



To: City of Albany Planning Board
From: Brad Glass | Director of Planning
Re: Zoning Text Amendment #0007: Comprehensive amendments to the USDO pursuant to the initial evaluation period established in §375-5(E)(24)(d)(i)
Date: December 11, 2018 (Updated August 21, 2019)

INTRODUCTION

The City of Albany Common Council adopted the Unified Sustainable Development Ordinance (USDO) on May 15, 2017, to be effective June 1, 2017. The USDO was the result of a 2.5-year effort to comprehensively rewrite the City's zoning ordinance and other relevant land development regulations, such as the sign ordinance and the land subdivision handbook. The existing regulations were in many cases in excess of 40 years old and were no longer consistent with best practices in the discipline. Antiquated terminologies were utilized and many common City practices were not reflected in law. Most notably, the regulations were frequently in conflict with the goals and objectives stipulated in Albany 2030, the City's Comprehensive Plan, adopted in 2012. Pursuant to New York State law, City zoning regulations are required to be consistent with the Comprehensive Plan.

Pursuant to Section §375-5(E)(24)(d)(i), the USDO was adopted with a built-in six-month evaluation period. The purpose of this evaluation period is to shield against any potential unintended consequences that may result from adopting these comprehensive changes without first applying them in practice. The ordinance directs the Planning Staff to compile a list of concerns or unintended consequences that may arise through the application of the USDO to specific projects, building permit applications, and public comment. Where the Chief Planning Official (CPO) finds sufficient grounds for the code to be amended, the CPO shall draft and propose changes pursuant to Section §375-5(E)(24) (Amendments to Zoning Map or USDO Text).

The six-month evaluation period coincided with the end of the term for the prior Common Council. Although a package of proposed amendments was reviewed by the Planning Board and referred to the Common Council in late 2017, the Planning Department received feedback that the Common Council was unwilling to take up the matter prior to the end of its term in 2017. Accordingly, the department withdrew its proposal and upon further review, broadened the extent of the CPO's proposed changes. The department has also coordinated with General Code on a strategy for codification of the code document for integration to the City's online code interface.

Accompanying this memorandum are several versions of the proposed revised copy of §375:

- A full track changes version, including all copy edits, renumbering and content changes.
- A markup copy limited to content-related edits, with comments by the Planning Staff identifying the reasoning for the changes.
- A clean version of the document.

The proposed changes are more fully described in this memorandum. The changes described herein are not arranged in a numerical or linear fashion but are instead divided into several themes:

- Copyediting and renumbering
- Reorganizational changes

- Content clarification
- Inadvertent omissions or errors
- Content changes

Those looking for a more linear narrative should consult the markup copy of the code document noted above.

COPYEDITING AND RENUMBERING

The department has engaged General Code, the City’s online codification provider, in the review of the adopted 2017 code document, inclusive of modifications proposed as a part of this review. The code has been fully copyedited by the editorial staff at General Code.

A renumbering scheme was also recommended and incorporated into the document. The renumbering removes one “level” from the overall numbering hierarchy, simplifying the online interface and references to the document. *Ex. §375-2(C)(5) is now §375-203(5)*

Tables throughout the USDO have also been simplified to make them more orderly and user-friendly. Jumbled text has been pulled apart to make it more readable and lengthy passages have been accommodated with footnotes at the bottom of the tables or moved to other appropriate sections of the code.

Upon adoption of the revised USDO, Chapter §375 will be fully integrated into the existing City Code online at generalcode.com.

REORGANIZATIONAL CHANGES

The revised USDO accommodates several reorganizational changes – that is, content that is moved from one section of the code to another, but where the application of that content is essentially the same. In some instances, a consolidation of content is also accomplished by the reorganization. The content affected by the reorganizations was often added late in the drafting process and therefore was not ideally integrated into the original architecture of the code.

The resulting deficiencies quickly became evident upon using the document in practice. The intent in every case is not to change to content, but to better direct the code user. There are circumstances where we decided against retaining cross-references, worrying that this may be cumbersome or result in additional confusion.

❖ REVISIONS TO PERMITTED USE TABLE LEGEND

An “L” (Limited Use) categorization has been added to the Permitted Use Table in §375-302 to denote that a is permitted in the applicable zone district, but not explicitly, due to its allowance being limited by one or more Use Specific Standards applicable to that use in §375-303.

Despite references to the Use Specific Standards in the Permitted Use Table, code users are often failing to consult and fully review those standards, which often articulate limitations of the use. Failure to consult the Use Specific Standards can be of extreme consequence to a prospective property owner. For example, a use may be listed as a “P” (Permitted Use) in a zone district, but not within “x” square feet of another use, not to exceed “x” number of beds, or only within “x” type of structure. These types of restrictions are only articulated within the Use Specific Standards applicable to that use; if a user fails to consult the latter section, they may not be fully informed about the allowances of the particular use, hence the conversion of the “P” (Permitted Use) to a “L” (Limited Use) in the Permitted Use Table.

The “V” (Vacant Use) categorization has been deleted. The designation is applied too infrequently to justify its own category within the Permitted Use Table. Specific use standards applicable to structures in residential zones that were originally designed and constructed for a nonresidential uses have largely overlapping applications. The following changes have also been made to the Permitted Use Table in conjunction with the elimination of the “V” categorization:

- “Hotel” and “Indoor Recreation and Entertainment” added as a conditional uses in the I-1 and I-2 districts. Previously a “V” use.
- Funeral Home or Crematorium added as a conditional use in the MU-NE, MU-CI, MU-FC and MU-FS districts. Previously a “V” use.
- Police and Fire Station allowance as V use removed in R-2 and R-T districts without replacement.
- Bar or Tavern allowance as V use removed in I-1 and I-2 districts without replacement.

Additionally, content relating to pre-existing conditional uses has been moved from 375-301(1) to new section 375-506(7) (Pre-Existing Conditional Uses).

❖ RELOCATION OF DISTRICT STANDARDS

The revised code relocates the District Standards in §375-203(2)(d), §375-203(3)(d), §375-203(4)(d) and §375-203(5)(d) to the appropriate sections within the USDO. These provisions are often overlooked in their current locations, and secondary cross references, particularly those originally included in the Permitted Use Table, were ineffective in underscoring these provisions. Because these standards inevitably regulate and control the use of the property, they belong in the Use Specific Standards. Examples of content that has been relocated are as follows:

§375-203(2)(d), §375-203(3)(d), §375-203(4)(d) and §375-203(5)(d)	§375-303(2)(a)(v); §375-303(2)(b)(i); §375-303(4)(c)(ii); §375-303(4)(d)(ii)
A structure that was originally designed and constructed for a nonresidential use may be occupied for any use in the “Residential” or “Civic and Institutional” categories in Table §375-3-1 (Permitted Use Table) upon the issuance of a Conditional Use Permit.	In the R-1M, R-2 R-T, or R-M District, a structure that was originally designed and constructed for a nonresidential use may be occupied for this use upon the issuance of a conditional use permit.
§375-203(3)(d), §375-203(4)(d) and §375-203(5)(d)	§375-303(4)(b)(ii); §375-303(4)(b)(iii); §375-303(4)(d)(ii); §375-303(4)(d)(iii); §375-303(4)(f)(vii); §375-602
Portions of the ground or basement floor of a residential structure that were physically constructed or adapted to accommodate nonresidential uses (for example, through an addition extending closer to the sidewalk than the original façade of the building, or through the installation of display windows) before January 1, 2015, may be used for the following uses, but the area devoted to such uses may not be expanded beyond the ground or basement floor constructed or adapted for nonresidential purposes before January 1, 2015, and the use may only operate between the hours of 8:00 am and 10:00 pm...	In the R-2, R-T, and R-M Zone Districts, this use is limited to preexisting storefronts and may not be expanded beyond those areas constructed or adapted for nonresidential purposes before the effective date of this USDO. PREEXISTING STOREFRONT The basement or ground floor of a structure, or portions of that structure, that were physically constructed or adapted to accommodate nonresidential uses (for example, through an addition extending closer to the sidewalk than the original façade of the building, or through the installation of display windows) before the effective date of this USDO.
§375-203(3)(d)	§375-303(2)(a)(ii)
After June 1, 2017, no single- or two-family dwelling structure may be converted to contain more than the existing number of dwelling units unless a Conditional Use Permit for the conversion has been obtained. No Conditional Use Permit for such conversion shall be approved unless the Planning Board determines that...	In the R-2 or zone district, no structure constructed as a single-family detached dwelling may be converted to a two-family detached dwelling without approval of a conditional use permit. No conditional use permit for such conversion shall be approved unless it is determined that...
§375-203(4)(d)	§375-303(2)(a)(iii)
Conversion of a single- or two-family dwelling to a three-family dwelling is permitted with approval of a Conditional Use Permit, provided that... Conversion of a single- or two-family dwelling to a three-family dwelling is permitted with approval of a Conditional Use Permit, provided that...	In the R-T Zone District, no townhouse dwelling may be converted for additional dwelling units without approval of a conditional use permit. No conditional use permit for such conversion shall be approved unless it is determined that...
§375-203(5)(d)	§375-303(2)(a)(v)
After June 1, 2017, no single- or two-family dwelling structure may be converted to contain more than the existing number of dwelling units unless a Conditional Use Permit for the conversion has been obtained. No Conditional Use Permit for such conversion shall be	In the R-M Zone District, no structure may be converted to add additional dwelling units unless a conditional use permit for the conversion has been obtained. No conditional use permit for such conversion shall be approved unless it is determined that...

approved unless the Planning Board determines that...	
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❖ RELOCATION OF NONCONFORMING USE REGULATIONS FROM DISTRICT STANDARDS

The revised code relocates several provisions relating to the conformity status of existing uses and structures from the District Standards in §375-203(4)(d) to the sections of the code pertaining to nonconforming uses, §375-506. Content has been relocated as follows:

§375-203(4)(d)	§375-506(3)(i)
Structures that were originally designed and constructed for three or more dwelling units, or converted to three or more units prior to January 2015, shall be considered legally conforming as to the number of units, but shall be required to meet building code requirements as to the size and construction of each unit.	Any multifamily dwelling use will be considered a conforming use of property notwithstanding any provisions of this USDO where it meets the following criteria: (i) In the R-2, R-T or R-M Districts, a structure that was originally designed and constructed as a multifamily uses or dwelling shall be considered legally conforming as to the number of units for which it was originally designed. (ii) In the R-T and R-M Zone Districts, structures that were legally converted to four or more units prior to January 2015 shall be considered legally conforming as to the number of units for which it was converted.
§375-203(4)(d)	§375-506(3)(d)
If a building has been vacant for more than one year or damaged or destroyed to the extent of more than 50 percent of the cost of replacement of the structure, the provisions of Section §375-5(F)(4)(c) shall apply, except that: the average dwelling unit size in any building that was not originally constructed as a multi-family dwelling structure shall be at least 750 sq. ft. or gross improved floor area.	In the R-T and R-M Zone Districts, if a multifamily dwelling has been vacant for more than one year the preexisting use may be reestablished provided that the average dwelling unit size in shall be at least 750 square feet of gross improved floor area and it shall be required to meet building code requirements as to the size and construction of each unit.
	§375-506(3)(f) In the R-T and R-M Zone Districts, if a multifamily dwelling damaged or destroyed to the extent of more than 50% of the cost of replacement of the structure, the structure may be rebuilt provided that the average dwelling unit size in shall be at least 750 square feet of gross improved floor area and it shall be required to meet building code requirements as to the size and construction of each unit.

❖ CONSOLIDATION OF REGULATIONS PERTAINING TO HOURS OF OPERATION

The R-1L, R-1M, R-2, R-T, R-M, R-V, MU-NE, MU-NC, MU-CU, MU-CI and MU-FM zone districts have limitations upon allowable hours of operation for some or all uses. These regulations are currently listed individually within the district standards for each of these zone districts - §375-203(1)(d); §375-203(2)(d); §375-203(3)(d); §375-203(4)(d); §375-203(5)(d); §375-204(1)(d); §375-204(2)(d); §375-204(3)(d); §375-204(6)(d); §375-204(10)(d). This orientation is not accommodating to the most practical users seeking such information. For example, if you were looking to open a business that operates late into the evening, you would want to know which districts you could operate in without having to read the District Standards for each and every district. The same would be true of a public safety or code enforcement employee heading out on a detail. Regulations pertaining to Hours of Operation have therefore been moved and consolidated in new section §375-410(2): Hours of operation.

❖ CONSOLIDATION OF DISTRICT PLAN REGULATIONS

The R-V, MU-CU, MU-CH and MU-CI zone districts provide the option for an applicant of larger, often phased developments to pursue a District Plan Approval that allows for certain deviations from the dimensional and lot size requirements pertaining to those developments. This application was initially contemplated solely as relating to the MU-CI zoning district and subsequently broadened to apply in other districts. This has resulted in lengthy and redundant text in the District Standards sections in §375-203(5)(d), §375-204(3)(d); §375-204(4)(d) and §375-204(6)(d). These passages have been consolidated and moved to new section §375-401(4): Dimensional standards applicable to district plans. There have been minor changes in content necessary to align and consolidate the text. A cross-reference placeholder has been retained in the District Standards sections clarifying that the District Plan is an option and those districts and directing them to new section §375-401(4).

CONTENT CLARIFICATION

The following changes seek to correct poorly articulated or inherently contradictory passages within the USDO. The failure to adequately define or convey a statement can result in confusion, contradiction or exploitation. Only by using the code and testing it amongst vast constituencies do these flaws sometimes become apparent.

Because the intent of these changes is to better articulate content rather than change it, this section is primarily composed of mere references to the passages that have been reworded rather than substantial justifications as to why.

❖ PASSAGES REVISED FOR CLARITY

The following passages have been generally revised for clarity. Any changes to the content of these sections is called out separately within areas of this memorandum pertaining to changes in content.

- §375-105(3): Uses, Structures and lots rendered conforming.
- §375-203(6)(d)(iii)(A); §375-204(6)(d)(iv)(A): District standards: Optional district plan.
- §375-303(2)(a)(ii)(2): Residential uses: Dwelling, two-family detached.
- §375-303(6)(o): Accessory uses: Telecommunications antennas or satellite dishes.
- §375-401(3)(a)(iii): Contextual front yards.
- §375-401(4): Dimensional standards applicable to district plans.
- §375-405(5)(h): Parking lot and garage design standards: Protection of residential districts.
- §375-407(4)(g): Building design standards: Fenestration.
- §375-409(1)(a): Signs: General provisions: Purpose.
- §375-504(6)(c)(ii): Notice format and content: Mailed notices.
- §375-504(6)(c)(v): Notice format and content: Posted notices.
- §375-504(6)(c)(vi): Notice format and content: Other types of notice.
- §375-505(8): Revocable right-of-way privilege.
- §375-505(9): Right-of-way access permit.
- §375-602: Definitions.

The following sections have been revised to ensure that terms utilized coincide with definitions in §375-602:

- §375-206(4)(d): CS-O Combined sewer overlay: Additional requirements for small lots.
- §375-206(6)(c): NK-O Normans kill overlay: standards.
- §375-505(3)(a): Minor development plan review: Applicability.
- §375-505(12)(a): Major development plan review: Applicability.

❖ PASSAGE REVISED TO CORRECT INTERNAL INCONSISTENCIES

The following sections were revised to correct inconsistencies:

- §375-203(6)(c): R-V Residential Village: Dimensional standards.
General front yard setback reduced from 20 feet to 10 feet in consistency with §375-401(3).
- §375-206(2)(ii)(c): Secondary downtown archaeological review district.
Improper reference to demolition review procedures removed

- §375-401(3)(b)(iii): Mixed-use districts: Contextual lot widths. Contextual lot widths not applied in mixed-use districts.
- §375-504(5)(e)(i): Allowable administrative adjustments. Administrative adjustment of 5% for principal building height is inconsistent with measurement of height in number of stories.
- §375-602: Definitions.

The following definitions are redundant and have been removed:

- City of Albany Comprehensive Plan
- Lot coverage
- Principal building façade

The following definitions have been added:

- Median household income
- Right-of-way access
- Off-premises sign
- On-premises sign
- Sign height

INADVERTANT OMISSIONS OR ERRORS

This section focuses on unintended errors or omissions - that is, those that are not known to have resulted from a conscious decision or are directly contrary to a conscious decision made during the drafting of the code. While some of these represent consequential changes, it is the honest belief of the Planning Staff that the content was not intended to be included in, or absent from, the original USDO. These changes are therefore proposed as corrective measures as opposed to policy changes.

❖ PERMITTED USE TABLE

The following changes are proposed to the Permitted Use Table:

- “Dormitory” has been changed from a “P” (Permitted Use) to a “C” (Conditional Use) in the R-V (Residential Village) zone district in the Permitted Use Table. The original allowance is not agreeable with other district allowance requiring a Conditional Use Permit.
- “Dwelling, Single-Family Detached” and “Dwelling, Two-Family Detached” have been added as a Permitted Use in the “Connected Edge” frontage zone of the MU-FC (Mixed-Use Form-Based Central Avenue) district. This was an inadvertent omission during drafting.
- “Cabaret” has been added as an allowed “A” (Accessory Use) in the residential zone districts in the Permitted Use Table. This was an inadvertent omission during drafting.
- “Agriculture, Urban” has been added as a “P” (Permitted Use) in the LC (Land Conservation) zone district in the Permitted Use Table. There appears to be no logical reason to disallow the use in this district.

❖ PASSAGES REVISED TO ACKNOWLEDGE MIX OF USES

Due to the historic nature of use patterns and building typologies present within Albany, the code contemplates some future or preexisting commercial uses in most residential zone districts. This is reflected in the regulations with numerous allowances or caveats throughout the USDO. However, it has become evident upon using the code that some sections were drafted without contemplating the existence of such a mixed of uses, often resulting in a structural imbalance in the way that these sections are applied. The following sections have been revised to correct this imbalance:

- §375-301(2): Multiple uses
- §375-405(3)(d): Parking alternatives and adjustments: On-street parking
- §375-409(4): Signs that may be erected without a permit

❖ USES THAT MAY OCCUPY A NONRESIDENTIAL STRUCTURE IN A RESIDENTIAL ZONE

The USDO allows a structure located in an R-1M, R-2, R-T and R-M districts “that was originally designed and constructed for a nonresidential use” – a church, school, etc. – to be reoccupied for any use in the “Residential” or “Civic and Institutional” categories in the Permitted Use Table upon the issuance of a conditional use permit. The application of this provision is seen as overly broad and those uses that qualify under this provision have been limited to: “Dwelling, multifamily,” “Assisted living or nursing home,” “Higher education institution” and “Office”.

Being that these are use-related provisions, they have been relocated from the District Standards in §375-203(2)(d), §375-203(3)(d), §375-203(4)(d) and §375-203(5)(d) to the Use Specific Standards in §375-303.

❖ CONTIGUITY OF COMMUNITY RESIDENTIAL FACILITIES

A provision has been added in §375-303(2)(b)(ii) to clarify that a community residential facility may not be located on an adjacent or adjoining lot or parcel to one that is operated by the same entity or that serves the same population. The USDO, in consistency with the Fair Housing Act, permits community residential facilities in all zones, but limits them to an eight-bed maximum in low density residential districts. However, the code does not currently limit the allowance of multiple individual such uses on contiguous lots, potentially allowing for the circumvention of the intent of the provision by dividing a larger facility over multiple buildings on contiguous parcels.

❖ SATELLITE DISH REMOVAL

Language has been added in §375-303(6)(o)(ii) requiring the removal of satellite dishes within 30 days of ending the service subscription. This rule was present in prior iterations of the City zoning code and was inadvertently left out of the USDO.

❖ MOBILE VENDING CONDITIONAL USE PERMIT REQUIREMENT

The USDO has been clarified to indicate that a Conditional Use Permit use required for a Mobile Vendor if it has been located at a site for at least 30 consecutive days. The applicable specific use standard currently states “for a period in excess of 30 days.” The Conditional Use Permit requirement is intended to address the Mobile Vending use becoming a semi-permanent fixture at a site.

❖ MAXIMUM IMPERVIOUS LOT COVERAGE IN FORM-BASED DISTRICTS

An additional dimensional regulation – maximum impervious lot coverage – has been added in the form-based zoning districts (MU-FW, MU-FS, MU-FC and MU-FM) in §375-402(2). This regulates the area of the parcel that can be covered with impervious surfaces, such as buildings and paved areas. It is currently applied in all districts except for the form-based districts. We have been unable to find a credible reasoning for this inconsistency.

❖ DRIVEWAY WIDTH

The maximum allowable width of a two-way driveway in §375-405(5)(e) has been increased from 20 to 24 feet in consistency with current practice. The 20-foot number represents a miscommunication during the code drafting and cannot be reasonably applied in practice.

❖ APPLICATION OF STANDARDS FOR MECHANICAL EQUIPMENT

§375-406(9) of the USDO currently stipulates that both roof-mounted and ground-mounted mechanical equipment for all nonresidential principal uses be screened from view. These requirements have been broadened to apply to all multifamily, mixed-use and nonresidential principal uses.

❖ HOURS OF OPERATION FOR MOBILE VENDORS

The original draft of the USDO does not address allowable hours of operation for mobile vendors. A provision has been added in §375-410(2)(d) stipulating that mobile vendors must comply with hours of operation otherwise applicable to food and beverage uses within the district in which they are located. This ensures that a food truck cannot operate outside of the hours applicable to a brick and mortar restaurant establishment.

❖ MAXIMUM SIZE OF FREESTANDING SIGNS

The maximum height of freestanding signs allowed in the MU-CH and MU-CI districts pursuant to §375-409(5)(a)(i) has been decreased from 25 feet to 12 feet, “except along Central Avenue, between King Avenue and the City line, where a maximum height of 25 feet is allowed.” The intent in drafting the USDO was to reduce the allowable height of freestanding signs, except as specified above.

❖ SIGNAGE ALLOWANCE FOR MULTI-TENANT BUILDINGS

Signage allowances are now provided in §375-409(5)(a)(i) for buildings or properties with multiple users. As originally drafted, the USDO failed to accommodate for such circumstances, resulting in some businesses and uses being allocated extremely small sign allowances when the total allowable square footage was divided amongst all the uses upon the property.

❖ EXPANSION OF PREEXISTING CONDITIONAL USE

§375-301(1)(b) clarifies that “any expansion in the size or extension of hours of operation” of a conditional use that was in place upon adoption of the USDO will require the approval of a new conditional use permit, and that such uses cannot carte blanche expand their operations without prudent and proper review of the impacts.

❖ WALLS AND FENCES ON VACANT LOTS

§375-406(9) has been revised to apply the same standards to fencing on vacant lots as are applied to those on lots occupied with a structure. It is further stipulated that walls and fences on lots without a principal structure may not exceed the height of walls and fences permitted on the same portion of the nearest lot with a principal structure.

❖ PROCEDURE SUMMARY CHART

The following changes are proposed to the Procedure Summary Chart in §375-502:

- “Stormwater Management Officer” and “City Engineer” has been added as reviewing parties for both “Minor Development Plan Review” and “Major Development Plan Review.”

- “City Engineer” has been removed as a reviewing party for “Lot Consolidation.”
- The decision-making entity for a “Right-of-way Access Permit” has been reassigned to the Commissioner of General Services, while the “City Engineer” has become a reviewing party.

❖ NOTICE OF PUBLIC HEARINGS AND MEETINGS

§375-504(6) has been revised to clarify that notice of a public hearing or meeting will only be sent for the initial hearing or meeting for an application, not each meeting agenda upon which the subject case appears, as some items appear before Boards and Commission multiple times. It would be costly and impractical to formally notice every meeting, and it was never our intent to do so. However, content will be added to advise that subsequent meetings may be held and identify a telephone number, website, or email address from which more information may be obtained.

❖ DEVELOPMENT PLAN REVIEW THRESHOLDS

The applicability thresholds for Minor and Major Development Plan Review – Sections §375-505(3)(a) and §375-505(12)(a), respectively – have been standardized for ease of administration and internal consistency:

Action	Minor DPR Threshold	Major DPR Threshold
Construction of a building or buildings on single or contiguous and adjacent lots.	< 10,000 SF	10,000 SF or greater
Expansion of any existing building that increases the ground floor area	1,000 – 9,999 SF	10,000 SF or greater
Internal renovations to an existing building resulting in the creation of new dwelling units.	10 – 19 units	20 or more units
Development or redevelopment of any surface parking lot	5-9 parking spaces	10 or more parking spaces; disturbance exceeding 0.5 acres.
Any redevelopment on a lot	10,000 – 20,000 SF of lot area	20,000 or more SF of lot area

In addition to the aforementioned standardization, the following definitions have been added or modified in §375-602:

- Change of use
- Disturbance
- Internal renovation
- Redevelopment
- Substantial Renovation

❖ EXPANSION OF A NONCONFORMING USE

Expansion of a nonconforming use within a building has been limited to 25% of the floor area within the building. The current USDO places no limitation upon such an expansion. We believe this was an oversight in the drafting process and is not a typical provision applied to a nonconforming use.

❖ TEMPORARY OR ACCESSORY USES AFFILIATED WITH A NONCONFORMING USE

§375-506(3)(b) has been added to clarify that a nonconforming use may continue to apply for permits to continue an accessory or temporary use, such as an outdoor café or cabaret.

❖ REDUCTION OF MAXIMUM ALLOWABLE BUILDING HEIGHT IN MU-CI

The maximum building height allowance for the MU-CI district has been reduced from 8.5 stories to 5 stories. The 8.5-story provision was mainly reflective of providing opportunities from existing institutional uses as well as accommodating existing tall building within areas of the zone district. In conjunction with the generalized reduction of allowable building height within this district, a provision has been added allowing buildings that exceed allowable height regulations where approved as a part of a District Plan Approval where necessary to accommodate a demonstrable need of a proposing institution.

❖ LANDSCAPE REMOVAL DURING APPLICATION REVIEW PERIOD

Text has been added to section §375-410(3) (Landscape Maintenance) to clarify that where any property is the subject of a development application, no clearing or removal of existing trees and vegetation shall occur, excepting the removal of severely diseased, dead or dying trees, until such time that the development application has been approved.

CONTENT MODIFICATIONS

There are several changes that go beyond corrective or interpretive measures and represent definitive policy changes. These changes arise both from our experiences using the code and from reasonable requests received by this office for changes to the code. In some cases, these issues were discussed or contemplated prior to the adoption of the original code and therefore did not require extensive study or research of the part of the staff.

❖ ALLOWABLE LOT COVERAGE INCREASE IN R-1L DISTRICT

The maximum allowable impervious lot coverage has been increased from 30% to 35% in in the R-1L (Single-Family Low Density) zone district - §375-203(1)(c); §375-401(3)(a)(i). Lot sizes are the most disparate in this district of all the residential zone districts. This has seemingly resulted in additions and other small improvements coming exceedingly close to the lot coverage maximum in these districts.

❖ ADDITION OF CORNER SIDE YARD REGULATION

The USDO currently establishes that any street facing yard is a “front yard.” This creates a scenario where corner properties have two “front yards.” This is appropriate in some commercial districts, where both street frontages are equally important. However, in residential districts, a home often fronts upon one street or the other. Even where a building faces two streets, the setbacks are often not identical.

The revised USDO establishes a “corner side yard” setback regulation in the R-1L, R-1M, R-2, R-M and R-V districts – underscored in the dimensional tables in sections §375-203(1)(c), §375-203(2)(c), §375-203(3)(c), §375-203(5)(c), §375-203(6)(c), respectively, and, §375-401(3)(a)(i) and §375-401(3)(a)(iv). The “front yard” becomes defined as the street facing yard upon which the structure fronts, thereby distinguishing it from the “corner side yard.” The traditional side yard is renamed the “interior side yard.” A dimensional reference has also been added in §375-401(3)(a)(iv): Contextual corner side yards.

This change is also relevant to: Parking restrictions – §375-405(4); Design of off-street loading areas – §375-405(7)(b), and; Walls and fences – §375-406(8)(b). A further qualification has been made in regard to fences and

walls, “where an existing accessory structure on the subject lot exceeds the corner side yard setback requirement, or a principal or accessory structure on an abutting lot exceeds the front setback requirement on the abutting lot,” and for additional broadened applications in the R-1L and R-1M districts. In these circumstances, walls or fences may be located in consistency with these arrangements.

Ancillary definitions associated with “lot line” and “yard” in §375-602 have been revised to reflect the aforementioned changes.

❖ REGULATION OF FORMULA ESTABLISHMENTS IN MU-NE DISTRICT

A new definition has been added in §375-602, “Formula Establishment,” regulating certain uses where standardized features cause them to be substantially identical to more than 10 other businesses (i.e. national or local brand chain establishments). This has been added in conjunction with the revision of the purpose statement for the MU-NE zone district in §375-204(1)(b) to encourage commercial uses that “protect local character and encourage local investment.”

Pursuant to the specific use standards in §375-303 formula establishments would be prohibited in the MU-NE zone district for the following use categories: Limited Service Café; Restaurant; Personal or Business Service; General Retail; Specialty Retail. These uses are denoted with an “L” underscoring these limitations in the Permitted Use Table in §375-302. In the case of “Restaurant” and “Personal or Business Services” uses, a Conditional Use Permit would no longer be required in the MU-NE district.

❖ ADDITION OF FRONTAGE BUILD-OUT REGULATION

An additional dimensional regulation – frontage build-out, minimum – has been added in the MU-NE, MU-NC, MU-CU and MU-DT districts – underscored in the dimensional tables in sections §375-204(1)(c), §375-204(2)(c), §375-204(3)(c), §375-204(5)(d), respectively, and §375-401(3)(b)(i).

The frontage build-out is the percentage of the width of a lot that is required to be occupied by its building’s façade. This regulation is already applied in the City’s form-based zoning districts. Its application in these additional districts will help to ensure reasonable contiguity in the street wall of building in urban commercial district thereby supporting walkability and ensuring quality urban design.

An administrative adjustment allowance of 5% has been added in §375-504(5)(e)(i) and the definition revised in §375-602.

❖ MODIFICATION OF HEIGHT LIMIT IN I-1 AND I-2 DISTRICTS

The allowable height limit in I-1 (Light Industrial) and I-2 (Heavy Industrial) has been broadened to assess height in feet as well as the number of stories. The maximum height allowance has been changed to “2 stories / 35 feet” in the I-1 district and “6 stories / 85 feet” in the I-2 district, reflected in the dimensional tables in §375-2(E)(1)(c), §375-2(E)(2)(c) and §375-401(4)(c).

It has become evident that more so that other types of structure, industrial structures may be limited in their number of stories but still reach substantial heights.

❖ NEW AND MODIFIED RETAIL, FOOD AND BEVERAGE DESIGNATIONS

Definitions relating to both Retail and Food and Beverage uses have been revised in §375-602 to further distinguish individual use types, as follows:

Bar, Tavern or Lounge:	This use has been modified from the original designation “Bar or Tavern” to encompass hookah, vaping and cigar lounges.
Limited Service Café:	This use has been added to distinguish an “establishment that serves deli sandwiches, a bagel shop, a donut shop, a coffee or tea shop, or an ice cream parlor” from a full-service restaurant establishment.
Restaurant:	The definition for this use has been modified all to specify that the use has a full kitchen and that any retail products sold shall be secondary to the sale of food.
Retail, Convenience:	This definition has been revised to qualify uses for which “less than 50% of revenues are from the sale of fresh (nonprocessed) food and vegetables” and that the “use may serve prepared foods or beverages to be consumed on or off the premises, but such service shall be secondary to retail sales.”
Retail, General:	This definition has been revised to clearly distinguish from other uses.
Retail, Special:	This definition has been revised to clearly distinguish from Retail, Convenience and to disqualify uses for which “between 10% and 80% of revenues are from alcohol and tobacco sales.”

❖ LIMITED VEHICLE RENTAL PERMITTED IN COMERCIAL DISTRICTS

“Light Vehicle and Equipment Sales, Rental and Services” has been added to §375-302 (Permitted Use Table) as an allowable accessory use in the MU-NE, MU-NC, and MU-CU zone districts. The allowance is limited by the specific use standards applicable to this use to “no more than two vehicles, neither of which may be stored in any required front setback area when the vehicles are not in use.” The allowance was prompted by the desire to open accessibility for moving vehicles in urban districts.

❖ FUNERAL HOME OR CREMATORIUM CHANGED TO A PERMITTED USE IN MU-CU

“Funeral home or crematorium” has been changed in §375-302 (Permitted Use Table) from a “C” (Conditional Use) to a “P” (Permitted Use) in the MU-CU (Mixed-Use Community Urban) zone district in the Permitted Use Table. This change evolved from conversations with the Planning Board based upon their experiences evaluating an application under this USDO.

❖ CHANGES TO MOBILE VENDING USE

“Mobile vendor” has been added in §375-302 (Permitted Use Table) as an allowable Temporary Use in the MU-NC zoning district. This proposal results from a request received to locate a food truck vendor at a gas station location in an area principally zoned MU-NC.

❖ LEASING OF INDIVIDUAL BEDROOMS IN THE R-1L DISTRICT

A provision has been added in §375-303(2)(a)(i) disallowing the leasing of individual bedrooms in the R-1L or R-1M Districts. This has resulted from community concerns. It has been suggested that rental residences are essentially operating as “rooming houses,” though this does not fall within the definition of rooming house as defined within the USDO.

A single lease with up to three unrelated individuals will remain permitted within the R-1 districts, as it meets the definition of “family” as defined within the USDO.

❖ CONVERSION STANDARD FOR TRASH STORAGE

A requirement has been added to the conversion standards for townhouse dwellings in §375-303(2)(a)(iii) that the design incorporate an area inside the structure for the storage of trash containers.

❖ NEW PROVISION FOR MULTIFAMILY CONSTRUCTION IN R-T DISTRICT

A new provision in §375-303(2)(a)(v) would allow construction of new multifamily dwellings on contiguous lots in the R-T zone district the total number of dwelling units does not exceed 80% of the total units allowable if the lots were developed with townhouse dwellings and on-site parking is provided for at least 50% of the units. The front façade of the structure would also need to be articulated to reflect the general width and design features of any existing single-family, two-family, or townhouse structures on the same block face.

The proposed allowance is intended to allow for more cost-effective construction of infill development while balancing the concerns of density and parking upon neighborhood.

❖ MANDATORY TRAFFIC STUDY FOR DISPATCH SERVICE AND FREIGHT TRUCK TERMINAL

A traffic study has been added as a mandatory requirement for any new “Dispatch Service or Freight Truck Terminal” use, pursuant to the specific use standards in §375-303(4)(g)(ii) for that use. Upon review of an application for such use, there appeared to be no circumstances where such a study would not be appropriate. Adding this language to the code makes this requirement clear to any prospective applicant.

❖ LIGHTENED LANDSCAPE RESTRICTIONS FOR AUTOMOBILE SALES USES

Language has been added to the specific use standards in §375-303(4)(g) for both “Light” and “Heavy Vehicle and Equipment Sales, Rental and Services” providing for the following:

- Required trees and landscaping along the front lot line may be clustered to improve visibility of vehicles for sale or lease.
- Landscaping shall only be required in portions of the parking area designed or reserved for customer vehicles, and need not be installed in vehicle and equipment display areas.

❖ ACCESSORY DWELLING UNITS

An accessory dwelling unit is a residential unit that is located on the same lot as a single-family dwelling unit, either internal to or attached to the single-family unit or in a detached structure. Unlike a traditional dwelling unit, the property owner must occupy either the primary or the accessory dwelling unit as his or her primary residence, and the accessory unit shall not exceed 800 square feet of gross floor (additional criteria has been added in §375-303(2)(a)(ii) to distinguish this use from a conversion to a two-family detached dwelling). The property remains taxed and classified as a single-family residence.

Implementation of the provisions allowing for accessory dwelling units in §375-303(6)(a) was delayed pending the initial review of the code. The proposed revision implements this provision with the following adjustments:

- Text has been revised to prohibit new street facing entrances for accessory dwelling units when attached to the principal dwelling structure.
- Provision has been added requiring minimum of 30 days residency and requirement for a Residential Occupancy Permit.

❖ MODERATION OF MAXIMUM ALLOWABLE PARKING SPACES PROVISION

Small sites less than 50,000 square feet in area have been exempted from the maximum parking allowance provisions in §375-405(2)(b). Where applicable, the maximum number of allowable parking spaces has also been increased from 115% to between 125% and 150% of the minimum parking requirement. This change was made mainly in deference to uses in the MU-CH zone district, as well as smaller uses in other zone districts where 115% is seen to be unreasonably low in some circumstances.

The increase comes with the caveat that no variance may be issued to permit additional parking above the limits established until the use has been in operation for a period of at least one year.

The revised section also clarifies the application of maximum parking requirements in circumstances where no parking is required.

❖ **PARKING ADJUSTMENT ADDED FOR CAR-SHARE SPACES**

A provision has been added in §375-405(3) allowing for a reduction in the minimum number of required off-street parking spaces required for new developments that provide for a car share vehicle on site. A 10-space parking reduction is offered for each car-sharing parking space provided up to a maximum of 25% of the required parking spaces. A definition of “Car sharing” has been added in §375-602 and the use has been added as an allowable accessory use in the permitted use table.

❖ **CORNER DRIVE-THRU PROHIBITION REVISED TO EXEMPT MU-CH DISTRICT**

Under the adopted code - §375-405(8) - drive-thru facilities are prohibited in the front and corner side yard areas. The USDO has been revised to exempt drive-thrus located in the MU-CH district from this prohibition based upon the results of two cases that were evaluated by the Board of Zoning Appeals and granted variances in both circumstances.

❖ **CHAIN LINK FENCING PROHIBITION REMOVED**

The prohibition of chain link fencing in front yard areas has been rescinded from §375-406(8). The application of other types of fencing has been contested as unreasonable and uneconomical.

❖ **REDUCED SQUARE FOOTAGE ALLOWANCE FOR SIGNAGE IN RESIDENTIAL DISTRICT**

The maximum allowance size of both freestanding signs and wall signs in residential districts has been reduced from 20 square feet to 10 square feet. It is also clarified that a freestanding sign is only permitted in lieu of a wall sign, or vice versa.

❖ **DEVELOPMENT PERMIT PROCEDURE REMOVED**

The procedural provision in §375-505(3) for a “Development Permit” has been removed. A formal application procedure is not necessary to request correspondence with respect to the compliance of a project proposal. This procedure has not been implemented in practice.

❖ **TREE AND VEGETATION PERMIT PROCEDURE REMOVED**

The procedural provision in §375-505(11) for a “Tree and Vegetation Permit” has been removed. This procedure has not been implemented in practice and the inclusion of this content within the USDO is premature. The bulk of the language in this section still resides within Chapter 345 of the City Code. For all practical purposes, compliance with USDO requirements to install trees or landscaping can be administered through the Development Plan Review and Certificate of Occupancy processes.

❖ NEW TEMPORARY USE PERMIT PROCEDURE

A new procedure has been added in 373-505(15) allowing for the issuance of a “Temporary Use Permit.” The following temporary uses are contemplated: farmers’ market; mobile vendor; portable storage container; temporary construction office or yard; temporary real estate sales/leasing office; temporary/seasonal sales/activity. While these uses were contemplated, listed and defined in the original adopted USDO, the provision for their approval was left unclear. The new procedure established both Major and Minor Temporary use permit thresholds that are subject to approval by the Planning Board and Chief Planning Official, respectively.

❖ STANDARDS FOR VACANT LOTS RESULTING FROM DEMOLISHED STRUCTURES

Pursuant to the standards for Demolition Review in §375-505(16)(c), applicant must now agree in writing to certain treatments of lots upon demolition of a structure, such as the installation of fencing, the restoration and maintenance of lots, and the removal of unutilized curb cuts. These basic standards will ensure appropriate treatment of lots and in many cases alleviate the need for formal and costly site restoration plan documents.

❖ FEE SCHEDULE TRANSFERRED TO ADMINISTRATIVE MANUAL

As intended upon adoption of the USDO, the fee schedule currently constituting §375-7 has been removed to the Administrative Manual.

❖ LEAD TIME FOR PUBLISHED NOTICE

The lead time for required published notices in the newspaper has been reduced from 10 days to 5 days, in accordance with General Municipal Law. The reduction stems from the Times Union newspaper requirement upwards of four additional days lead time to publish a notice, resulting in 10 days becoming 14 days, etc. This does not affect any other type of notice – mailed or posted. We do not believe that many constituents rely upon the newspaper for public notice, such that the impact will be minimal.

❖ REDUCTION OF MAILED NOTICE RADIUS FOR CERTIFICATE OF APPROPRIATENESS

Parties receiving mailed notice for Certificate of Appropriateness applications have been narrowed from those within a 250-foot radius to those “on the same block face as the subject property.” This is based upon the prior informal practice for notice that existed for many years. The amount of notices currently being sent is exorbitant in cost given that no fees are charged for Certificate of Appropriateness applications and is being sent to many property owners that may not be practically affected a minor aesthetic change to a building several blocks away.

❖ MINOR DEVELOPMENT PLAN REVIEW FOR DEMOLITIONS

As a way of exempting small accessory structures, partial demolitions and industrial buildings from the traditional Demolition Review Procedures in §375-505(16), the Minor Development Plan procedure in §375-505(3), was applied. In practice, this process is in many cases more complicated than the demolition review procedure. Accordingly, the threshold for demolition referral under §375-505(3) has been removed.

❖ NONCONFORMING USE CERTIFICATES

The suggestion in §375-506(1)(a) that the Chief Planning Official will issue a formal “Certificate” of nonconformity has been revised to state that a “written confirmation” will be issued, in consistency with current practice.

❖ SUBSTITUTION OF A NONCONFORMING USE

§375-506(3)(e) has been revised to include objective standards for evaluating whether a proposed nonconforming use is of a greater intensity than the nonconforming use it is replacing. The current analysis is applied based upon the land use category within which the proposed use is included and does not sufficiently evaluate the intensity of the respective uses.

❖ DEFINITIONS OF TOWER STRUCTURE, OTHER AND TRANSIT FACILITY

The definitions of “Tower Structure, Other” and “Transit Facility” in §375-602 have been revised to contemplate aerial gondola transit systems.

❖ SETBACKS AS RELATED TO CANOPY STRUCTURES

The definitions of “Build-to line,” “Build-to zone” and “Setback” in §375-602 have been revised to disqualify canopy elements attached to a proposed structure, such as a gas canopy, from satisfying the requirement.

❖ ELIMINATION OF ½ STORY BUILDING HEIGHT APPLICATION IN MIXED-USE DISTRICTS

A maximum building height involving ½ story is currently applicable in the MU-NC (3 ½ stories), MU-CH (5 ½ stories) and MU-CI (8 ½ stories) zone districts. These applications have been ineffective due to the practical difficulties of accommodating a half-story in modern commercial and mixed-use construction. The maximum height allowances applicable to the affected districts have been revised as follows: MU-NC (4 stories), MU-CH (5 stories) and MU-CI (5 stories).

❖ SUSPENSION OF LOW-IMPACT DEVELOPMENT INCENTIVE

The USDO allows for certain deviations from dimensional requirements such as building height, building setbacks and lot coverage provisions to incentivize certain development goals: (i) energy efficient development; (ii) low-impact development; and (iii) affordable housing. Throughout the application of the code thus far, the low-impact development incentive has been far and away the most utilized of the three. The incentive is proposed to be suspended for one year to test the effectiveness of the other incentives.

Additionally, the incentive has been revised to limit application to green roof installations, disqualifying blue roofs as a means of obtaining the incentive.

❖ STANDARDIZATION OF BUILDING HEIGHT STEP DOWNS

Content previously existing in the District Standards sections for the R-M, MU-CU, MU-CH and MU-CI districts and stipulating required height step downs adjacent to R-1 districts has been standardized and applied uniformly through the addition of a section titled Building Heights in §375-402(b). Any portion of a primary structure (in any district) located within 100 feet of a lot boundary abutting an R-1L or R-1M District will be limited to three stories pursuant to §375-402(b).

❖ APPLICABILITY OF DESIGN REVIEW FOR TALL BUILDINGS

§375-519 (Design Review of Tall Buildings in MU-DT) has been reviewed to apply to all buildings exceeding 100 feet regardless of district, and a reference has been added in new section titled Building Heights in §375-402(b).

❖ ALLOWABLE DURATION OF TEMPORARY SIGNS OR BANNERS

The allowable duration that temporary signs can be displayed pursuant to §375-409(4) has been reduced from six month within a calendar year to three months.