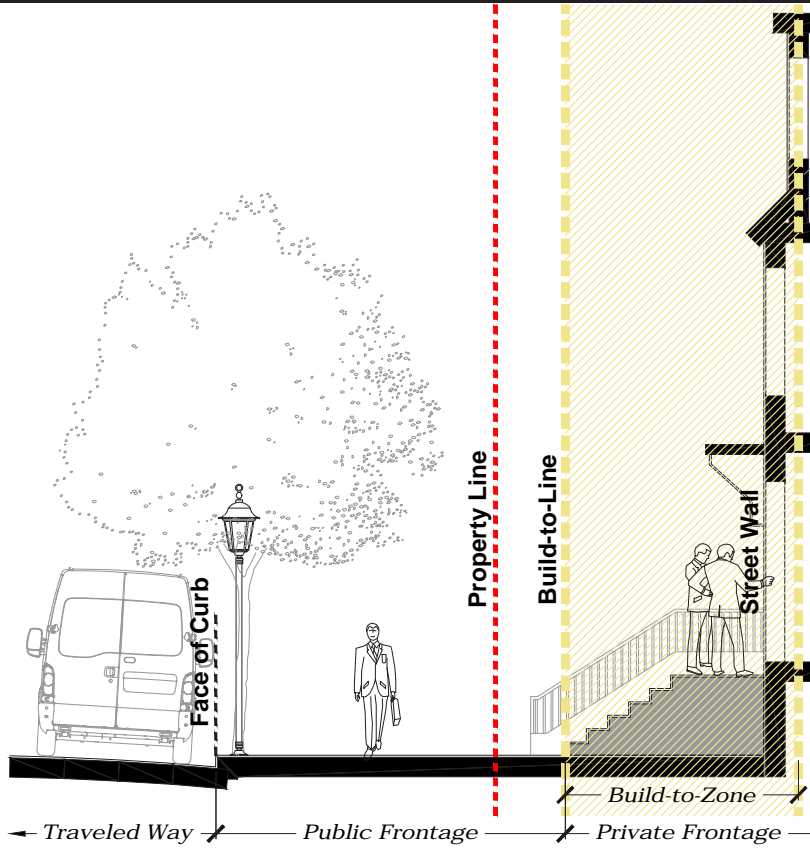


Urban Frontage is a Private Frontage type with less substantial Active Edge and glazing at the sidewalk level than Storefront Frontage.

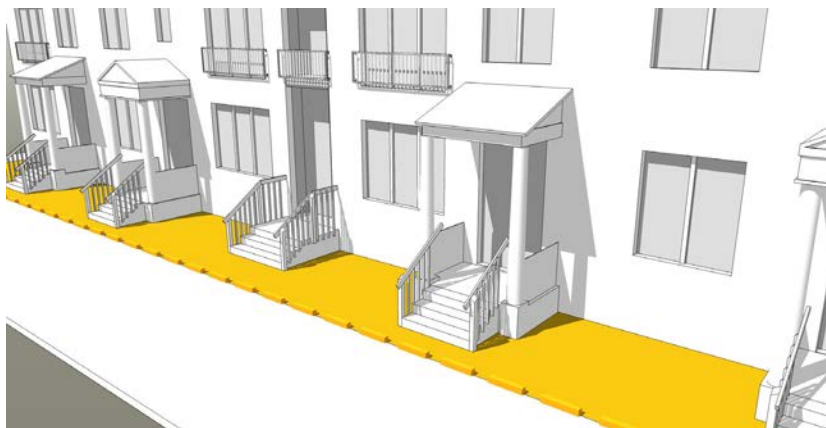




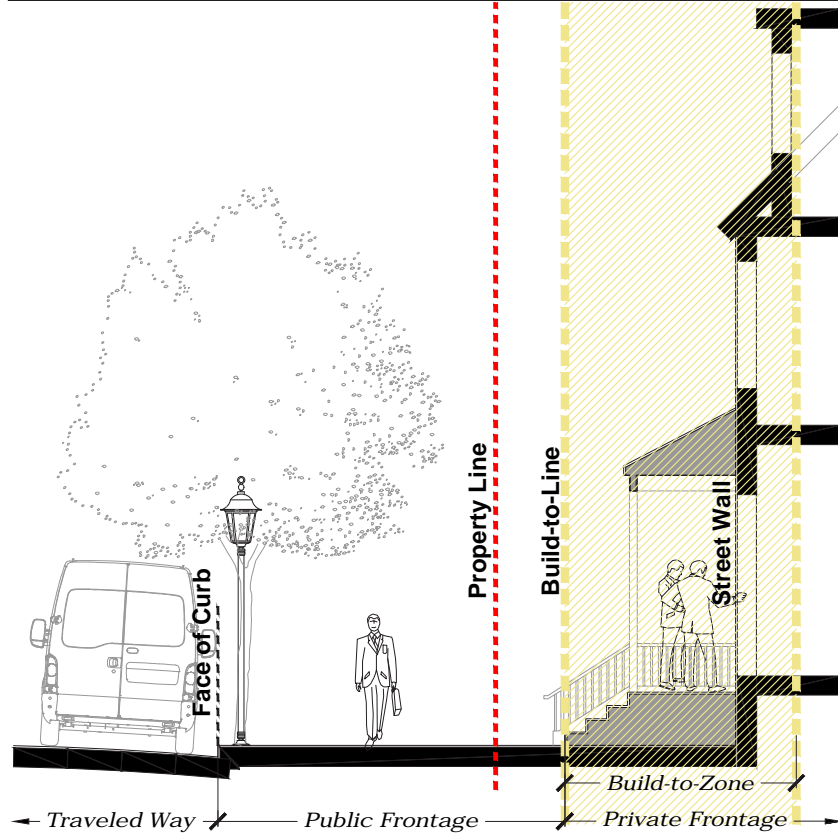
175.21G(4) STOOP FRONTAGE



Stoop Frontage is a Private Frontage type, typically residential, with elevated first floor to sufficiently secure privacy for the windows, with entrance accessed from an exterior stair and landing that may be a perpendicular or parallel to the sidewalk, located within Build-To-Zone



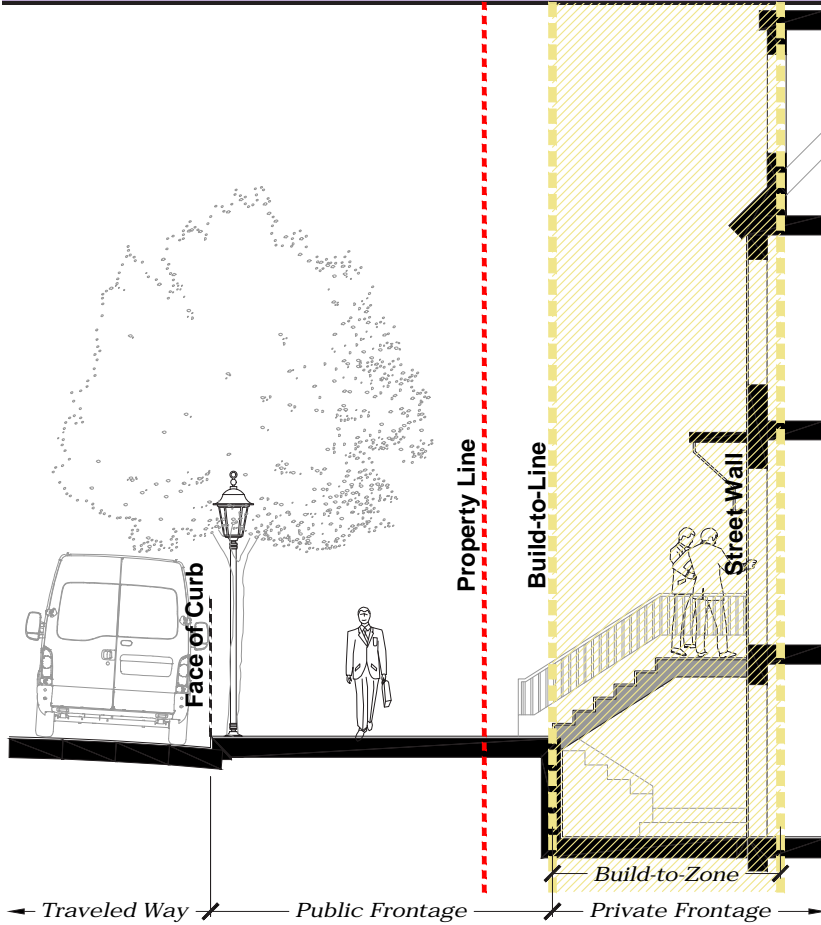
175.21G(5) PORCH FRONTAGE



Porch Frontage is a Private Frontage type, typically residential, where the façade is set back from an attached porch that may not be screened or glazed, and is no less than 5 feet deep.



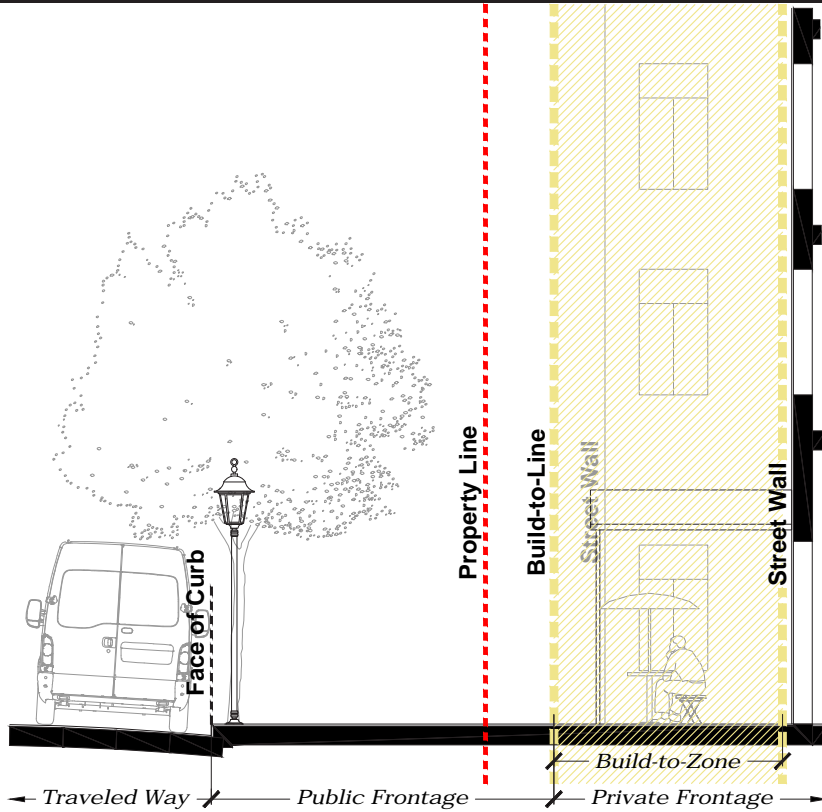
175.21G(6) LIGHTWELL FRONTAGE



Lightwell Frontage is a Private Frontage type, typically residential, where the façade is set back to allow for below-grade entrances or windows designed to allow light into basements.



175.21G(7) FORECOURT FRONTAGE



Forecourt Frontage is a Private Frontage type, where a portion of the building façade is set back to allow for large private gardens, bio-retention areas, or similar.

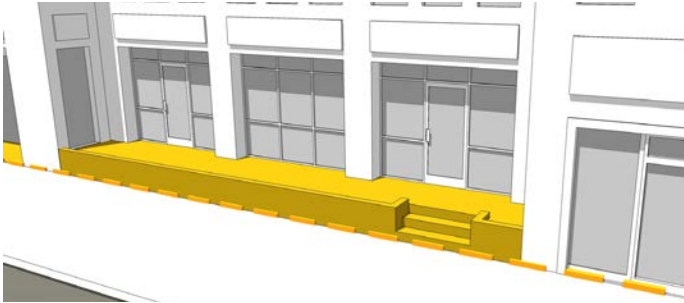


175.21G(8) MID-BLOCK FRONTAGE

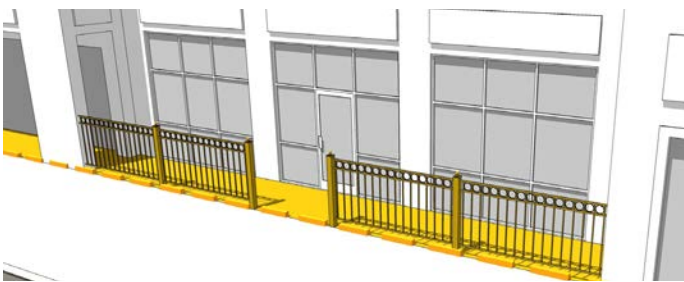
Mid-Block Frontage is a Private Frontage type with lower Frontage Occupancy, that permits courtyard, drop-off and parking areas with incorporated edging elements to screen the view from the street.



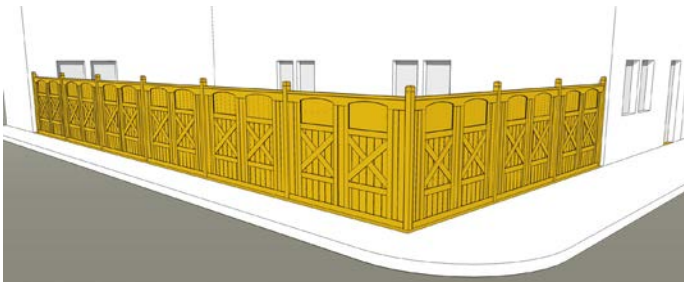
175.21H(1) EDGE STRUCTURE



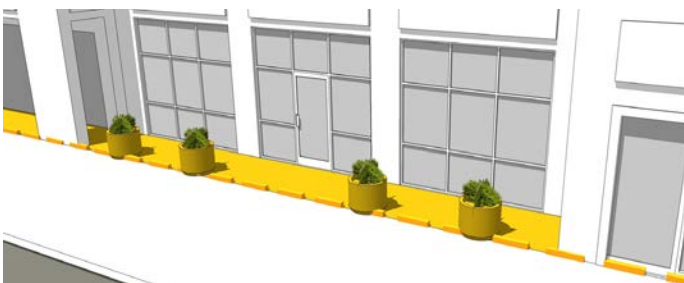
175.21H(2) ORNAMENTAL FENCE



175.21H(3) PRIVACY FENCE



175.21H(4) PLANTERS



175.21H(5) LANDSCAPED EDGE



## 8.10 General

### 8.10 General

#### 8.10.1 PURPOSE

- A.** The parking, mobility, and access regulations of this article are intended to protect the public health, safety, and general welfare by:
- (1) Promoting economically viable and fiscally beneficial use of land;
  - (2) Helping avoid the negative impacts that can result from requiring or allowing excessive supplies of off-street parking (e.g., impervious surfaces, stormwater runoff, heat island affect, visual environment, parking encroachment into stable neighborhoods);
  - (3) Promoting bicycling and other forms of active transportation; and
  - (4) Otherwise helping ensure safe mobility and transportation access options for city residents and visitors.

### 8.20 Motor Vehicle Parking

#### 8.20.1 MINIMUM RATIOS

This zoning code does not establish minimum off-street parking requirements (note: accessible parking spaces to serve persons with disabilities may be required in accordance with the state building code).

#### 8.20.2 MAXIMUMS

New and expanded uses may not provide off-street motor vehicle parking in excess of the maximum parking ratios established in [Table 8-1](#), unless approved through the special permit approval procedures of [11.50](#). Spaces located within parking structures are not counted in determining compliance with these parking maximums. No parking

**Table 8-1. Maximum Motor Vehicle Parking**

USE	MOTOR VEHICLE PARKING SPACES (MAXIMUM)
<b>COMMERCIAL</b>	
Office	4 per 1,000 sq. ft.
<b>Retail &amp; Entertainment</b>	
Retail Sales	4.5 per 1,000 sq. ft.
Eating and Drinking	8 per 1,000 sq. ft.
General Entertainment	1 per 4 seats or 10 per 1,000 sq. ft.
<b>Live Entertainment Venue</b>	1 per 4 seats or 10 per 1,000 sq. ft.
<b>Consumer Service, Indoor</b>	3.5 per 1,000 sq. ft.
<b>Controlled Sales &amp; Service</b>	4 per 1,000 sq. ft.

sq. ft. = square feet of gross floor area

maximums apply to unlisted use types.

#### 8.20.3 PARKING AREA LOCATION AND DESIGN

The parking area location and design standards of this section apply to all off-street parking areas for motor vehicles, whether containing accessory or non-accessory motor vehicle parking spaces.

- A. Parking on Sidewalks.** Parking is prohibited on sidewalks and on sidewalk crossings of driveways.
- B. Parking in Yard Areas.** Parking is prohibited in yard areas except on approved driveways and parking pads that comply with all applicable regulations of this zoning code.
- C. Ingress and Egress.** All driveways and parking areas must be designed to allow vehicles to enter and exit a street and cross public sidewalks in a forward motion, except that this requirement does not apply to lots occupied by 5 or fewer dwelling units when motor vehicle access is to a local street.
- D. Driveway Widths.** Maximum driveway widths are established for each building type in [3.0](#). See also municipal code [Section 12.08.030](#) for additional regulations governing driveway approaches.
- E. Surfacing.**
- (1) **General.** All off-street parking areas and access drives must be surfaced and maintained with an asphaltic or Portland concrete pavement or other hard, dust-free surface approved by the city engineer.
  - (2) **Ribbon Driveways.** Ribbon (wheel strip) driveways are allowed on N-zoned lots containing no more than 2 dwelling units. Such driveways must consist of 2 paved wheel strips, each of which is at least 18 inches in width. A permeable surface, such as turf or ground cover plantings, must be maintained between the paved wheel strips. The driveway must be fully paved for its entire width within the public right-of-way, from the property line to the curbline.
- F. Drainage and Stormwater.** Surfacing, curbing, and drainage improvements for all parking and loading facilities must be sufficient to provide adequate drainage and to preclude the free flow of water onto adjacent properties and public rights-of-way. Stormwater management must be provided in accordance with the city's *Stormwater Management Manual*.
- G. Landscape and Screening.** See [7.100](#) and [7.110](#).

## Senate Bill No. 167

### CHAPTER 368

An act to amend Section 65589.5 of the Government Code, relating to housing.

[Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 167, Skinner. Housing Accountability Act.

(1) The Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner than renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based upon substantial evidence in the record.

This bill would require the findings of the local agency to instead be based on a preponderance of the evidence in the record.

(2) The act authorizes a local agency to disapprove or condition approval of a housing development or emergency shelter, as described above, if, among other reasons, the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with specified law.

This bill would specify that a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete does not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(3) The act defines various terms for purposes of its provisions, including the term "housing development project," which is defined as a project consisting either of residential units only, mixed-use developments consisting of residential and nonresidential units, or transitional housing or supportive housing. For a mixed-use development for these purposes, the act requires that nonresidential uses be limited to neighborhood commercial uses, as defined, and to the first floor of buildings that are 2 or more stories.

This bill would instead require, with respect to mixed-use developments, that  $\frac{2}{3}$  of the square footage be designated for residential use.

(4) If a local agency proposes to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria, or to approve it on the condition that it be developed at a lower density, the act requires that the local agency base its decision



upon written findings supported by substantial evidence on the record that specified conditions exist.

This bill would specify that a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision for purposes of the above-described provisions if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity. The bill, if the local agency considers the housing development project to be inconsistent, not in compliance, or not in conformity, would require the local agency to provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity within specified time periods. If the local agency fails to provide this documentation, the bill would provide that the housing development project would be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. By requiring local agencies to provide documentation related to disapprovals of housing development projects, this bill would impose a state-mandated local program.

(5) The act authorizes the project applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, as defined, to bring an action to enforce its provisions.

This bill would entitle a housing organization to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce the act.

(6) If a court finds that the local agency disapproved, or conditioned approval in a manner that renders infeasible the project or emergency shelter or housing for very low, low-, or moderate-income households without making the required findings or without making sufficient findings, the act requires the court to issue an order or judgment compelling compliance with its provisions within 60 days, including an order that the local agency take action on the development project or emergency shelter and awarding attorney's fees and costs.

This bill would additionally require the court to issue an order compelling compliance with the act, as described above, if it finds that either the local agency, in violation of a specified provision of the act, disapproved or conditioned approval of a housing development project in a manner rendering it infeasible for the development of an emergency shelter or certain housing without making the required findings or without making findings supported by a preponderance of the evidence, or, the local agency, in violation of another specified provision of the act, disapproved a housing development project complying with specified standards and criteria or imposed a condition that the project be developed at a lower density, without making the required findings or without making findings supported by a preponderance of the evidence. The bill would authorize the court to issue

an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development project or emergency shelter in violation of the act.

(7) The act authorizes the court to impose fines if it finds that a local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter and failed to carry out the court's order or judgment compelling compliance within 60 days of the court's judgment. The act requires that the fines be deposited into a housing trust fund and committed for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

This bill, upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with these provisions within 60 days, would instead require the court to impose fines, as described above, in every instance in which the court determines that the local agency disapproved, or conditioned approval in a manner that renders infeasible, the housing development project or emergency shelter without making the required findings or without making sufficient findings. The bill would require that the fine be in a minimum amount of \$10,000 per housing unit in the housing development project on the date the application was deemed complete. In determining the amount of fine to impose, the bill would require the court to consider the local agency's progress in attaining its target allocation of the regional housing need and any prior violations of the act. The bill would authorize the local agency to instead deposit the fine into a specified state fund, and would also provide that any funds in a local housing trust fund not expended after 5 years would revert to the state and be deposited in that fund, to be used upon appropriation by the Legislature for financing newly constructed housing units affordable to extremely low, very low, or low-income households. If the local agency has acted in bad faith and failed to carry out the court's order, as described above, the bill would require the court to multiply the fine by a factor of 5.

This bill would also require that a petition to enforce the act be filed and served no later than 90 days from the later of (a) the effective date of a decision of the local agency imposing conditions on, disapproving, or taking any other final action on a housing development project or (b) the expiration of certain time periods specified in the Permit Streamlining Act.

(8) In order to obtain appellate review of a trial court's order, the act requires a party to file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow.

This bill would allow a party to instead appeal a trial court's order or judgment to the court of appeal pursuant to specified law.

(9) This bill would make various technical and conforming changes to the Housing Accountability Act.

(10) This bill would incorporate additional changes to Section 65589.5 of the Government Code proposed by AB 1515 to be operative only if this bill and AB 1515 are enacted and this bill is enacted last.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval

in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by

Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons

and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) “Disapprove the housing development project” includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, “lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to impose a

condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, “lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an



emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars (\$10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate

Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, “housing organization” means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney’s fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court’s order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, “bad faith” includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of

a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 1.5. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic

opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California’s overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only half of California’s households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state’s cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California’s cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California’s housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-

and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction’s housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate

the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) “Housing for very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) “Disapprove the housing development project” includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.



(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, “lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, “lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney’s fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, “lower density” includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars (\$10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency’s progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, “housing organization” means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to

housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 65589.5 of the Government Code proposed by both this bill and Assembly Bill 1515. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65589.5 of the Government Code, and (3) this bill is enacted after Assembly Bill 1515, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.



# Cambridge City MA

Ordnained as Amended  
Oct 24, 2022 5:30 PM

## Policy Order POR 2022 #19

**That section 6.36 entitled, Schedule of Parking and Loading Requirements, of Article 6.000, entitled OFF STREET PARKING AND LOADING REQUIREMENTS AND NIGHTTIME CURFEW ON LARGE COMMERCIAL THROUGH TRUCKS, of the Zoning Ordinance of the City of Cambridge be amended (Ordinance #2022-5) PASSED TO A SECOND READING AS AMENDED ON OCTOBER 3, 2022. TO BE ORDAINED ON OR AFTER OCTOBER 24, 2022 EXPIRES NOVEMBER 1, 2022**

### Information

<b>Department:</b>	City Clerk's Office	<b>Sponsors:</b>	Councillor Burhan Azeem, Councillor Quinton Zondervan, Vice Mayor Marc C. McGovern
<b>Category:</b>	Policy Order		

### Attachments

- [Printout](#)
- [Parking Minimums Maximums Policy Order](#)
- [Ordinance #2022-5 Original Policy Order Parking Minimums](#)
- [Original Policy Order #4](#)
- [Ordinance # 2022-5 -Amend Article 6.000 \(Parking Requirements\)](#)
- [Ordinance # 2022-5 - Amend Article 6.000 \(Parking Requirements\)](#)

### Body

- WHEREAS:** Some residents in Cambridge drive and benefit from off-street parking spaces; not every resident, however, drives a car, and so the City should not require, but still allow, homes to have off-street parking spaces; and
- WHEREAS:** Parking minimums can force homeowners and residential & commercial developers to accommodate space for more parking than they deem necessary, leading to higher project costs and a decrease in the number of units or amount of open space; and
- ORDERED:** That the Zoning Ordinance of the City of Cambridge be amended by substitution as follows:  
**6.30 - PARKING QUANTITY REQUIREMENTS**  
 6.31 Required Amount of Parking. Off street parking facilities shall be provided for each use of a lot or structure in the amount specified in the schedule of parking requirements contained in Subsection 6.36. Said schedule specifies the amount of accessory off street parking required for each type of land use listed in "Table of Use Regulations" in this Ordinance. The amount of required parking is also based on the intensity of development permitted in the district in which the use is located. Notwithstanding any other provision in the zoning, the minimum accessory parking required for all uses shall be zero (0) parking spaces, including in all overlay districts.
- a. Developers building more than 4 units of housing and/or Projects subject to Article 19 (Project Review Special Permit) shall provide a written report as part of the public record and permitting process detailing the number of proposed parking and loading spaces, and

how that number was determined, including any surveys, parking demand studies or other research that was conducted.

b. The Community Development Department shall provide the City Council with an impact report no later than July 2025 detailing the number of parking spaces and residential housing units that were added subsequent to the adoption of this provision. and any discernible impacts the ordinance has had on the availability of on-street parking.

## Meeting History

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**Feb 7, 2022 5:30 PM**      **City Council**      **Regular Meeting**

DS

**RESULT:**    **CHARTER RIGHT**

*Next: 2/28/2022 5:30 PM*

**Feb 28, 2022 5:30 PM**      **City Council**      **Regular Meeting**

referred to the transportation and public utilities committee by azeem

**RESULT:**    **REFERRED TO COMMITTEE [UNANIMOUS]**

**YEAS:**      Paul F. Toner, Dennis J. Carlone, Patricia Nolan, Alanna Mallon, Marc C. McGovern, Sumbul Siddiqui, E. Denise Simmons, Burhan Azeem, Quinton Zondervan

**Jun 27, 2022 5:30 PM**      **City Council**      **Regular Meeting**

TO THE ORDINANCE COMMITTEE AND PLANNING BOARD FOR HEARING AND REPORT

**RESULT:**    **REFERRED TO COMMITTEE**

**Aug 3, 2022 5:30 PM**      **Ordinance Committee**      **Committee Meeting**

**Sep 21, 2022 5:30 PM**      **Ordinance Committee**      **Committee Meeting**

**Oct 3, 2022 5:30 PM**      **City Council**      **Regular Meeting**

AS AMENDED

**RESULT:**    **PASSED TO A SECOND READING**

*Next: 10/17/2022 5:30 PM*

**Oct 17, 2022 5:30 PM**      **City Council**      **Regular Meeting**

**RESULT:**    **NO ACTION TAKEN**

*Next: 10/24/2022 5:30 PM*

**Oct 24, 2022 5:30 PM**      **City Council**      **Regular Meeting**

**RESULT:**    **ORDAINED AS AMENDED [8 TO 1]**

**YEAS:**      Burhan Azeem, Alanna Mallon, Marc C. McGovern, Patricia Nolan, E. Denise Simmons, Paul F. Toner, Quinton Zondervan, Sumbul Siddiqui

**NAYS:**      Dennis J. Carlone

# 7.0 PARKING

## Parking Requirements

USES	REQUIRED NUMBER OF OFF-STREET PARKING SPACES
<b>Residential &amp; Lodging Uses</b>	
One-Unit Dwelling, Group Living for Health Reasons	Maximum 4 spaces per lot For One-Unit Dwelling Building in N-1-1, maximum 6 spaces per lot
2- & 3- Unit Dwelling, Multi-Unit Dwelling, Efficiency/Micro Unit	Maximum 2 spaces per unit
Bed & Breakfast, Hotel/ Apartment Hotel	Maximum 1.5 spaces per guest rooms
Temporary Shelter Facility	Maximum 1 space per bed
Group Living	In accordance with special permit review; guideline is maximum 1.5 spaces per adult resident, or for foster homes and children's homes guideline is maximum 2 spaces per 4 children residents
Residential Care	Maximum 1 space per bed (excluding bassinets)
Roominghouse/ Boardinghouse	In accordance with special permit review; guideline is maximum 1 space per rooming unit, plus maximum 1.5 spaces per dwelling unit of owner or manager
<b>Civic &amp; Institutional Uses</b>	
Hospital	In accordance with special permit review; guideline is maximum 1 space per bed (excluding bassinets)
Library/Museum	None
All Other Civic & Institutional Uses	In accordance with special permit review
<b>Open Space Uses</b>	
Park, River Uses, Urban Farm	In accordance with special permit review
<b>Retail Uses</b>	
Outdoor Sales Lot for Vehicles	1 space for each unregistered vehicle permitted to be sold, plus 1 additional space per minimum 10, maximum 5 such vehicles, reserved for visitors/ employees
All Other Retail Uses	Maximum 3 spaces per 1,000 square feet net floor area devoted to retail space

USES	REQUIRED NUMBER OF OFF-STREET PARKING SPACES
<b>Service Uses</b>	
Automobile Fueling & Limited Service, Automobile Service/Car Wash, Drinking Places, Entertainment Assembly, & Smoking Places	In accordance with special permit review or, if special permit not required, in accordance with site plan review
Eating Places	Maximum 3 spaces for every 5 persons based on maximum capacity
All Other Service Uses	Maximum 3 spaces per 1,000 square foot of net floor area devoted to customer service
<b>Adult Uses</b>	
Adult Establishment	In accordance with special permit review; guideline is minimum 1 space, maximum 3 spaces per 600 square feet net floor area devoted to retail space; OR for assembly-type uses: minimum 1 space for every 4 persons based on maximum capacity
<b>Employment Uses</b>	
All Employment Uses	Maximum 4 spaces per 1,000 square feet
<b>Infrastructure Uses</b>	
All Infrastructure Uses	In accordance with special permit review
<b>Industrial Uses</b>	
All Industrial & Warehouse Uses	Maximum 1 space per employee

### Notes:

These off-street automobile parking requirements shall not be applied to lots in the DT-1, DT-2, and DT-3 districts.

Where special permit review is required for particular projects, these off-street automobile parking requirements shall be used as guidance but are not binding.

Figure 7.2-A Required Off-Street Automobile Parking



*Local Law Filing*

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**Village of Port Chester, New York**

**Local Law No. 10 of 2024**

A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER,  
CHAPTER 345, “ZONING,” TO ADD A NEW SECTION 345.405.X, “PUBLIC PARKING  
INCENTIVE ZONING”

**Be it enacted by the Board of Trustees of the Village of Port Chester, New York as follows:**

SECTION 1: Purpose and Intent

The Village of Port Chester Comprehensive Plan was adopted on December 17, 2012. The Comprehensive Plan included goals and recommendations related to parking in the Village’s downtown, and identified the need for additional parking to addresses parking needs in the downtown as well as in the Village’s residential neighborhoods. The Comprehensive Plan suggested that the Village support the development of a multi-level parking structure in the Village’s downtown to meet the then-current and anticipated future demands of the Village’s residents and businesses.

As the need for additional parking in the Village’s downtown (as identified in the Comprehensive Plan) remains, the Village Board of Trustees has found it necessary to consider other ways to encourage the development of parking, including through the use of a public parking incentive. This Local Law would incentivize the creation of public parking within new developments in certain areas proximate to the Metro North train station, generally bounded by North Main Street, the Metro North Railroad right-of-way, Westchester Avenue, and Mill Street, through an incentive program whereby additional building height is granted in return for the provision of public parking within the development.

SECTION 2: The Code of the Village of Port Chester, Chapter 345, “Zoning,” Article 4, “Building and Lot Plans and Standards,” is hereby amended to add a new section 345.405.X., “Public Parking Incentive Zoning,” as follows:

(1) Legislative Intent. In accordance with the Village’s general zoning powers, including but not limited to, those granted by §7-703 of Village Law, the Village finds it necessary to provide for a system of zoning incentives in exchange for specific community benefits. The system defined herein is consistent with the Village’s Comprehensive Plan, as well as the Village’s planning efforts, which seek to continually balance economic development, the creation of new housing, the provision of public parking, and the minimization of environmental impacts.

(2) Lots designated in the CD-5 Character District and that are located west of North Main Street, east of the Metro North Railroad right-of-way, north of Westchester Avenue, and south of

Mill Street may make use of the following incentive system. This incentive shall be subject to the following standards and conditions, as well as all other requirements of this Chapter.

- a. Parcels/Lots shall earn two (2) additional stories of permitted height if they provide a number of “municipal parking spaces,” defined below, equal to at least one-half (50%) of the number of dwelling units proposed. In no case shall the maximum height of a building making use of this incentive program exceed eight (8) stories.
- b. Parcels/lots utilizing this incentive may reduce the amount of off-street parking required for multifamily residential uses to 1.0 space per dwelling unit.
- c. The “Municipal parking spaces” provided shall reduce the number of off-street parking spaces otherwise required on the Parcel/Lot owing to non-residential uses. A minimum of one off-street parking space per residential unit shall be provided in addition to any “municipal parking spaces.”
- d. Parcels/lots utilizing this incentive zoning shall comply with the following additional standards:
  - i. Façade articulation must include “stepbacks” along the building’s North Main Street frontage whereby the façade of the building, above a certain height, is set back from the frontage line. Required stepbacks include:
    - 1) The façade of the top-most story of the building facing North Main Street must be set back at least 10 feet from the frontage line.
    - 2) For buildings with at least 200 feet of frontage along North Main Street: At least 25% of the length of the building’s North Main Street frontage beginning with the second, third, or fourth story, and continuing to the top story, must be set back at least 25 feet from the frontage line.
  - ii. The “Municipal parking spaces” may not be accessed directly from North Main Street.
- e. “Municipal parking spaces,” for the purposes of this subsection only, shall mean off-street parking spaces for use by the general public in accordance with a Memorandum of Understanding (MOU), or similar instrument, executed among the Village Board of Trustees and a property owner or Applicant. Nothing herein shall require the Board of Trustees to enter into an MOU with a property owner or Applicant. The Board of Trustees retains the discretion to determine whether entering into an MOU pursuant to this section is in the best interest of the Village.
  - i. The MOU shall generally address the following items, which items may be subject to final agreement among the parties at a later date:
    - 1) The general characteristics of the proposed development within which the municipally available parking would be located.
    - 2) The general location of the municipally available parking spaces and the access thereto.
    - 3) The intended hours of operation and other access restrictions for the municipally available parking.
    - 4) General operating rules, including methods of collecting payment for the municipally available parking.
    - 5) The potential of revenue sharing for the municipally available parking.

- 6) Other items deemed necessary by the Board of Trustees.
- ii. The MOU shall be executed prior to Planning Commission action on the Site Plan.
- iii. An MOU (draft or final) shall not be a required element of determining the completeness of a site plan application for the purposes of commencing the application's review by an Approving Agency.

SECTION 3: The Code of the Village of Port Chester, Chapter 345, "Zoning," Article 4, "Building and Lot Plans and Standards," is hereby amended as follows:

Section 345-405.A(6)(i)[1], "District Standards: Urban Center Character District," is amended as follows:

[1] Building Height	
Principal Building	2 Stories minimum, 6 Stories maximum, except as provided in Section 345.405.X

Section 345-405.N(1)(a) is amended as follows:

Vehicular Parking must be provided in accordance with this § 345-405N and Table 345.405.N-1 (Vehicular Parking Requirements), must comply with and be located and in accordance with Tables 345.405.A-1 through 345.405.A-14 (District Standards) and Table 345.405.B (Civic District Standards) and must be designed in accordance with Table 345.405.N-3 (Off-Street Vehicular Parking Space Dimensions), except as modified by lots making use of the public parking incentive program as provided in Section 345.405X.

Section 345-405.N(1)(h)[1] is amended as follows:

For a lot greater than 12,000 square feet, where a ratio of off-street parking spaces per unit less than 1.5 but no less than 1.0 is proposed, a parking fee in lieu shall be required in a pro-rated amount of \$15,000 per space, except for lots making use of the public parking incentive program as provided in Section 345.405.X.

SECTION 4: Supersession

This local law shall supersede any inconsistent or conflicting provisions of Chapter 345 of the Village Code to provide for this local law to have full force and effect.

SECTION 5: Severability

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or

section or part of this local law directly involved in the controversy in which said judgment shall have been involved.

SECTION 6: Effective Date

This Local Law shall become effective upon due publication and filing with the Secretary of State.

BY ORDER OF THE BOARD OF TRUSTEES OF  
THE VILLAGE OF PORT CHESTER, NEW YORK

Luis A. Marino, Mayor

Janusz R. Richards, Village Clerk

Adopted: August 5, 2024

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 10 of the 2024 of the Village of Port Chester was duly passed by the Village Board of Trustees on August 5, 2024 in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. of \_ of the Village of Port Chester was duly passed by the Village and was (approved) (not approved) (repassed after disapproval) by the and was deemed duly adopted on in accordance with their applicable provisions of law.

**3. (Final adoption by referendum)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of Year 20\_\_\_ of the Village of Port Chester was duly passed by the \_\_\_\_\_ on \_\_\_, 20\_\_ and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_, 20\_\_\_. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on \_\_\_, 20\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20\_\_\_ of the Town of Rye was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_, and was (approved) (not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_, 20\_\_\_, in accordance with the applicable provisions of law.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20\_\_\_ of the City of \_\_\_ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of the majority of the

qualified electors of such city voting thereon at the (special) (general) election held on \_\_\_\_\_, 20 became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law hereto, designated as local law No. \_\_\_ of 20\_\_ of the County of Westchester, State of New York, having been submitted to the electors at the General Elections of November\_\_\_\_, 20\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of the said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript there from and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

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Janusz R. Richards, Village Clerk  
Village of Port Chester

Seal

Date: August 8, 2024

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, ss.

No. SJ-2024-\_\_\_\_\_

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ATTORNEY GENERAL,

Plaintiff,

v.

TOWN OF MILTON and  
JOE ATCHUE,

Defendants

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**ATTORNEY GENERAL'S COMPLAINT AND BRIEF**

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1. The Attorney General brings this action to obtain declaratory, injunctive, and other relief against the Town of Milton ("Town" or "Milton") concerning the Town's failure to comply with mandatory state law--specifically, the provision of the MBTA Communities Act, codified at G.L. c. 40A, § 3A(a), that requires the Town to have a zoning by-law that provides for at least one district of reasonable size in which multi-family housing is permitted as of right, that is located within a half-mile of a transit station, and that satisfies other specified criteria.

## **PARTIES**

2. The Attorney General is the chief law enforcement officer of the Commonwealth. Her principal place of business is at One Ashburton Place in Boston, Massachusetts.

3. The Town of Milton is a Massachusetts municipal corporation with a principal place of business at 525 Canton Avenue in Milton, Massachusetts.

4. Joe Atchue is the Town's Building Commissioner. His principal place of business is at 525 Canton Avenue in Milton, Massachusetts. He is sued in his official capacity only.

## **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over the claims for declaratory relief set forth herein. G.L. c. 231A, § 1.

6. This Court has original jurisdiction over the claims for equitable relief set forth herein. G.L. c. 214, § 1.

7. This Court is an appropriate venue for this action. G.L. c. 214, § 5; G.L. c. 223, § 5.

## **FACTUAL ALLEGATIONS**

### ***The Legislature Attempts to Spur Housing Production Through Voluntary Means***

8. It is indisputable that the Commonwealth faces a housing crisis, which is a key factor in the state's exceptionally high cost of living. The Commonwealth's limited housing supply also forms a significant impediment to economic growth, and makes Massachusetts all too unaffordable for its

residents--particularly working families, those with disabilities, and people of color.

9. For several decades, the Legislature has attempted to incentivize housing production by establishing voluntary programs that provide additional funding for municipalities that choose to participate.

10. In 2004, for example, the Legislature enacted Chapter 40R to encourage "smart growth zoning." St. 2004, c. 149, § 92. Chapter 40R encourages municipalities to adopt "40R" overlay zoning districts, which must be located near either a transit station or area of concentrated development and must allow, at minimum, between 8 and 20 units of housing per acre, with at least 20% of those new units being income restricted to 80% of the Areawide Median Income ("AMI"). G.L. c. 40R, §§ 2 & 6. A municipality that does so may receive state payments of up to \$600,000, as well as \$3,000 for each new housing unit constructed in the 40R district. G.L. c. 40R, § 9. Some may also receive reimbursement for certain costs associated with providing educational services to students in that district. G.L. c. 40S, § 2.



11. As of May 2018 however, only 37 of the state's 351 municipalities had created a 40R district. A I:36.<sup>1</sup> And, although those districts permitted up to 15,391 future housing units, only roughly 3,500 housing units had been actually constructed. Id. As of 2018, only 5% of the future zoned units were located within Greater Boston. A I:48.

12. A 2016 amendment to the 40R program further allowed municipalities to adopt "starter home" zoning districts, which must allow at least 4 units per acre, with at least 20% of those new units being restricted to 100% of AMI. St. 2016, c. 219, §§ 37-54. As of December 2020, however, no municipality had created such a starter home district. See Scott Van Voorhis, "Baker's Starter House Effort a Bust," Commonwealth Beacon (Dec. 3, 2020), <https://commonwealthbeacon.org/uncategorized/bakers-starter-house-effort-a-bust/>.

13. In November 2014, the Legislature received a report from the nonprofit Massachusetts Housing Partnership concluding that the state would need to build 500,000 new units of housing by 2040 to maintain its existing base of employment. A I:82. The report recommended a new mandatory program that would

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<sup>1</sup> This document cites the accompanying two-volume, consecutively-paginated "Appendix to Attorney General's Complaint and Brief" as "A [vol.]:[page]."

require all municipalities to have a zoning district in which multifamily housing was permitted as of right. A I:86.

***The Legislature Enacts the MBTA Communities Act***

14. Although the power to zone is among those powers granted to municipalities by the Home Rule Amendment to the state Constitution, the Legislature has retained “supreme power in zoning matters,” as long as it acts in accordance with the Home Rule Amendment. Bd. of Appeals of Hanover v. Hous. Appeals Comm., 363 Mass. 339, 356 (1973) (internal quotations and citations omitted). The Legislature has, over the years, placed various limits on municipalities’ power to zone. See G.L. c. 40A, § 3; G.L. c. 40B, §§ 20-23.

15. On January 14, 2021, Governor Baker signed into law the MBTA Communities Act. St. 2020, c. 358. Among other things, that legislation inserted a new § 3A into the state’s Zoning Act, Chapter 40A. See id. § 18; see also A I:9-10 (copy of G.L. c. 40A, § 3A). Section 3A consists of three subsections.

16. Subsection (a) requires municipalities that are “MBTA communities”<sup>2</sup> to “have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family

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<sup>2</sup> The definition of “MBTA community” was inserted into G.L. c. 40A, § 1A. By reference to the MBTA’s enabling statute, the definition encompasses over 170 specifically identified municipalities, of which Milton is one.

housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by [certain environmental laws]; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.”

17. Subsection (b) prescribes certain administrative consequences for an MBTA community’s failure to provide for such a district, namely, that the noncompliant municipality “shall not be eligible for funds from: (i) the Housing Choice Initiative . . . ; (ii) the Local Capital Projects Fund . . . ; (iii) the MassWorks infrastructure program . . . ; or (iv) the HousingWorks infrastructure program . . . .”

18. Subsection (c) states that the Commonwealth’s Executive Office of Housing and Livable Communities (“EOHLC”)<sup>3</sup> “shall promulgate guidelines to determine if an MBTA community is in compliance with this section.” Cf. Fairhaven Hous. Auth. v. Commonwealth, 493 Mass. 27 (2023) (addressing separate

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<sup>3</sup> Prior to 2023, EOHLC was known as the Department of Housing and Community Development, or “DHCD.” See St. 2023, c. 7. For simplicity, this document refers to that entity as EOHLC throughout.

statutory scheme under which EOHLIC is also empowered to “promulgate guidelines”).

***EOHLC Issues Draft Guidelines and Solicits Public Comment***

19. Less than one month after § 3A became law, EOHLIC issued a short missive to MBTA communities outlining its anticipated process for establishing compliance guidelines under § 3A(c). See A I:107-108. EOHLIC noted that it intended to consult with the MBTA and MassDOT, and “expect[ed] to seek and consider input from affected MBTA [c]ommunities as well.”

A I:108. EOHLIC noted that it “anticipate[d] that its compliance guidelines will account for the fact that different communities have different needs and that communities considering the adoption of new zoning will, in many cases, require time for a planning process and community input.” Id.

20. On December 15, 2021, EOHLIC issued draft guidelines (the “Draft Guidelines”) and invited public comment. A I:109.

21. The Draft Guidelines proposed to categorize MBTA communities based on what transit facilities were present in or near that municipality. A I:113. A municipality with a subway station within its borders, or within 0.5 mile of its borders, would be categorized as a “Rapid Transit Community.” A I:111.

22. Milton is served by four stops on the MBTA’s Mattapan High Speed Line branch of the Red Line: Milton, Central Avenue, Valley Road, and Capen Street. A I:269. The Draft Guidelines

accordingly categorized Milton as a Rapid Transit Community. A I:122.

23. The Draft Guidelines offered some limited flexibility for a municipality to determine the location of its § 3A(a)-compliant district. A I:115. Specifically, the Draft Guidelines indicated that a Rapid Transit Community's district would comply if a "substantial portion" of the district was located within 0.5 miles of a transit station. Id. Only a municipality with no developable land within 0.5 miles of a transit station could comply by use of a district less than half of which was within 0.5 miles of a transit station. Id.

24. Acknowledging that many MBTA communities lacked a preexisting § 3A(a)-compliant district, the Draft Guidelines also established timelines by which municipalities could establish one. A I:117. Specifically, the Draft Guidelines called for Rapid Transit Communities such as Milton to submit a "proposed action plan" projecting milestones toward compliance by March 31, 2023, and to actually establish a § 3A(a)-compliant district by December 31, 2023. A I:117-118.

***The Town Comments on the Draft Guidelines***

25. On March 30, 2022, Milton's Select Board<sup>4</sup> submitted a letter to EOHLIC commenting on the Draft Guidelines. A I:134.

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<sup>4</sup> In 2018, the Town renamed its "Board of Selectmen" to "Select Board." See Milton Town By-Laws § 1-9.

26. That letter stated that the Town “[u]nderstand[s] and take[s] seriously the housing crisis that led the Legislature to draft the MBTA Communities Zoning law,” A I:128, and acknowledged that, “like all other communities, [Milton] has an obligation to zone for additional housing to meet regional needs . . . .” A I:127.

27. The letter also acknowledged, without protest, the Town’s categorization as a Rapid Transit Community. A I:127.

28. The letter did express concern that the Mattapan High Speed Line’s location adjacent to the Milton-Boston border meant that the Town had limited developable area within 0.5 miles of its transit stations. A I:127. The letter observed that one neighborhood, East Milton Square, “is amenity-rich and has multiple potential redevelopment sites” such that it “could be an appropriate location for mixed-use multifamily development.” Id. The letter observed, however, that the Draft Guidelines “disqualify East Milton Square from being the location of a compliant district because of its distance from transit.” Id.

***EOHLC Promulgates Final Guidelines in August 2022***

29. On August 10, 2022, EOHLC promulgated final guidelines. (the “August 2022 Final Guidelines”). See A I:129, 131.

30. The August 2022 Final Guidelines retained the category “Rapid Transit Community” and, while making some changes to the

definition of that category, also retained Milton's categorization as a Rapid Transit Community. A I:135.

31. The August 2022 Final Guidelines also afforded new flexibility over the location(s) and features of a § 3A(a)-compliant district. A I:141-142. Specifically, they acknowledged that it may not be practical for a municipality with limited area near transit stations (i.e., like Milton) to situate most or all of its district within 0.5 miles of a transit station. A I:141. So the August 2022 Final Guidelines specified, on a municipality-by-municipality basis, what proportion of that municipality's district must be located within 0.5 miles of a transit station, as well as how many new housing units that district must support. A I:142. They also recognized that a municipality could require site plan review of multi-family housing projects allowed as of right within the district. A I:136-137.

32. As to Milton, the August 2022 Final Guidelines required only half of Milton's § 3A(a)-compliant district to be located within 0.5 miles of a transit station, and permitted the other half of the district to be located anywhere in Milton. A I:150. They also required Milton's district to achieve an estimated unit capacity of at least 2,461 units. Id.

33. The August 2022 Final Guidelines also finalized the process by which a municipality could be deemed compliant with

§ 3A(a). See A I:143-144. Like the Draft Guidelines, the August 2022 Final Guidelines required a municipality to submit an Action Plan proposing information about current zoning, any past planning for multi-family housing, and potential locations for a § 3A(a)-compliant district. A I:143-144. The deadline for all MBTA communities to submit such an Action Plan was set as January 31, 2023. A I:144.

34. The August 2022 Final Guidelines also specified the materials that a municipality would be required to submit to EOHLIC in order to apply for EOHLIC's determination of full compliance (termed "district compliance") with § 3A(a), including: a certified copy of the municipal zoning by-law and zoning map; an estimate of the district's multi-family unit capacity prepared using a "compliance model" created by EOHLIC; a GIS shapefile for the district; and, in the case of a town, evidence that the zoning enactment has been either submitted to the Attorney General's Office for review pursuant to G.L. c. 40, § 32, or approved by the Attorney General's Office pursuant to that same statute. A I:144-145. The deadline to submit such an application was set as December 31, 2023, for Rapid Transit Communities such as Milton. A I:143.

35. The August 2022 Final Guidelines were subsequently revised on October 21, 2022, and again on August 17, 2023. See A I:157, 158, 202, 203. Neither revision altered Milton's



categorization as a Rapid Transit Community or the deadlines or procedures for it to achieve compliance with § 3A(a). See id.

***The Attorney General Issues an Advisory Regarding Compliance with the MBTA Communities Act***

36. On March 15, 2023, Attorney General Campbell issued an advisory to MBTA communities stating unqualifiedly that “[a]ll MBTA Communities must comply with [§ 3A(a)]” and that the law “does not provide any mechanism by which a town or city may opt out of this requirement.” A I:248-249.

37. She added that “MBTA Communities cannot avoid their obligations under [§ 3A(a)] by foregoing th[e] funding” identified in § 3A(b). A I:249. She cautioned that “[c]ommunities that fail to comply with [§ 3A(a)] may be subject to civil enforcement action.” Id.

***The Town of Milton***

38. Milton has a representative town meeting form of government. See generally St. 1927, c. 27. Its Representative Town Meeting (“RTM”) convenes for an annual town meeting each spring, and also convenes for any special town meeting that might be called by the Town’s Select Board or by citizens’ petition at another time of year.

39. The agenda for each town meeting is set forth in a warrant compiled by the Select Board. The warrant consists of one or more articles, each of which presents an item of Town

business to be discussed, and potentially acted upon, at the town meeting.

40. A warrant article proposing to adopt or amend a zoning by-law may be initiated by the Select Board or Planning Board, among others. G.L. c. 40A, § 5. But, regardless of how the article is initiated, it must be reviewed by the Planning Board before it can be voted upon by RTM. Id. Specifically, the proposal must be referred to the Planning Board, after which that board has sixty-five days to hold a public hearing. Id. RTM may vote on the proposal only after either: (1) the Planning Board has submitted a report and recommendations on the proposal; or (2) twenty-one days have elapsed since the public hearing without the Planning Board submitting such a report. Id.

41. Milton's Town Charter contains a referendum provision, which was granted to the Town by the Legislature in 1927. See St. 1927, c. 27, § 7. That provision states that "[n]o vote passed at any representative town meeting under any article in the warrant, [with exceptions not pertinent here,] shall take effect until after the expiration of seven days, exclusive of Sundays and holidays, from date of such vote. If, within said seven days a petition, signed by not less than five percent of the registered voters of the town . . . is filed with the selectmen asking that the question or questions involved in such vote be submitted to the voters of the town at large, then the

selectmen within fourteen days of the filing of such petition shall call a special town meeting which shall be held within twenty-one days after notice of the call, for the sole purpose of presenting to the voters at large the question or questions so involved." A I:11. "[S]uch question or questions shall be determined by vote of the same [proportion] of the voters at large voting thereon as would have been required by law had the question been finally determined at a representative town meeting." Id.

***The Town's Early Response to § 3A(a) and the August 2022 Final Guidelines***

42. As of the promulgation of the August 2022 Final Guidelines, the Town was on notice that it had been finally categorized as a Rapid Transit Community and, as such, that its deadlines to submit an Action Plan to EOHLIC and to enact § 3A(a)-compliant zoning were January 31 and December 31, 2023, respectively.

43. Even prior to August 2022, the Town had applied to EOHLIC for a "technical assistance" grant to hire professional consultants "to analyze alternatives, conduct community outreach, and draft Section 3A-compliant zoning." A I:261. On October 17, 2022, EOHLIC notified the Town that it had been approved for a grant of \$50,000. A I:268.

44. On September 7, 2022, the Select Board directed the Town's planning staff to prepare an Action Plan in anticipation of the January 31 deadline. A II:487.

45. The Town's planning staff did so and, on January 23, 2023, submitted Milton's Action Plan to EOHLC. A I:269. That Action Plan identified several locations that, preliminarily, appeared to be favorable locations for the Town's § 3A(a)-compliant district, including the Eliot Street corridor, Blue Hills Parkway, Blue Hill Avenue, Brush Hill Road, and two parcels on Granite Avenue near Interstate 93. A I:272. It also projected a series of compliance milestones, including:

- Procuring a consultant by February 14, 2023;
- Creating a compliance model by August 1, 2023;
- Developing zoning by September 1, 2023;
- Conducting public outreach throughout 2023;
- Conducting the Planning Board's public hearing by October 26, 2023; and
- Holding a special town meeting to consider § 3A(a)-compliant zoning on or about December 4, 2023.

A I:273-274.

46. Later in January 2023, the Town used the funds it had been granted to hire Utile, a planning and design consultant, to prepare § 3A(a) compliance models and draft § 3A(a)-compliant zoning. A II:402. Utile prepared those materials using the Town's Action Plan as a guide. A II:410-411. Iterative drafts

of those materials were presented to the Town's Planning Board--either by the Town's planning staff or by Utile's staff--on March 23, April 27, May 11, July 13, August 24, September 7, and September 14, 2023. A II:410-11, 421-422, 424, 435, 442, 444-445, 449; see also A II:692-720 (presentation given by Town planning staff describing its process).

47. On May 23, 2023, the Town applied to EOHLIC for a further grant to hire a professional consultant "to draft zoning language to achieve compliance with Milton's MBTA Communities obligations" to "be considered by Town Meeting in December." A A I:279. On June 9, 2023, EOHLIC notified the Town that it had been approved for a further grant of \$30,000. A I:285.

### ***Opposition to § 3A(a) Emerges***

48. As the Town worked toward compliance during the spring and summer of 2023, however, the Town's Planning Board began to expressly oppose § 3A(a), in at least three ways.

49. One line of opposition was to question Milton's categorization as a Rapid Transit Community. The Planning Board's periodic discussions of this issue during the spring and summer culminated in exchanges of letters with the MBTA and EOHLIC between August and October 2023, in which the MBTA affirmed the designation of the Mattapan High Speed Line as "rapid transit" and EOHLIC affirmed the categorization of Milton as a Rapid Transit Community. A I:253-258, A I:289-365. Of

note, the MBTA observed that the designation of the Mattapan High Speed Line as "rapid transit" is "a technical one based on characteristics of the vehicle, such as whether it operates on a fixed guideway, uses a designated right-of-way, or uses a fixed catenary system," all in accordance with definitions established by federal law. A I:257.

50. A second line of opposition was to question the enforceability of the Guidelines. By September 27, 2023, the Planning Board had requested an opinion from the Town's counsel concerning EOHLIC's authority to promulgate and enforce the Guidelines. A II:451-454. Counsel expressed his opinion that § 3A indeed requires EOHLIC to promulgate the Guidelines, requires compliance by the Town, and provides no mechanism by which the Town may opt out. A II:453. Nonetheless, one member of the Planning Board subsequently expressed the view that "she did not believe the guidelines are legally enforceable" and sought to authorize the Planning Board to hire "independent counsel" to address the question. A II:469.

51. A third line of opposition was to question whether Milton was obligated to comply with § 3A(a) at all. This view asserted that "the Town should know it has a choice with compliance," and that "the choice to opt out would be decided by members of Town Meeting." A II:437. One member of the Planning Board asserted that the Board should "not be conditioning anyone

to be afraid of the outcome,” and insisted that a poll to be conducted at an upcoming public forum should include an “opt out” option. A II:428. At one point, the Planning Board even discussed “[c]easing trolley service through Milton as a means for avoiding the required zoning.” A II:391.

***The Zoning By-Law Proposed as “Article 1”***

52. Against this backdrop, the Town’s Select Board voted on August 22, 2023, to affirm its intention to comply with § 3A(a) in anticipation of the special town meeting that had been scheduled for December 4, 2023. A II:558-559.

53. Noting that it had authority to initiate zoning by-law changes, the Select Board then, on September 5, 2023, referred a proposed zoning by-law to the Planning Board for consideration (“Article 1”). A II:573. The Chair of the Select Board noted that, in doing so, the Select Board was giving the Planning Board the full sixty-five days contemplated by G.L. c. 40A, § 5 to conduct a public hearing and to issue its report. Id.

54. Article 1 had been prepared by the Town’s planning staff in consultation with Utile during the summer of 2023. A II:558-559. The process of preparing it included eight public forums, 484 online survey responses, 4 “listening posts” at the Milton Farmers’ Market, a mailing that was included in every resident’s water bill, and outreach on social media. A II:696. Article 1 represented the result of the iterative process

described above at ¶ 46; as the Town's planning staff later noted, "half of the 30 iterations we tested met the thresholds outlined in the compliance guideline[s]. Getting to [Article 1] was an exercise in tradeoffs and prioritizing competing planning priorities. Other potential subdistricts would not meet as many of the [Town's] guiding principles as those in Article 1."

A II:719.

55. The express purpose of Article 1 was to create an "MBTA Communities Multi-family Overlay District" ("MCMOD") "to allow multi-family housing as of right in accordance with [G.L. c. 40A, § 3A(a)]." A II:737. The proposed MCMOD would "overlay" the preexisting zoning, in the sense that all regulations imposed pursuant to the preexisting zoning by-law would remain in force, except for uses allowed as of right or by special permit in the MCMOD. Id.

56. The MCMOD consisted of six sub-districts, most (but not all) of which were within a half-mile of a transit station. A II:740-755. As forecasted in the Town's Action Plan, those sub-districts included Eliot Street, Blue Hills Parkway, and Granite Avenue. A II:740, 747, 753. As forecasted in the Town's comments on the December 2021 Draft Guidelines, the MCMOD also included a sub-district in East Milton Square. A II:750.

57. Article 1 called for multi-family housing to be permitted as of right in each sub-district, although such



housing was, in some sub-districts, limited to a maximum number of units on a single lot or limited to lots of a certain size. See, e.g., A II:646, 648. It also specified accessory uses that were allowed as of right, and dimensional standards (i.e., lot size, building height, open space, frontage and setback requirements, and floor area ratios), for each sub-district. See A II:740-755. In some sub-districts, certain mixed-use developments were also permitted as of right. See, e.g., A II:649, 652.

58. Article 1 specified certain "general development standards" applicable to all sub-districts, concerning standards for site design, vehicular access and circulation, and building design, among other things. A II:660-662. Article 1 also specified that at least 10% of housing units in a development of ten or more units must be restricted as "affordable," defined as up to 80% of AMI. A II:665-666. And Article 1 established a process for site plan review to ensure that as-of-right uses complied with all applicable regulations and standards. A II:666-668.

59. Following the Select Board's endorsement of Article 1 on September 5, 2023, the Planning Board spent much of its meetings over the ensuing sixty-five days debating whether it would submit an alternative re-zoning article for RTM's consideration that, in the Planning Board's view, would

purportedly comply with the language of § 3A(a) but not with the Guidelines. See A II:444-479. Ultimately, the Planning Board chose not to do so. A II:469

60. Instead, after holding a public hearing on Article 1, the Planning Board recommended that Article 1 be sent back to the Select Board for further study. A II:482.

### ***The December 2023 Special Town Meeting***

61. The Town's Warrant Committee--which reviews, comments on, and recommends town meeting action as to all proposed articles, see Milton Town By-Laws §§ 12-1 et seq.; see also G.L. c. 39, § 16--also recommended that RTM refer Article 1 back to the Select Board for further study. A II:668.

62. Article 1 was discussed at the town meeting that convened on December 4, 2023, and continued on December 11, 2023. There, on December 11, RTM voted favorably on Article 1 as proposed by the Select Board, with one minor conforming amendment, by a margin of 158 to 76. A II:721-736, 737-765.

### ***The Push for a Referendum***

63. On or about December 28, 2023, following the certification of signatures accompanying a petition asking that Article 1 be submitted to a referendum, the Select Board voted to call such a referendum for February 13, 2024. A II:768-769; see also A II:775-777 (warrant for referendum), 780 (sample referendum ballot).

***The Town Submits Article 1 to EOHLIC***

64. On January 2, 2024--the first business day following Milton's December 31 deadline to provide EOHLIC with an application for district compliance--the Town submitted to EOHLIC most (but not all) of the materials required to complete such an application. A II:783-784. It did so in substitution for a formal application, in view of the fact that a referendum on Article 1 was still pending. A II:784. The materials included in the Town's submission represented sufficient information for EOHLIC to make a conclusive determination of whether the MCMOD would be compliant with § 3A. Id.

***The Referendum***

65. On February 12, in the face of a forecasted snowstorm, the referendum was delayed by one day to February 14. A II:778-779.

66. At the referendum held on February 14, the voters determined not to adopt Article 1 by a margin of 5,115 to 4,346 (i.e., approximately 54% to 46%). A II:781.

67. On February 16, EOHLIC notified the Town that it was out of compliance with G.L. c. 40A, § 3A. A I:371.

***EOHLIC's Analysis of Article 1***

68. EOHLIC's analysis of the materials submitted by the Town on February 2. A II:784-785. That analysis concluded--assuming that the unsubmitted portions of the application

contained no contrary information, and that the Town properly sought review by the Attorney General's Office pursuant to G.L. c. 40, § 32--that the MCMOD would have complied with § 3A.

A II:785.

### **LEGAL POINTS AND AUTHORITIES**

#### **I. The Town Is in Violation of § 3A(a) and the Attorney General Is Entitled to Appropriate Remedies.**

##### **A. Section 3A(a) Affirmatively Obligates the Town to Have a Compliant Zoning District.**

69. As noted, § 3A(a) provides that each "MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right," that also satisfies other specified criteria. This creates an affirmative obligation on the part of affected municipalities, for at least three reasons.

70. First, § 3A(a) is phrased in terms of what an affected municipality "shall" do. The primary goal of statutory interpretation, of course, is "to effectuate the intent of the Legislature, and the statutory language is the principal source of insight into legislative purpose. Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent." Curtatone v. Barstool Sports, Inc., 487 Mass. 655, 658 (2021) (internal quotations and citations omitted).

71. It is "axiomatic" that a statute's use of the word "shall" connotes a mandatory obligation. Perez v. Dep't of State Police, 491 Mass. 474, 486 (2023) (internal quotations and citations omitted); see also Galenski v. Town of Erving, 471 Mass. 305, 309 (2015) ("The word 'shall' is ordinarily interpreted as having a mandatory or imperative obligation.") (internal citations and quotations omitted). That the Legislature chose to use the word "shall" in § 3A(a) signifies its intent to create an affirmative obligation on the part of MBTA communities such as Milton.

72. Moreover, to the extent the language of § 3A(a) is ambiguous, available legislative history--specifically, a press release issued by legislative leaders shortly after the MBTA Communities Act became law--confirms that the Legislature intended it to "[r]equire[] designated MBTA communities to be zoned for at least one district of reasonable size, in which multi-family housing is permitted as of right . . . ." A I:101.

73. Second, the final paragraph of G.L. c. 40A, § 7, empowers the judiciary to "restrain by injunction violations [of Chapter 40A]." The Legislature, of course, is presumed to be "aware of the statutory and common law that governed the matter in which it legislates." In re Globe Newspaper Co., 461 Mass. 113, 117 (2011). By codifying the MBTA Communities Act in Chapter 40A, and therefore subject to § 7's preexisting

provision for equitable remedies, the Legislature signaled its intention to make those remedies available to enforce the mandate of § 3A(a).

74. Third, § 3A(a)'s use of mandatory language contrasts with the language that the Legislature chose to use in true "opt-in" zoning statutes. See, e.g., G.L. c. 40R, § 3 (municipality "may adopt a smart growth zoning district") (emphasis added); G.L. c. 40Y, § 2 (municipality "may adopt a starter home zoning district") (emphasis added).

75. That § 3A(b) prescribes administrative consequences for a municipality that fails to comply--specifically, the loss of eligibility for certain kinds of housing and infrastructure funding--does not suggest that § 3A(a) is anything less than obligatory. To the contrary, the prescription of such consequences signifies the Legislature's intent that § 3A(a) is mandatory. 3 S. Singer, *Statutes and Statutory Construction* § 57:7 (8th ed. 2020) (statute that imposes sanctions for failure to comply is mandatory).

**B. The Attorney General May Enforce § 3A(a) Through Declaratory and Injunctive Remedies.**

76. The Attorney General, as noted, is the "the chief law officer of the Commonwealth" and, as such, is "clothed with certain common law faculties appurtenant to the office." Commonwealth v. Kozlowsky, 238 Mass. 379, 386, 389 (1921).

Absent "some express legislative restriction to the contrary," she may "exercise all such power and authority as public interests may from time to time require. [She] may institute, conduct, and maintain all such suits and proceedings as [she] deems necessary for the enforcement of the law of the State, the preservation of order, and the protection of public rights." Id. at 390-91; accord Opinion of the Justices, 354 Mass. 804, 809 (1968).

77. The Attorney General's authority to bring suit in the public interest is partially codified in the provision of the General Laws that authorizes her to "take cognizance of all violations of law . . . affecting the general welfare of the people" and to "institute . . . such . . . civil proceedings before the appropriate state and federal courts, tribunals and commissions as [she] may deem to be for the public interest . . . ." G.L. c. 12, § 10. Her authority in this regard is not limited to specific statutory rights of action, see, e.g., Commonwealth v. Mass. CRINC, 392 Mass. 79, 88 (1984), and it encompasses actions that private actors lack power to institute themselves. See Lowell Gas Co. v. Att'y Gen'l, 377 Mass. 37, 43-44 (1979). Indeed, the Legislature's use of the phrase "as [she] may deem to be for the public interest" in G.L. c. 12, § 10, confirms that, in developing the legal policy of the Commonwealth, the Attorney General is the arbiter of the public

interest. Cf. Sec'y of Admin. and Fin. v. Att'y Gen'l, 367 Mass. 154, 163 (1975) (Attorney General is empowered by Legislature "to set a unified and consistent legal policy for the Commonwealth," and has a "common law duty to represent the public interest").

78. The Attorney General's authority to bring suit in the public interest finds expression in a long line of cases brought by the Attorney General against a municipality or municipal official to secure compliance with state law by means of mandamus, declaratory, or injunctive relief. See, e.g., Att'y Gen'l v. City of Boston, 123 Mass. 460 (1877); Att'y Gen'l v. Suffolk County Apportionment Comm'rs, 224 Mass. 598 (1916); Commonwealth v. Town of Hudson, 315 Mass. 335 (1943); Jacobson v. Parks & Rec. Comm'n of Boston, 345 Mass. 641 (1963); Att'y Gen'l v. Sch. Comm. of Essex, 387 Mass. 326 (1982); Commonwealth v. Sch. Comm. of Springfield, 382 Mass. 665 (1981). Such compliance necessarily implicates the public interest and public rights. See, e.g., Quinn v. Rent Control Bd. of Peabody, 45 Mass. App. Ct. 357, 381 (1998) (Kaplan, J.).

79. Moreover, § 3A(b)'s identification of administrative consequences for a municipality's noncompliance with § 3A(a) does not preclude the Attorney General from obtaining judicially ordered declaratory and injunctive relief to secure compliance with § 3A(a).



80. Indeed, a similar situation was presented in Board of Education v. City of Boston, where, amidst a dispute between the Boston School Committee and the Mayor of Boston about the appropriation the School Committee would receive to fund the 1980-81 school year, the state Board of Education, represented by the Attorney General, sought declaratory and injunctive relief to require both municipal entities to provide a minimum school year of 180 days. 386 Mass. 103, 105 (1982). The statutory scheme under which that dispute unfolded indeed purported to obligate a municipality to operate its public schools for a minimum term of 180 days. Id. at 108 (citing G.L. c. 71, §§ 1 & 4). But the statutes also provided that a municipality that failed to do so would forfeit its Chapter 70 school aid funding in an amount proportional to the curtailment of the school year. G.L. c. 71, § 4A. This administrative consequence did not inhibit the SJC from recognizing the Commonwealth's right to seek, and actually awarding, declaratory relief that mandated the municipal entities' compliance with the 180-day school year requirement.<sup>5</sup> 386 Mass. at 112 n.14 & 113;

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<sup>5</sup> Although the Commonwealth had also been awarded an injunction by the Superior Court, the SJC's rescript contemplated only declaratory relief--presumably because, by the time of the SJC's opinion in the spring of 1982, the 1980-81 school year had ended and enjoining the municipal entities to provide 180 days of instruction during that year could have had no effect. See 386 Mass. at 113.

see also Perlera v. Vining Disposal Svc., Inc., 47 Mass. App. Ct. 491, 499 (1999) (Attorney General may seek declaration and injunction to force town to comply with prevailing wage mandate of G.L. c. 149, § 27F, even though statute provides criminal penalties for noncompliance; "Section 27F is primarily a remedial statute. The criminal penalty is specified only to encourage compliance with a civil duty. As such, it is properly treated as merely incidental and not as precluding the injunctive relief normally available to enforce legal duties.").

81. Here, in view of the ongoing regional housing crisis-- a crisis that, as noted at ¶ 26 above, the Town itself acknowledges--there can be no doubt that the enforcement of § 3A(a) implicates the public interest. As such, the Attorney General is authorized to secure compliance with § 3A(a) through the type of judicially ordered declaratory and injunctive remedies that she seeks in this suit.

**COUNT ONE - VIOLATION OF G.L. c. 40A, § 3A(a)**

82. The Attorney General repeats and incorporates by reference paragraphs 1-81 as if fully set forth herein.

83. An actual controversy exists between the parties arising out of the Town's failure to comply with the requirements of § 3A(a) and the Guidelines.

84. Resolution of this controversy by entry of judgment declaring the respective rights of the parties will remove any uncertainty about those rights.

85. The Attorney General is authorized to take notice of violations of § 3A(a) and the Guidelines and, in the public interest, to invoke this court's equitable jurisdiction to secure compliance with the same.

**PRAYER FOR RELIEF**

Wherefore, the Attorney General respectfully requests that this Court:

A. Reserve decision on the merits of this complaint and report the case to the Supreme Judicial Court for the Commonwealth for adjudication of the issues of law presented herein;

B. Declare that § 3A(a) affirmatively obligates the Town to have a zoning by-law that provides for at least one district of reasonable size in which multi-family housing is permitted as of right and that satisfies the other criteria set forth in § 3A(a) and the Guidelines;

C. Declare that the Town has failed to meet its obligations under § 3A(a) and the Guidelines;

D. Declare that the Attorney General is entitled to injunctive remedies to secure the Town's compliance with § 3A(a) and the Guidelines;

E. Enter an injunction requiring the Town to create a zoning district that complies with § 3A(a) and the Guidelines within three months after entry of such injunction;

F. If, and to the extent that, the Town does not comply with said injunction, enter a further injunction prohibiting the Town and Mr. Atchue from enforcing any aspect of the Town's zoning by-law, rules, or regulations, to the extent that such enforcement is inconsistent with the Town's obligations under § 3A(a) and the Guidelines; and

G. Order such other relief as the Court may deem just and proper. In the event that the Town proves unable or unwilling to comply with the injunctive relief sought above, this may include, but is not limited to, appointment of a Special Master to propose a zoning by-law that complies with § 3A(a) and the Guidelines, or imposition of fines on the Town.

Respectfully submitted,

ANDREA JOY CAMPBELL,  
ATTORNEY GENERAL,

By her counsel:

*/s/ Eric Haskell*

Feb. 27, 2024

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**Certificate of Service**

Pursuant to Mass. R. Civ. P. 5(b)(1), I certify that I caused the foregoing document to be served on Peter L. Mello, Esq., counsel for the Town of Milton, by e-mail at pmello@mhtl.com.

*/s/ Eric Haskell*

Feb. 27, 2024

\_\_\_\_\_  
Eric A. Haskell  
Assistant Attorney General

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# MBTA Communities Law Q&A

This page provides answers to frequently asked questions regarding the MBTA Communities Law.

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## (1) What is the MBTA Communities Law and what does it require?

The MBTA Communities Act was adopted in January 2021, as part of legislation to strengthen the state's economy. It was passed by broad bipartisan majorities in the legislature — the Senate voted unanimously in favor of the Act, and the House voted 143 in favor to 4 against. Governor Baker signed the Act into law on January 14, 2021. [Source: [H.5250 \(https://malegislature.gov/Bills/191/H5250\)](https://malegislature.gov/Bills/191/H5250) (2020)]

The MBTA Communities Act requires 177 Cities and Towns to establish “at least 1 district of reasonable size in which multi-family housing is permitted as of right.” Where possible, the district must be within a half mile from public transportation (commuter rail, bus station, ferry terminal or subway). MBTA Communities must permit the development of housing suitable for families with children, and may not impose age restrictions, within the district.

The state agency with responsibility for housing issues, known as the Executive Office of Housing and Livable Communities (or EOHLC), has detailed materials available to address questions about this law and help communities understand their obligations. Those materials are available [here](#) (</info-details/resources-for-mbta-communities#3a-fact-sheets->).

## (2) Is compliance with the law mandatory?

Yes. The law states clearly that 177 communities covered by the MBTA Communities Law “shall have a zoning ordinance or bylaw that provides for at least 1 district of reasonable size” that permits multi-family housing as of right.

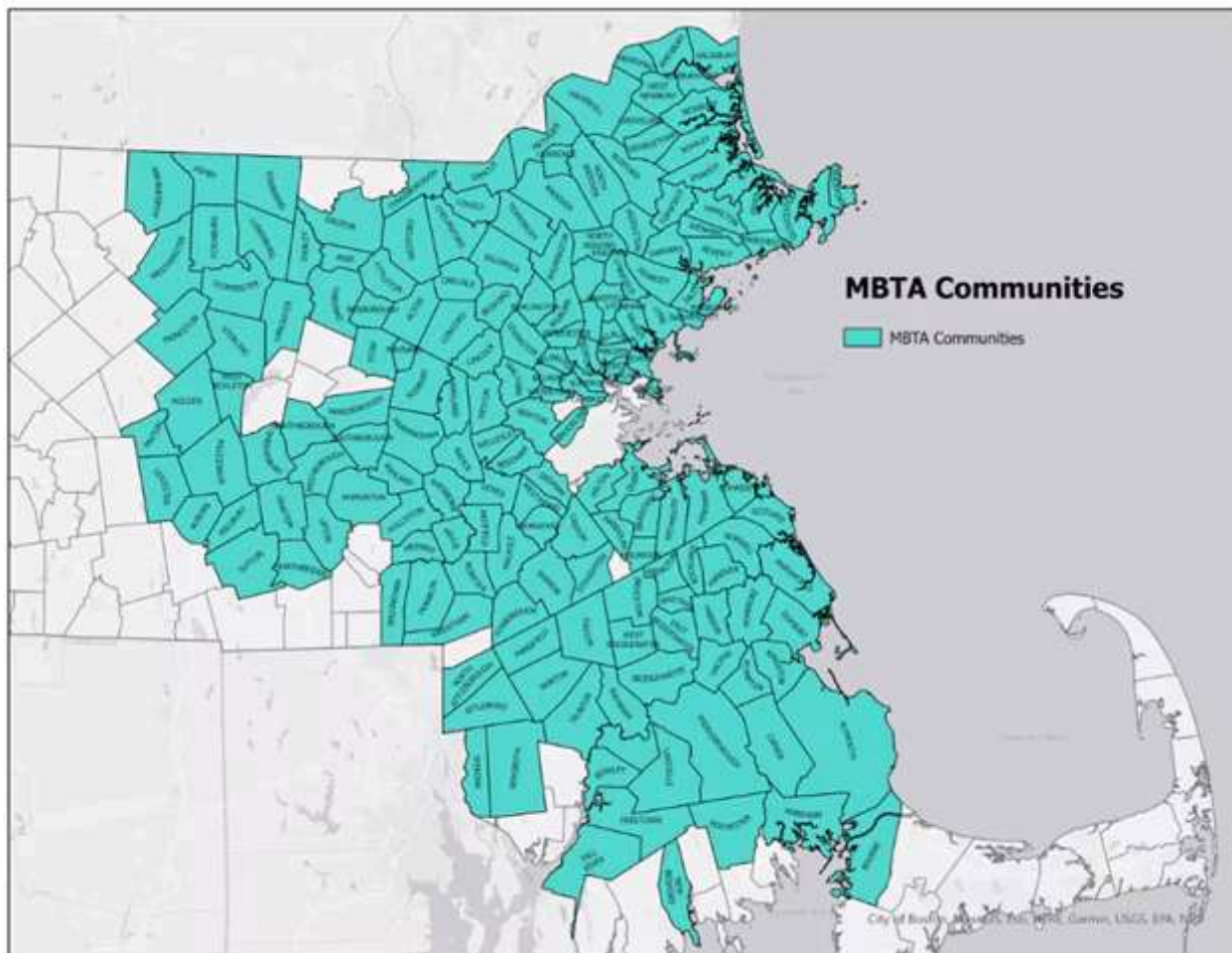
The Attorney General's Office has issued an advisory on this issue, which is available [here](#) (</doc/advisory-concerning-enforcement-of-the-mbta-communities-zoning-law/download>).

## (3) What Cities and Towns are subject to the law?

Communities that are served by the MBTA are subject to the law, including:

- 84 communities that host MBTA service, including rapid transit, commuter rail, ferry or bus.
- 93 communities that abut — that is, share a border with — a City or Town that is served by the MBTA.

The following map demonstrates the location of MBTA Communities throughout the Commonwealth:



#### (4) Is the MBTA Communities Act constitutional?

Yes, it is. Under the state constitution, our state legislature has the power to pass laws about municipal zoning. Mass. Const. Art. Amend. art. 60. In the words of our state supreme court, this gives the state the “supreme power” in zoning matters.

In many cases, the legislature has passed laws that empower local communities to make their own decisions about zoning. In some cases, though, the legislature has determined that local discretion should be limited in order to allow development that will further state or regional interests. For example, the legislature has set statewide standards when it comes to housing development for low- and moderate-income residents (under Chapter 40B); as well as schools, churches and other religious institutions, certain agricultural uses, child care centers, congregated care for those with disabilities, and solar power installations (under G.L. c. 40A, § 3).

Litigation has challenged Chapter 40B based on an argument that the state cannot require communities to allow low- and moderate-income housing developments that would otherwise violate local zoning. But those challenges have failed because the constitution gives the state the authority to restrict local zoning. The state supreme court has consistently required municipalities to comply with state law that allows educational, religious, childcare, and solar developments, over community objections.



The state legislature had the authority to pass the MBTA Communities Law to require multi-family housing districts in 177 communities where public transportation is accessible. The state is particularly interested in such development because Massachusetts is facing a housing crisis that is crowding out people who wish to live and work here, hurting our communities and limiting our economic growth. The legislature also chose to preserve significant local discretion to determine where that housing may be allowed in order to meet the particular needs of each community.

## **(5) Does the MBTA Communities Law allow for municipal discretion?**

Yes. The MBTA Communities Law and Compliance Guidelines established by the state require that multi-family housing districts must be of reasonable size and, where feasible, located near mass transit; they must allow housing suitable for families with children; and they cannot be age-limited.

As long as they meet those requirements, communities have considerable discretion as to where to locate multi-family districts and how big those districts may be.

## **(6) Are there resources available to assist covered communities with compliance?**

Yes. The Attorney General's Office and the Executive Office of Housing and Livable Communities (EOHLC) have collected materials [here](#) (</news/ag-campbell-issues-advisory-on-requirements-of-mbta-communities-zoning-law>) and [here](#) (</info-details/resources-for-mbta-communities>). Municipal planners may seek EOHLC's assistance and communities may be eligible for (or may already have received) grant funding to help design compliant districts. In addition, Massachusetts Housing Partnership (MHP) offers consultant services to assist with technical aspects of compliance and Citizens' Housing and Planning Association (CHAPA) provides assistance to municipalities around public education and engagement. Regional Planning Agencies also provide technical assistance to their municipalities. Taken together, over \$6 million in technical assistance has been provided to 156 of the 177 municipalities since August 2022.

Municipal counsel are encouraged to reach out to the Attorney General's Municipal Law Unit with questions on compliance. Both EOHLC and the Attorney General's Office have offered pre-review for proposed districts to give municipalities guidance as to whether the district is likely to be approved.

## **(7) Does the MBTA Communities Law impermissibly limit local control?**

No. The state legislature has the power to enact zoning laws with which communities must comply. The power is set forth in Article 60 of the Amendments to the state constitution. That power is specifically preserved by the Home Rule Amendment, which requires municipalities to follow state law, like the MBTA Communities Law. Mass. Const. Art. Amend. art. 89, § 8.

In addition, the MBTA Communities Act ensures communities can determine where the required district is (or districts are) located and how large they are, within certain parameters.

## **(8) Are the Guidelines adopted by the state binding on my community?**

Yes, they are. State law requires the state — and, specifically, the Executive Office of Housing and Livable Communities, known as EOHLIC — to “promulgate guidelines to determine if an MBTA Community” is in compliance with its obligations.

These guidelines are binding. We are aware of suggestions that guidelines are somehow non-binding because they are not “regulations.” But our state supreme court has recently rejected an argument that EOHLIC guidelines are nonbinding. *See Fairhaven Hous. Auth. v. Commonwealth*, 493 Mass. 27 (2023).

## **(9) How can zoning that is compliant with the MBTA Communities Law be adopted?**

One or more zoning districts that are consistent with the MBTA Communities Act may be adopted through the typical municipal process for adopting zoning ordinances or bylaws. That means in certain towns, an approval of Town Meeting or Representative Town Meeting will be required (in an annual or specially-called meeting), following action by the appropriate municipal board (e.g., the Select Board or the Planning Board). In cities, approval by the City Council is required. A few municipalities may have existing zoning that complies with the Guidelines in which case they should submit a complete application to EOHLIC for a determination of compliance.

## **(10) What do MBTA Communities have to do, and by when?**

The MBTA Communities Act simply required cities and towns to “have” a zoning ordinance or by-law that provides for at least one district of reasonable size in which multi-family housing is permitted as of right and meets the other requirements of the Act. However, EOHLIC recognized that many communities would need time to craft and pass an appropriate district, and therefore created a process by which communities can be treated as being in compliance by taking concrete steps towards adopting the necessary zoning ordinance or by-law.

Communities served by MBTA rapid transit (the subway, trolley, or Silver Line buses) were required to submit a zoning ordinance or bylaw to EOHLIC for approval by December 31, 2023. Of the 12 communities subject to that deadline, only Milton has failed to submit a zoning ordinance or bylaw for approval.

Most of the remaining communities covered by the law—those served by commuter rail, bus, or ferry, or adjacent to such a community—must submit their zoning ordinance or bylaw for EOHLIC approval by December 31, 2024. Certain smaller adjacent communities are allowed until December 31, 2025.

The deadline applicable to each community can be located in the EOHLC Guidelines, which are available [here](#) (</doc/compliance-guidelines-for-multi-family-zoning-districts-under-section-3a-of-the-zoning-act/download>).

The zoning ordinance or bylaw that a community adopts must comply with EOHLC Guidelines. However, if they submit by their deadline, MBTA Communities will be treated as compliant with the law while EOHLC is reviewing their submission.

## **(11) What happens if my City or Town fails to comply with the MBTA Communities Law?**

Communities that fail to comply with the MBTA Communities Act automatically lose certain state funding, including funding: for local infrastructure generally, such as road, bridge, water and sewer improvements (known as MassWorks); for local infrastructure projects that support housing (known as HousingWorks); for EOHLC grants to communities with a “Housing Choice” designation; and state funding under the Local Capital Projects Fund.

In addition, the Healey-Driscoll Administration has notified communities that compliance with the MBTA Communities Act will be considered when dispensing certain discretionary local aid. Several programs potentially affected by that consideration are catalogued [here](#) (</info-details/section-3a-guidelines#9.-determinations-of-compliance->).

In addition, intentional or persistent non-compliance may result in an enforcement action against the municipality by the Attorney General. Any such action would seek a court order requiring the community to comply with the law. Such a lawsuit is currently pending in the state supreme court against the Town of Milton.

## **(12) The following questions might be asked by residents preparing to attend a Town Meeting where a new zoning district will be considered:**

1.
  - a. **How did my community settle upon the district presented for Town Meeting consideration?**

This answer will vary for each community. At a minimum, each community held a public Planning Board hearing on the proposed district, at which residents could participate. After the hearing the Planning Board was required to issue a report to Town Meeting or City Council with a recommendation concerning whether or not the zoning district should be adopted.

Many communities also held preliminary workshops or public comment meetings on proposed MBTA Communities zoning districts. In many cases, proposed zoning districts are drafted with help from planning consultants, often hired with grant money provided by Commonwealth agencies. Like every other zoning bylaw, the zoning district is drafted with input from the Town/City Planner, the Planning Board, and the Select Board or City Council.

- **What vote is required in order for the new district to pass?**

A simple majority vote.

- **What happens if the proposed zoning district passes?**

It is submitted to the Executive Office of Housing and Livable Communities (EOHLC) to ensure that the district is compliant with the MBTA Communities Act. EOHLC offers an optional “pre-adoption” review of proposed districts before they are voted on, in which case the community will have some indication as to whether the zoning district is likely to be approved.

As with all other town zoning bylaws, a town’s MBTA Communities zoning bylaw also will be submitted to the Attorney General’s Office for review and approval as required by statute. Once the zoning bylaw is approved, it will take effect, and multi-family housing will be permitted in the new zoning district. Please note that EOHLC determinations of compliance are separate from the bylaw review by the Attorney General’s Office and that a bylaw approved by the Attorney General will be in effect even if EOHLC makes a determination that the bylaw does not comply with the Guidelines and the Act.

- **What happens if the proposed zoning district does not pass?**

This answer will depend on the time of the Town Meeting or City Council vote and whether the community will be able to come into compliance in advance of the applicable deadline (which, for many communities, will be December 31, 2024). If the vote renders the community out of compliance, the community will face the consequences set forth in response to question 11, above.

## **(13) Does passage of an MBTA compliant zone require changes to existing properties?**

No. The passage of a zoning district to comply with the MBTA Communities Law does not require existing property owners to alter their properties or to change otherwise lawful restrictions in leases or home owner association contracts. It merely allows that multifamily housing can be developed as of right should a property owner choose to develop it.



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Local Law  
NG-Zero Special Permit

§ 60-430.O Permitted special uses.

....

(19) North Greeley Net Zero Carbon (NG-Zero). NG-Zero development shall be permitted only upon the issuance of a special permit by the Town Board and shall be subject to the specific requirements set forth herein in addition to the general procedures, conditions, and standards applicable to special permit uses as set forth in § 60-430 of this chapter.

(a) Purpose and intent. The NG-Zero special permit is intended to encourage and facilitate the redevelopment of a large, vacant property on North Greeley Avenue in the Chappaqua Hamlet as a mixed used, multi-family residential building that will exceed the currently applicable Green Building Code requirements in Chapter 74 of the New Castle Town Code, serve as a model for sustainable, environmentally responsible development not just in New Castle but statewide, and promote the following goals set forth in the Town Comprehensive Plan: help promote a vibrant and walkable downtown; help promote diversity and affordability of housing types; require environmentally friendly forms of residential development; promote carbon-neutral construction practices; promote resource conservation; promote reduction of construction waste; promote reduction in energy use; and promote access to public transportation, bicycle and pedestrian infrastructure.

(b) Special development standards.

[1] Site requirements.

[a] Location. NG-Zero development shall be permitted on any lot that is situated on the westerly side of North Greeley Avenue in the Retail Business and Parking (B-RP) Zoning District, and shall not include any corner lot or lot also having frontage on lower King Street (Allen Place).

[b] Site size. The minimum required lot area for a NG-Zero shall be 33,000 square feet.

[c] Variances. Relief from the site requirements of this subsection may be granted only upon application to and after hearing by the Zoning Board of Appeals upon a showing of unnecessary hardship as required in connection with the granting of a use variance.

[2] Dwelling units.

[a] Dwelling unit type. Individual dwelling units may be of the efficiency, studio, one-bedroom or two-bedroom type, but shall not contain more than two bedrooms. The Town Building Inspector shall have the authority to determine which rooms may function as bedrooms for the purpose of determining compliance with this requirement and may include any room other than bathrooms, kitchens, entranceways, foyers and closets.

[b] The gross floor area for an individual dwelling unit, excluding exterior space, shall be at least 500 square feet, but in no case shall it exceed 2,000 square feet.

[3] Affordable housing. A multifamily development, including a mixed-use development, shall be required to provide AFFH units pursuant to §§ 60-220 and 60-410H(6)(k) of this chapter except that in developments of 10 or more units no less than 12% of the total number of units must be created as AFFH units. Alternatively, the applicant may provide no less than 10% of the total number of units as AFFH units if at least 2% of the total number of units (minimum of 1) are Workforce unit(s), as defined at § 60-210. In calculating the number of required AFFH units and Workforce units, partial units shall be rounded up to the next largest integer in all cases. No less than 20% of the total dwelling units in an NG-Zero building shall be comprised of AFFH and Workforce units.

[4] Traffic management. Roadways giving vehicular access to NG-Zero sites shall be adequate to accommodate the anticipated traffic generation resulting from the development proposed thereon. The Town Board shall not approve a special use permit until and unless said Board determines that the roads and intersections proximate to the project site are capable of accommodating the additional traffic generation or, if not, that the necessary improvements will be made prior to the occupancy of the development.

[5] Off-street bicycle and e-bike/scooter storage. Off-street bicycle storage and charging for e-bikes and scooters shall be provided. Off-street e-bike/scooter storage shall be appropriately sized and secured in a self-contained area, readily accessible in the event of an emergency. Such storage shall be accessible to all residents of the NG-Zero building.

[6] Permitted uses. Permitted principal and accessory uses shall be as follows:

[a] Ground-floor. To promote the goals and intent of this provision, a project utilizing the NG-Zero special permit in the B-RP district shall provide one or

more ground floor retail or commercial uses consistent with the permitted principal uses within said district.

[b] Residential Density. Residential density shall be calculated as follows:

**Minimum Gross Lot Area Requirement per Dwelling Unit**

Efficiency (studio) apartment	375 square feet
1-bedroom apartment	500 square feet
2-bedroom apartment	750 square feet

[c] Any accessory use customarily incidental to a permitted principal use on the same lot.

[7] Utilities and services.

[a] Drainage. At a minimum, stormwater drainage systems shall comply with the requirements of Chapter 108A, Stormwater Management and Erosion and Sediment Control.

[b] Green infrastructure. Green infrastructure practices to improve water quality through stormwater management, such as rain gardens, green roofs, and cisterns, shall be provided to the extent readily achievable.

[c] Refuse storage and collection. Plans for the storage and collection of refuse and recycling shall be designed to the satisfaction of the Town Board to minimize disruption to nearby properties and provide appropriate odor, pollution and vermin controls. Refuse and recycling shall be stored in rodent-proof containers which shall be conveniently located to serve all dwelling units and shall be enclosed or otherwise screened from view in a location easily accessible by emergency responders and service providers. Such facilities shall comply with all setback requirements applicable to principal buildings and may not be located in the front yard.

[d] Undergrounding. All utilities, including electric, telephone and cable television service shall be placed underground, unless it is determined by the Town Board, based on professional consultation, that such a requirement is technically infeasible. If such undergrounding is not feasible, adequate fire suppression must be incorporated into the roof structure of the building.

[9] Off-street parking and loading.

[a] The applicant shall demonstrate compliance with the following off-street parking standards:

Use	Minimum Required Off-Street Parking	
Residential, Multi-Family	1 space per unit if on-site car share is provided. If no on-site car share is provided parking shall be:	
Rental	Studio	.85/DU
	1-Bedroom	1.1/ DU
	2-Bedroom	1.4/ DU
Retail	2.8 spaces per each 1,000 SF	
Restaurant	10 spaces per each 1,000 SF	
Office	2.8 spaces per each 1,000 SF	
Medical Office	3.3 spaces per each 1,000 SF	

Any use not specifically listed in the table above shall be subject to the minimum off-street parking requirements set forth at § 60-420.F of this chapter.

[b] The Town Board may approve a reduction of these minimum standard(s) based upon a finding that:

- (i) Sufficient public parking is available within 2,000 feet of the project site; or
- (ii) The projected operational characteristics of the proposed use(s) or other strategies proposed by the applicant justify a different amount of parking.

[c] Payment in lieu of off-street parking. Where off-street parking is insufficient to meet the standards set forth in paragraph [a] above, the Town Board may require as a condition of special permit approval a payment to the Town in lieu of providing such parking spaces. The amount of the fee-in-lieu shall be established by the Town Board in its Fee Schedule. The fee-in-lieu shall be deposited by the Town in a designed trust fund to be used by the Town exclusively for ensuring the availability of adequate off-site parking in the Chappaqua Hamlet.



[10] Electric Vehicle Charging Stations. A minimum of 50% of the required parking shall be electric vehicle ready with sufficient capacity to charge electric vehicles at the full rated amperage.

[11] Green Building.

In compliance with Chapter 74, Section 13 of the Town Code, new construction shall incorporate green building practices designed to minimize short-term and long-term negative impacts on the environment. In addition to meeting the Town Code Green Building Standards, all NG-Zero projects must comply with the following requirements:

[a] Minimize on-site generation of carbon emissions: all buildings greater than 5,000 square feet of conditioned space shall not be serviced by gas or fossil-fuel fired equipment or appliances, except as required for emergency standby power.

[b] Minimize operational carbon emissions: all new construction addressed by the International Energy Conservation Code must incorporate renewable energy systems of adequate capacity to achieve net zero carbon, per the requirements of the 2021 International Energy Conservation Code (IECC) Appendix CC: Zero Energy Commercial Building Provisions, as may be amended from time to time.

[c] Minimize embodied carbon in building products and materials: all buildings greater than 5,000 square feet of conditioned space must perform a whole building life cycle assessment (WBLCA) of the project's structure and enclosure prior to building permit approval. The project WBLCA must demonstrate a minimum 25% reduction in global warming potential (GWP) compared to a typical baseline building. Suitable WBLCA frameworks include LEED v4.1 Building Design & Construction and ANSI/GBI 01-2021 Green Globes Assessment Protocol for Commercial Buildings or similar. Where possible, material reuse (salvaged material) is strongly encouraged, as these materials can be designated to have low/zero GWP.

[12] Energy Efficient Building Standards.

[a] Purpose. To ensure that a NG-Zero building serves as a model for sustainable, environmentally responsible development, this subsection incorporates performance standards used for tax deductions allowable under Internal Revenue Code § 179D. However, nothing herein shall require any taxpayer to claim any such deduction with any taxing authority.

[b] Energy Efficiency Standard. proposed NG-Zero building performance must be modeled and certified by a registered design professional as having interior lighting systems, heating, cooling, ventilation, hot water systems, and a building envelope, that together:

[i] meet the energy efficiency requirements described in Internal Revenue Service Notices 2006-52, 2008-40, and 2012-26, or any newer version(s) issued hereafter, as applicable; and

[ii] reduce the building's total annual energy and power costs by 50 percent or more over the minimum ANSI/ASHRAE/IE 90.1-2022 energy standard or latest version using generally accepted proofing methods and technologies which may include computer modeling having the features described in section 6 of Notice 2006-52 or section 4 of Notice 2008-40.

[c] Certification. The Certification required under this subsection shall meet all the requirements listed in Notice 2006-52, section 4, and Notice 2008-40, section 5.

[d] Testing. Prior to the issuance of a Certificate of Occupancy, the owner of a NG-Zero building shall furnish the Building Inspector with the results of an air space (blower door) test, a system adjusting and balancing test, and a commissioned test, verifying that the building's HVAC and energy systems meet the standard described in paragraph 12[b][ii] of this subsection.

[e] Waiver. The Building Inspector may waive or modify, in whole or in part, the requirements in this subsection upon a showing that strict compliance with such requirements would be infeasible or impose an unreasonable hardship upon the applicant.

[13] Open space.

[a] Outdoor space. Outdoor space for NG-Zero building residents shall be provided in the form of one or more of the following: individual patios or terraces, rooftop garden, community garden, courtyard deck or balcony.

[b] Public open space. To foster a walkable community and activate street life in the downtown Chappaqua hamlet, suitable public open space shall be provided in connection with the ground floor commercial use(s). Outdoor seating, plantings, and lighting shall be incorporated into such public open space.

[c] Other open spaces. Land within a NG-Zero project site which is not used for one or more of the purposes enumerated above shall be designed and maintained as permanent open space either to be improved and landscaped or to be preserved in its natural state, all in accordance with plans and restrictions as may be approved by the Town Board.

[14] Design.

[a] The site design shall include features that enhance the visual aesthetic and pedestrian experience, such as streetscape improvements, attractive lighting, benches, variation of façade and building materials, landscaping, and suitable building and parking orientation.

[b] Building height shall not exceed either 50 feet or 4 stories, as measured pursuant to § 60-210(B)[1] of this chapter. To ensure development compatible with the area in which the NG-Zero project is located, the Town Board may further limit the height. The floor area limitations in § 60-410.B, Schedule of regulations for business and industrial districts -- Lot and Bulk Regulations – Part 4, shall not apply.

[c] The design shall integrate low-impact ecologically conscious construction techniques and construction management practices.

[d] Building facades facing a street, which shall be defined as “street walls” for the purpose of this subsection, shall adhere to the following requirements:

[i] The street wall shall have varying depths from the property line to create outdoor open spaces at the street level and outdoor common areas for residents of the building above the ground floor.

[ii] The street wall shall maintain a minimum setback from the curb of at least 10 feet.

[ii] Street wall height shall not exceed maximum allowable building height;

[iii] The street wall shall incorporate a varied design that mitigates its mass and optimizes the amount of natural light into residential units;

[iv] Through the use of open public spaces, windows, and other architectural features, the street wall shall activate the street and enhance the pedestrian experience; and

[v] Outdoor common areas for residents of the building above the ground floor shall include amenities such as landscaped planters and green courtyards that utilize sustainable materials and technologies.

[f] An NG-Zero building shall optimize the configuration and location of its ground floor retail space, which shall consist of at least 4,000 square feet of public facing retail or restaurant space. Residential units shall not be located on the ground floor or have windows directly facing the Metro-North railroad tracks.

[h] On-site parking shall be located on the ground floor beyond the street wall so it is not directly visible from the street.

[15] Visual.

[a] A shadow study of the proposed project shall be submitted based upon appropriate modeling, photography and other pertinent analytical techniques accounting for the worst-case seasonal conditions.

[b] A visual impact assessment of the proposed project shall be submitted based upon appropriate modeling, photography and other pertinent analytical techniques accounting for the worst-case seasonal conditions.

[c] The Town Board may require modifications to the project to reduce or eliminate impacts based on the results of the shadow study or visual impact assessment.

[16] Waiver of site requirements. The Town Board may waive or modify, in whole or in part, the standards set forth at § 60-430.O(19)(b)(2)-(15) where the Town Board finds substantial evidence that such waiver or modification is consistent with the goals of the Town Comprehensive Plan, will better serve the public health, safety and welfare than strict compliance with such standard(s), and is necessary to avoid an unreasonable hardship upon the applicant.

(c) Application Procedure. Except as otherwise indicated below, applications for NG-Zero special permits shall comply with the procedures and requirements in § 60-430. B.

[1] Application. An application for a NG-Zero special permit and site development approval shall be submitted to the Town Clerk's Office, with 12 copies, and an electronic file format. Application form(s) as required by the Development Department shall be completed and submitted and shall include at a minimum the following information:

[a] The names and addresses of the property owner(s) of the applicant (if other than the owner), and of the planner, engineer, architect, surveyor and/or other professionals engaged to work on the project. If the applicant is not the owner of the property, authorization from the owner(s) to make the application shall be provided.

[b] A written statement: (i) describing the nature of the proposed NG-Zero special permit and a site development plan and how the proposed project is consistent with the special permit standards and will serve the purpose of NG-Zero; (ii) describing how the project is consistent with the Town Development Plan; (iii) describing in narrative or graphic form the relationship of the proposed site development plan with adjoining properties, other uses and improvements and the broader community; (iv) analyzing the availability and adequacy of utilities to serve the proposed site development plan; (v) analyzing the safety and capacity of the street system in the area in relation to the anticipated traffic generation and parking demand of the proposed project, and (vi) presenting such other information as may be required by law or deemed necessary by the Town Director of Planning to ensure efficient review of the application.

[c] A site development plan for the project site drawn to a convenient scale and including the following items of information: (i) the area of the property in both acres and square feet; (ii) the floor area in square feet of the proposed site development plan; (iii) a map of existing terrain conditions of the proposed site, including topography with a vertical contour interval of no more than two feet, existing drainage features, and major environmental features; (iv) a sketch indicating the location of the proposed project improvements with respect to neighboring streets and properties, including the names of all owners of property within 500 feet of the development site, showing the existing zoning of the property and showing the location of zoning district boundaries in the surrounding area; (v) a site development plan indicating the footprint, height, and design of the building(s), the approximate layout of individual uses, pedestrian and bicycle access, parking areas and access drives, and the general nature and location of other proposed site improvements including landscaping and screening, storm drainage, water and sewer

connections, etc., (vi) a generalized schedule for construction staging and completion of the proposed project; and (vii) an itemized list as to the green building attributes employed in the development project, (viii) an application fee in an amount as set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended.

Upon determination by the Director of Planning that the application is substantially complete, the Director of Planning shall refer said application to the Town Board for review at its next regularly scheduled meeting. The Town Board may, in its discretion, invite the Planning Board to meet jointly with the Town Board in an advisory capacity.

[2] Public Hearing and Decision. Within 62 days of the date a completed NG-Zero special permit application is received, the Town Board shall schedule a public hearing on the NG-Zero special permit and associated site development plan. Within 62 days of the later of the date that the public hearing is closed or that all actions required under the State Environmental Quality Review Act as a prerequisite to Town Board action have been taken, the Town Board shall act to approve, approve with modifications, or disapprove the NG-Zero special permit and site development plan. Nothing in this section is to be construed as authorization for a default approval in the event these periods are exceeded.

## Innovations in Land Use Planning

### Decarbonization

<https://www.energy.gov/eere/decarbonizing-us-economy-2050-national-blueprint-buildings-sector>

<https://www.nyserda.ny.gov/About/Publications/Energy-Analysis-Reports-and-Studies/Greenhouse-Gas-Emissions>

<https://worldgbc.org/advancing-net-zero/what-is-a-net-zero-carbon-building/>

<https://www.energy.gov/eere/buildings/zero-energy-buildings-resource-hub>

### Zero Waste

<https://www.epa.gov/transforming-waste-tool/how-communities-have-defined-zero-waste>

### Micro Mobility

<https://www.transportation.gov/rural/electric-vehicles/ev-toolkit/electric-micromobility>

<https://advocate.nyc.gov/blog/a-guide-to-micromobility>

<https://www.planetizen.com/definition/micromobility>

### Re-envisioning the right-of-way

<https://rpa.org/work/reports/re-envisioning-right-of-way>

<https://highways.dot.gov/public-roads/spring-2024/03>

### Economic Restructuring

<https://hbr.org/2018/03/thriving-in-the-gig-economy>

<https://www.nber.org/digest/202208/effect-e-commerce-expansion-local-retail>

<https://www.worldfinance.com/strategy/the-long-term-effects-of-the-gig-economy>

### Housing

<https://www.nar.realtor/on-common-ground/zoning-innovation-from-coast-to-coast>

<https://www.brookings.edu/articles/new-yorks-ideas-for-zoning-reform-offer-many-paths-to-tackling-the-housing-crisis/>

<https://urbanland.uli.org/issues-trends/zoning-reforms-to-mitigate-americas-affordable-housing-crisis>

## **Artificial Intelligence**

<https://www.esri.com/arcgis-blog/products/city-engine/design-planning/generative-ai-in-urban-planning/>

<https://www.planning.org/podcast/artificial-intelligence-and-urban-planning-what-planners-need-to-know-now/>

<https://acss.org.uk/publications/ai-in-urban-planning-risks-and-opportunities/>

## **Virtual Reality**

<https://acss.org.uk/publications/ai-in-urban-planning-risks-and-opportunities/>

<https://www.planning.org/planning/2019/oct/virtualhorizons/>

<https://gowlingwlg.com/en/insights-resources/articles/2019/how-will-vr-change-the-way-we-plan-smart-cities>

## **Smart Cities**

<https://www.ibm.com/topics/smart-city>

<https://www.dhs.gov/archive/science-and-technology/smart-cities>

## **Commercialization of Outer Space**

<https://hbr.org/2021/02/the-commercial-space-age-is-here>

<https://libguides.law.uconn.edu/c.php?g=1047257&p=7619996>

<https://www.thespacereview.com/article/4238/1>