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SUMMARY AND PROJECT OVERVIEW

Background

Located on a steep hill at the junction of the Hudson and Mohawk Rivers, and first visited by Henry Hudson in 1609, Albany is the fourth oldest city in the United States. Its long and colorful history centers on trade, whether by river, railroad, or highway, and its role as the capital of New York State since 1797. With a population of almost 100,000, the city now serves as the hub of a metropolitan area of almost 900,000 residents. Despite its long history, however, it was not until April of 2012 that Albany adopted its first Comprehensive Plan – entitled *Albany 2030*. While addressing the economic, transportation, land use, and financial challenges facing the city, *Albany 2030* has been noted for its strong emphasis on encouraging more sustainable and resilient development and redevelopment.

Now that *Albany 2030* has been adopted, it is time to update Albany's 1968 and 1993-era zoning, subdivision, and development regulations to reflect the vision and strategy articulated in *Albany 2030*. In 2014, the New York State Energy Research and Development Agency (NYSERDA) awarded the city a grant to do just that – to create a Unified Sustainable Development Code to implement the plan. The goal is to create new land use regulations and incentives that:

- Are simpler, more user-friendly, and highly illustrated;
- Are better aligned with the city's *Albany 2030* planning priorities;
- Promotes energy conservation and sustainable development;
- Reduces burdens on small business owners;
- Streamlines the city's procedures for reviewing and approving new development, and
- Protects established neighborhoods.

In late 2014, Albany retained a team of eight consulting firms led by Clarion Associates to draft the new Unified Development Code. This initiative is entitled "ReZone Albany" and is scheduled to be completed by December 2016.

Project Overview

The ReZone Albany project will be accomplished through the following five tasks:

- § Task 1: Project Initiation and Orientation (Completed);
- § Task 2: Technical Review & Diagnosis Report (This Document);
- § Task 3: Drafting the Sustainable USDO;
- § Task 4: Public Hearing and Adoption; and
- § Task 5: Post Adoption Implementation.

The project was officially kicked off in January 2015 and the schedule for the completion of the remaining tasks is shown below:

Project Tasks	Month																							
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Task 1: Project Initiation	●	●																						
Task 2: Technical Report			●	●	●	●																		
Task 3: Ordinance Drafting							●	●	●	●	●	●	●	●	●	●	●	●	●	●	●			
Installment 1							●	●	●															
Installment 2									●	●	●													
Installment 3											●	●	●											
Consolidated												●	●	●										
Testing															●	●	●							
Task 4: Public Hearing and Adoption																			●	●	●	●		
Task 5: Post-Adoption Implementation																							●	●
Task 6: Optional Training																							●	●

Task 1: Project Initiation

The Clarion team completed our initial visit to Albany and our initial round of stakeholder interviews and public meetings in January 2015. In addition to meeting many individuals and groups that use the current land use regulations, or who have been affected by their shortcomings, we also assisted the city in forming a Zoning Advisory Committee and met with the Planning Board, Board of Zoning Appeals, and Common Council. Our goal was to understand:

- § Ways in which the current regulations work well;
- § Ways in which the current regulations are ineffective or difficult to use;
- § Areas of consistency and inconsistency between existing city policies and practices, the adopted plans, and the existing code language; and
- § Ways to make the revised documents more user-friendly.

Task 2: Technical Report

Task 2 involves summarizing the results of the Task 1 meetings and interviews, our observations during a lengthy tour of the city, and our conclusions after detailed review of the zoning ordinance, subdivision regulations, other chapters of the City Code, and background documents, records, and plans affecting development in the city. This report also evaluates the current regulations for their consistency with and ability to implement the *Albany 2030* plan. In order to ensure a broad understanding of what needs to be changed, improved, or better integrated, this Task will result in three products:

- § This Technical Report (this document);

- § A brochure summarizing the key findings of this Technical Report; and
- § An Annotated Outline of how the Unified Sustainable Development Ordinance (USDO) is likely to be organized.

These documents will be posted on the project web site and discussed in a second round of meetings, along with any comments or corrections from the public and stakeholders noted for inclusion in the remaining ReZone Albany tasks.

Task 3: Ordinance Drafting

Using the Annotated Outline (with changes based on public/stakeholder comment) as a framework, the Clarion Team will then begin drafting sections of the USDO for public review. Because the new ordinance will include a substantial amount of reorganized and new information, and because it is difficult for the public or for elected or appointed officials to digest all the rules of development at one time, the drafting process will be divided into three stages:

- § Module 1: Zoning Districts and Permitted Uses
- § Module 2: Form and Development Standards
- § Module 3: Procedures and Administration

In the course of Module 1 and Module 2, Dover Kohl Associates will be working to develop form-based zoning tools to serve as templates for this new type of zoning control in diverse areas of the city. The first is the Warehouse District. Additional areas for which form-based controls will be developed will be determined in consultation with city staff. Each document will footnote changes from the current regulations and each Module will include Staff and Public Drafts of the new regulations. The Staff Draft will be sent first to planning staff for review and comment. Based upon staff feedback, a revised Public Draft will be created for distribution to the public, posting on the project web site, and discussion in public meetings focused on specific topics. After each Module has been discussed and changes noted, the Clarion team will knit the three Modules together, footnote additional changes, test the consolidated draft document against typical development scenarios (to ensure there are no unintended consequences) and discuss the results of that testing in another round of public meetings.

Task 4: Public Hearings and Adoption

The Clarion team will then present the public hearing draft of the USDO at required public hearings to obtain formal comments and make any changes required by appointed or elected officials during the adoption process.

Task 5: Post-Adoption Implementation

Following adoption of the new USDO by the Common Council, the Clarion team will take three final steps to ensure a smooth transition to the new regulatory system. We will:

- § Prepare a USDO Manual and User's Guide;
- § Assist the City staff to prepare new application forms based on the USDO; and
- § Conduct training on the new USDO for both City staff and the public.

Report Organization

Following this Summary and Project Overview, the document is organized into two main parts:

- § Key Themes for Improvement; and
- § Ordinance-by-Ordinance Analysis of existing Regulations

Key Themes for Improvement

This section identifies major themes that emerged from our review of the city's plans and regulations, the stakeholder interviews, and our knowledge of best practices in drafting ordinances in New York and across the nation. The discussion of each issue includes recommendations or suggestions on how a new code might modify current regulations to better address concerns pertinent to that issue.

Ordinance-by-Ordinance (and Chapter-by-Chapter) Analysis

Includes observations, questions, and recommendations regarding current ordinance language, organization and content, including:

- § Zoning Districts;
- § Land Uses;
- § Development Standards;
- § Procedures and Administration; and
- § Other portions of the City Code that should be evaluated for integration into the USDO, because they concern land development and redevelopment.

1. KEY THEMES FOR IMPROVEMENT

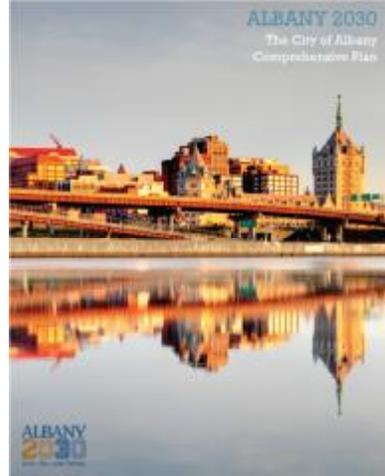
The current development regulations in Albany have some components that are working well, some that require minor edits and adjustments, and many that could benefit from a substantial overhaul. This section discusses the major, overarching areas where Albany's regulations could be improved and offers potential solutions to those issues.

Four major themes for improving Albany's current development regulations emerged from the Clarion team's interviews and our document review:

- § Implement *Albany 2030*;
- § Make the USDO User-friendly;
- § Improve building form and design standards; and
- § Promote energy conservation and sustainability.

Implement Albany 2030

As noted above, *Albany 2030* represents the first Comprehensive Plan adopted by the city in its over-400 year history. This is a major accomplishment, and it needs to be taken seriously – which means its key directions for the City's future land use and redevelopment should be reflected in the USDO. *Albany 2030* outlines multiple goals for the city, but the following are particularly well-suited for implementation through zoning, subdivision, land use, and performance regulations:



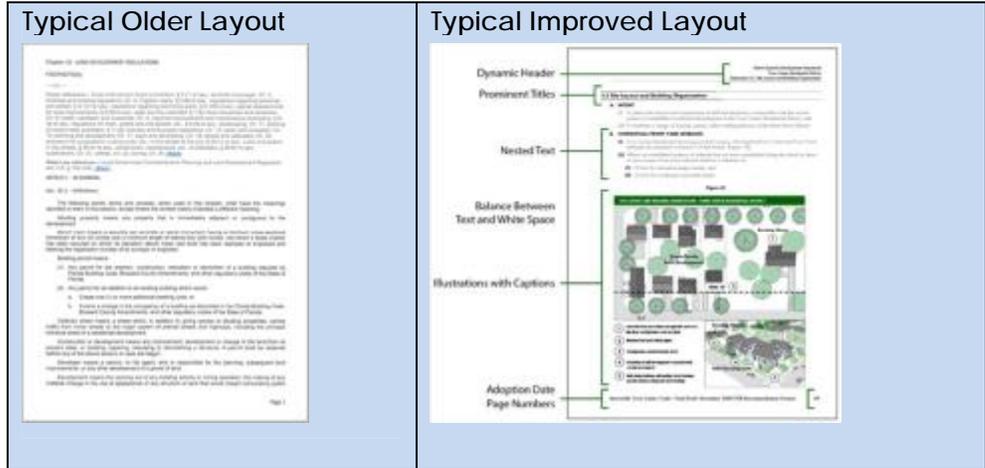
- § Opening up new economic development/redevelopment opportunities;
- § Ensuring a vibrant, walkable, mixed use downtown and neighborhoods;
- § Protecting the natural environment, including but not limited to the riverfront and the Albany Pine Bush;
- § Reinforcing the fabric and stability of the city's residential neighborhoods;
- § Ensuring creative redevelopment of key sites, such as the Warehouse District and distressed or underutilized commercial corridors.

Make the USDO User-Friendly

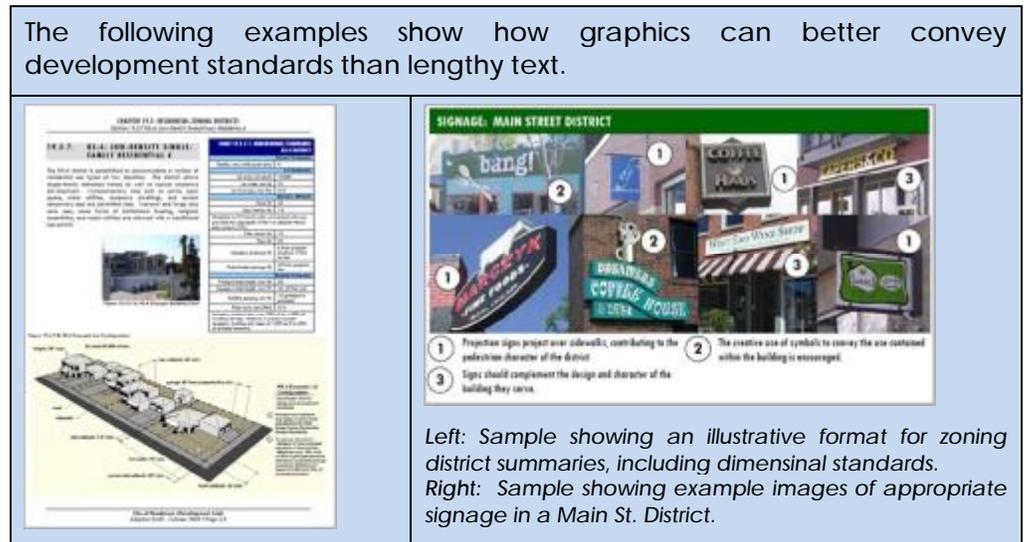
Many different parts of Albany's City Code address issues relating to land use, development, subdivision, and zoning. Some parts of the City's Zoning Ordinance have not been updated since 1968, while others were updated in 1993 and a few were added or updated later. These often do not reference other sections of the City Code, where guidelines and standards may conflict. The result is a relatively complex set of documents that lack a logical, intuitive organization. In fact, what Albany needs is exactly the opposite – it needs a set of land use controls that is easy to understand, graphically illustrated, and flexible enough to drive reinvestment in the City to new and creative heights. The new USDO should not only be easily understandable to corporations or investors who can create the jobs and housing that Albany needs to thrive in the 21st century, but also to citizens considering reinvestment or expansion of their homes – for it is citizens whose day-to-day decisions are actually responsible for the vast majority of real estate investment in the United States. The secrets to creating a user-friendly USDO include:

- § [Integrate](#) the different land use and development related regulations in the Albany City code. In addition to chapter 375 (the zoning ordinance) there are over 25 different chapters of the City Code, handbooks, interim regulations, and other documents that should be considered for integration or partial integration into the USDOs. Discussion of these regulations begins on page 8 of this document.

- § **Clarifying** the standards that apply to new development and redevelopment, and the procedures and criteria that will be used to make decisions on development applications.
- **Reformatting the Regulations.** The current typewritten, text-based format of the Albany zoning regulations is difficult to read and understand. Use of better numbering, and a more visually diverse page layout will improve user comprehension.



- § **Illustrate the USDO.** Photographs, tables, flowcharts, illustrations, and other graphics are helpful in conveying information concisely. Albany’s current development regulations make very limited use of such tools, but a variety of compelling illustrations are available to better communicate zoning requirements. Examples are shown below.



- § **Use More Tables.** Like illustrations, tables can help convey information more consistently and concisely, but they can also promote an internally rational

system, because they may comparisons between similar zone districts easier for both investors and citizens.

The following examples from other communities exhibit the clarity and convenience of using tables to understand and compare development standards.

**TABLE 50-14.4-1
RR-2 DISTRICT DIMENSIONAL STANDARDS²³**

LOT STANDARDS	
Minimum lot area per family	2 acres
Minimum lot frontage	100 ft.
SETBACKS, MINIMUM	
Minimum depth front yard	35 ft.
Minimum width of side yard	10 ft.
Corner lot width of front side yard	25 ft.
Minimum depth of rear yard	25 ft.
BUILDING STANDARDS	
Maximum height of building	30 ft.

Section 50.21 Dimensional Standards contains additional regulations applicable to this district.

TABLE 50-19.B: USE TABLE
NOTE: Uses in the Natural Resources Overlay (NRO) are limited by Section 50-18.1
NOTE: Uses in the Airport Overlay (A-O) districts are limited by Section 50-18.2
NOTE: P and S uses only allowed in R-P district if included in an approved District Plan for the area

New Zone District Name	Residential						Mixed Use				Form								
	R-C	RR-1	RR-2	R-1	R-2	R-3	MUM	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8
Current Zone District Name	S	RR-2	RR-2	R-1 & R-2	R-2	R-3	RM & CT	CS	MC	MU-I	MU-B	MU-W	VI						
LAND USE CATEGORY																			
RESIDENTIAL USES																			
Household Living																			
Dwelling one-family	P	P	P	P	P	P								U	U	U	U	U	U
Dwelling two-family				P ¹²	P	P								U	U	U	U	U	U
Dwelling townhouse ¹⁰				S	P	P						P		U	U	U	U	U	U
Dwelling multi-family ¹²					P	P								P	P	P	P	P	P
Dwelling live-work ¹⁰					P	P								P	P	P	P	P	P
Group Living																			
Assisted living facility (elderly) ¹⁰				S	P	P								P	U	P	U	P	U

Left: Summarizes dimensional standards for a residential zoning district, providing a quick snapshot of the regulations for that district.

Right: A portion of a consolidated use table, indicating which household living land uses are permitted in each zoning district, and what process is required for approval.

Improve Building Form and Design Standards

Form-based zoning is a new approach to land use controls that has emerged in the last 25 years. Rather than emphasizing the need to regulate (and often separate) permitted uses as the primary tool of zoning control, form-based regulations focus on the need to regulate the shape and form of new buildings to better reinforce the existing character (or the desired character) of specific areas of the city. Form-based controls are particularly well suited to (a) areas with a defined urban character where it is particularly important that new and replacement buildings reinforce that character, (b) key sites and areas that can be catalysts for surrounding development, and where ensuring an exceptional building or group of buildings can have a significant spillover effect on the neighborhoods, and (c) areas where the city wants to promote “walkable urbanism” that will require a significant redesign of existing auto- or truck-oriented street patterns (particularly older industrial, warehousing, or shipping areas). While all form-based controls are carefully tailored to their context, the basic tools of form-based zoning controls include:

- Defined building types;
- Defined frontage types (to ensure that buildings meet the street well);
- Standards to ensure great public spaces (including streets and parks);
- Block and subdivision standards (to ensure a walkable urban fabric); and
- A Regulating Plan to guide the design of streets and building placements.

Like many major U.S. cities, Albany’s new Unified Sustainable Development Ordinance would benefit from integrating form-based controls in areas that meet the criteria outlined above.

Promote Energy Conservation and Sustainability

Admirably, the *Albany 2030* plan puts significant emphasis on the need to conserve energy and promote sustainable development as keys to an economically healthy future. Because of the high percentage of tax exempt property in the City, Albany has fewer local tax revenues to provide services for its citizens. To make up for that gap, the City needs to operate as efficiently as possible and enable a wide variety of both private and public development to occur. Energy conservation is a key way to achieve that goal, whether through mixed use development (that reduces the frequency and length of required auto trips), encouraging or enabling solar, wind, and geothermal facilities, or other development incentives. In addition, the new USDO needs to promote sustainable development in other ways. Based on our experience drafting development regulations for over 130 communities across the U.S., the key areas for improvements in sustainable development (in addition to energy conservation) include:

- Reducing greenhouse gas emissions;
- Improving water conservation;
- Encouraging local food production;
- Encouraging walkability and improved connectivity for pedestrians and bicycles; and
- Encouraging improved waste materials recycling

2. CHAPTER-BY-CHAPTER REVIEW

This portion of the Technical Report reviews Chapter 375 of the Albany City Code (Zoning) on a chapter-by-chapter, section-by-section basis, as well as numerous other chapters of the City Code with content related to land use and development. This section identifies what might be carried over to the new USDO, what needs to be changed due to its inconsistency with *Albany 2030*, what may added due to its ability to assist with the implementation of *Albany 2030*, what needs to be changed because it is internally inconsistent or confusing, and what can be improved through adoption of best practices from other large U.S. cities.

Chapter 375: Zoning

Article I. Title and Purpose

Article I is a very short article covering some general provisions found in most zoning codes including: Short title (Sec. 375-1), Purpose (Sec. 375-2), and Scope (Sec. 375-3). While this article is typically the shortest chapter in a zoning code, Albany's Article I is too short and narrow to clearly reflect the intent and goals of the USDO, describe its links to *Albany 2030*, identify its authority, applicability, and jurisdiction, or explain its

relationship to other federal, state, and local regulations or private covenants. This article should be revised and expanded considerably.

Section 375-4 (Amendments) is misplaced, as it is in many older codes. The Common Council's ability to amend the Code is a procedure more appropriately found in the USDO article describing the role of decision-making bodies and development review and approval procedures.

Article II. Interpretation, Word Usage and Definitions

Article II contains three sections covering exactly what its title suggests. These are standard sections that should be carried forward with organizational and substantive updates.

Sec. 375-5 Interpretation

Rules of interpretation and authority to interpret the USDO should be very clearly defined. As written, this section is less about interpreting code regulations and more about its relationship to other regulations (Sec. 375-5.B). The content of current subsection B should be carried forward in new Article I under a new title (ex. Relationship to Other Regulations) and a new interpretation section identifying the appropriate decision maker or decision making body authorized to interpret code language, alternative compliance requests, zoning boundary disputes, etc. should be included in the new general provisions article.

Sec. 375-6. Word usage

This is a standard section of every zoning code, but word usage provisions (often referred to as "rules of construction") explaining the meaning of common regulatory terms (e.g., "shall" and "may") are commonly grouped with code definitions. The list of words explained in this section is short, however, and does not address other terms routinely used in zoning vocabulary (e.g., "should") and other customary rules (e.g., whether "Director" also includes a designee of the Director).

375-7. Definitions

This is a standard chapter in all zoning ordinances. The existing definitions section should be carried forward and updated throughout the rewrite process. Currently, this section has the following weaknesses:

- § Some terms are unclear and appear inconsistent;
- § Many terms are outdated;
- § Some terms contain substantive regulations, rather than just defining the term;
- § Many land uses are not defined;
- § Some defined terms are unused;
- § Some definitions of land uses (and related terms) do not appear to align with the requirements of New York State and federal law (e.g., telecommunications, fair housing, and the First Amendment).

The following definitions provide examples of these types of reviews and revisions.

Ensure clarity, relevant content, and consistent use

- § Sign Types. Illustrative graphics that can help clarify different types of permitted and prohibited signs are missing.
- § Expansion, Alteration, Conversion. These key terms are undefined t



Modernize outdated terms

- § Automobile Service, Filling or Gas Station. This definition does not include electric and alternative fuel vehicle services (e.g., electric vehicle charging and compressed natural gas), that could help the City establish itself as a leader in energy and sustainability planning and implement the initiatives developed by the Mayor's Office of Energy and Sustainability, identified in *Albany 2030* and outlined in the City's Climate Action and Adaptation Plans.

Remove substantive standards

- § Bed and Breakfast. This definition includes substantive standards that could conflict with other substantive requirements elsewhere in the code. For example, limiting this use to seven bedrooms and allowing guests to stay for no more than 14 consecutive days are use-specific standards that belong in the main body of the code rather than in a definition. Definitions should be drafted to allow the same definition to be used for all uses of this type, even if the City decides that they should be subject to different size limits in different zone districts.

Define all land uses

- § Accessory Dwelling Unit. This land use does not currently appear in the code.
- § Community Garden. Although defined, this term is not found elsewhere in the current code. Utility, Major; Utility, Minor. These two definitions do not currently appear in the code, but defining them can simplify code administration and public understanding. Major utilities are those that provide a regional or city wide-service such as power plants and waste water treatment plants, while minor utilities are those services that support development within an immediate vicinity and involve only minor structures like, transformers and pump stations.

Remove unnecessary and obsolete terms

- § Aerial. This definition is unnecessary because it simply states "see 'antenna'" and is not found elsewhere in the code. Some newer codes define the term each time it is listed but then use "see also" to refer the reader to other related definitions.
- § Delivery Restaurant. This definition is unnecessary and obsolete because most restaurants provide delivery service, although the concept of a delivery service may still be addressed more generally within the new code.
- § Depth of Lot/Lot Depth; Lot Depth. This term is defined twice. Once under "D" and once under "L." Because the term and definition are the same and all other "lot" terms are defined under "L," the "Depth of Lot/Lot Depth" term will be removed as unnecessary. Many newer codes group all related definitions in one

section of the code (for example “Lot Dimension Definitions”) to avoid this problem.

Align with state and federal laws

- § **Adult Entertainment Use.** Like many codes, this definition covers adult entertainment uses (e.g., adult cabaret and adult motion picture theater) and adult retail uses (e.g., adult bookstores). Because the secondary impacts of adult retail uses are generally smaller than for adult entertainment uses, some newer codes use separate definitions for “adult retail” and “adult entertainment”.
- § **Community Residence.** This term is generally defined as a residence for no more than 14 disabled persons and is the term for “group homes” under the current code, but it should be reviewed for compliance with the latest court interpretations of federal and state fair housing laws. Federal and state laws often define “disabled” differently and the federal Fair Housing Act Amendments generally protects a wider range of people. Because the definitions of “Supervised Living Facility,” “Supportive Living Facility,” and “Treatment Centers” all reference this “Community Residence” definition, the distinction between these facilities should be reviewed for clarity.
- § **Family.** This definition should be reviewed for consistency with recent court decisions under state or federal fair housing laws.

Defined terms should also be reviewed for consistency with other state and or federal laws and regulations such as those pertaining to telecommunications, first amendment rights, and alcoholic beverage licensing.

In addition to those listed above, the ReZone Albany project should review all definitions.

Article III. Enforcement and Administration

The title of this Article suggests that it broadly covers enforcement and administration of the zoning code, but this is not the case. It only addresses the authority of the Commissioner of the Department of Buildings and Regulatory Compliance (or a designee) to administer and enforce the zoning code (Sec. 375-8) and attempts to clarify this authority in Sec. 375-9 (Zoning and building permits) and Sec. 375-10 (Complaints of violations; penalties for offenses). It does not address other decision-making positions or bodies (e.g., the Planning Director and Board of Zoning Appeals) or specific zoning permits (e.g., a special use permit). As discussed below, these review bodies and various development procedures are included in separate articles or chapters, making it difficult to understand how administration of the zoning code actually works across departments. The need to list and clarify all decision-making responsibilities related to land use and development is even more important in a USDO, because a wider range of land use activities will now be covered. The contents of this Article should cover all review bodies and permitting procedures.

375-8 Commissioner of Department of Buildings and Regulatory Compliance

The authority of the Commissioner to administer and enforce the new USDO should be reviewed closely and clarified for consistency with state law and national best practices. Because the Commissioner currently has joint authority over the zoning code and the building code, the distinction between these two authorities should be clarified. In the majority of the communities where Clarion has prepared development code revisions, the Director of Planning is the Zoning Administrator or holds some of the authority for administration or enforcement of zoning-related matters. Albany is now in the process of a consulting study of the organization of these functions, and the USDO should reflect the outcome of city decisions based on that consulting study. Finally, the various titles used to refer to the Commissioner will be made consistent throughout the USDO. (e.g., Administrator v. Commissioner).

375-9. Zoning and Building Permits

Generally, this section contains standard regulatory procedures (e.g., application submittal; issuance of permit; notice posting requirements; denial of permit; and revocation or suspension of permit) common to all zoning and building permit approval processes. However, the text is confusing as to the authority of the Commissioner, because the two different types of permit approval processes are commingled.

The section should be revised to distinguish between zoning permit/clearance procedures and building permit procedures. Currently, subsection B. (Application) requires an “applicant and the Commissioner [to] follow the procedures specified for the issuance of permits in Chapter 133, Building Construction of the Code of the City of Albany.” Commingling these approval processes is confusing because a zoning permit or land use approval determines what can be built on a piece of property while a building permit enables the construction of that allowed facility to proceed once sound engineering has been confirmed. Referring an applicant to Chapter 133 as part of the zoning approval/clearance process is unusual because Sec. 133-5 requires much more involved construction drawings than are typically required for many types of zoning clearance. In most newer codes, applications are filed with a Planning Department, which reviews them and confirms compliance with zoning and subdivision standards before forwarding them to a Building Department for review and approval of building and site construction technical and engineering plans.

As a general best practice, common zoning procedures should be carried forward with revisions for clarity (e.g., to identify who has the authority to file an application, notice requirements for public hearings, and the criteria for making a decision on the application) in a chapter devoted to zoning and subdivision procedures. Specific procedures related to the building permit process, including the reference to Chapter 133, would be carried forward in different regulatory procedures section. Again, the USDO should reflect the decisions emerging from the consulting review of planning and building administration structures and procedures currently underway.

375-10. Complaints of Violations; Penalties for Offenses

This short section grants the Commissioner the authority to review zoning complaints and determine zoning violations, and provides for penalties in the form of a fine (not to

exceed \$1,000) or imprisonment (not to exceed 15 days). In line with the discussion above, many newer codes distinguish between authority to respond to zoning violations and authority to enforce building code violations. This section should be reviewed to clarify those authorizes. In addition, current weaknesses in this section, compared to newer codes, include:

- § Sec. 375-10.A, permitting the Commissioner “to revoke or suspend a permit or issue a notice of violation . . . if reasonable evidence exists” would normally what constitutes a violation of the code using objective standards.
- § Sec. 375-10.B, permitting a fine or imprisonment penalty would normally clearly outline the enforcement procedure from complaint to penalty, so that an alleged violator understands the steps that can be taken (and the allowed time frames) to comply with the code before a penalty is assessed. Like other communities, the code already establishes that each day the violation remains uncorrected is a separate offense, allowing the fine to increase by \$1,000 daily. Normally, specific fine/penalty amounts are not stated in newer codes, but are instead contained in a resolution of the Common Council that can be updated periodically to reflect actual administration and enforcement costs without amending the development code.

One way to update this section is by outlining a civil citation procedure (similar to a speeding ticket) in the code. Additionally, a provision granting the city the power to abate a violation (and bill the costs to the property owner) if there is an immediate threat to public health and safety should be included.



Article IV. Board of Zoning Appeals

This lengthy article, containing 18 sections (375-11 to 375-27), is the third longest article in this zoning chapter, behind the flood management regulations (30 sections) and the off-street parking and loading requirements (20 sections). This article is unnecessarily long and challenging to follow because it covers everything from:

- § Administration of the BZA including, but not limited to: Sec. 375-11 (Establishment and membership), Sec. 375 – 12 (Terms of office; vacancies; compensation), Sec. 375-14 (Powers and duties)(e.g., establishment, terms of office, powers and duties);
- § Common regulatory procedures including, but not limited to: Sec. 375-15 and 16 (Appeals procedures for applicants and the Director), Sec. 375-17 (Stay for proceedings), Sec. 375-18 (Hearing application procedure), Sec. 375-19 (Hearing), and Sec. 375-23 (Rehearing and reapplication); and
- § Specific regulatory procedures including: Sec. 375-26 (Variances) and Sec. 375-27 (Special use permits).

In most newer development codes, this material is consolidated with other procedures and administrative provisions. Material is generally separated into (1) descriptions of the decision-making bodies and their authorities, and (2) descriptions of the various decision-making procedures used by different review and approval bodies. Readers are much more likely to understand city procedures if they are organized by the type of

review procedure, rather than by the body that will make the decision. Currently, this section does not list any qualifications for membership on the BZA (for example, 2 individuals with experience in real estate development, or 2 neighborhood representatives), and some newer codes include this type of information.

Sec. 375-13. Meetings; Quorum; Records.

Many newer zoning ordinances put this type of information -- establishing when Board meetings are held, the votes needed to constitute a quorum and carry-out an action, and how meeting minutes are kept -- be moved out of the USDO -- would remove this information and put it into an administrative document that can be amended without Common Council approval. This way, if the City determines that there is a more efficient or effective way for the Board to conduct business (e.g. by conducting one rather than two meetings per month, which we understand may be under consideration) the change can be made without Common Council approval. If Albany follows this approach, the USDO should authorize the creation of such an administrative manual.

Sec. 375-14. Powers and Duties

This section gives the Board some customary powers and some nontraditional powers. For example, it is customary for the Board to hear and decide appeals of determinations made by zoning code administrators and requests for variances from the terms of the code. These powers and duties should be carried forward.

It is not common for the Board to grant or deny special use permits. Unlike a variance, which addresses a practical difficulty in meeting the terms of the code and requires a finding of hardship, a special use permit generally allows a new use on a site if the proposed use conforms to the character of the area and all other standards and provisions in the ordinance. Because a special use permit requires a determination of conformance with rather than relief from the code standards, these permits are typically reviewed and decided by the Planning Board. In newer zoning ordinances, parking lots and parking structures are generally listed as permitted or conditional uses in different zone districts, and compliance with parking access and design requirements is generally reviewed through a standard zoning clearance or site planning process (rather than through issuance of a permit specially designed for this one use).

Secs. 375-15. Appeals Procedure for Applicant., 375-16. Appeals Procedure for Director, 375-17., 375-18. Hearing Application Procedure; Instances of Pending Application

Although two of these sections are titled as “appeal procedures,” the text of all three sections is mostly focused on what constitutes a complete application and how the Director certifies completion for the purposes of securing a hearing with the Board. Because all three sections address the same procedures differently and vaguely, it is not clear how the Director verifies that an application is complete. Many newer codes clarify this procedure, how long the city has to verify completeness and notify the applicant of any additional information required, how long the applicant has to respond,

and what happens if the applicant does not provide the information needed to make the application complete.

In many newer development codes, the provisions in Sec. 375-15 requiring an application to “refer to the specific property; specify the exact relief sought; and state the grounds on which it is claimed the relief sought should be granted” would be relocated in an administrative document outside the code. A change in application requirements (due to technological improvements, for example) should not require an amendment to the development code. Sec. 375-18.B, preventing an applicant from being heard by the Board if the hearing request pertains to a vacant building that does not comply with other articles in the city code will be removed as unnecessary. Based on our discussions with staff, this provision was added when vacant buildings were a prevalent and contentious issue, and this is no longer the case.

Sec. 375-19. Hearing

Although titled “Hearing,” the main focus of this section is the notice requirements for a public hearing. Most newer codes consolidate all information about required public notice in a single section applicable to all BZA, Planning Board, and Common Council decisions requiring a public hearing.

Currently, the City is responsible for providing published notice (e.g., in a newspaper) and “shall attempt to notify involved neighborhood associations and nearby property owners by mail” and the applicant is responsible for posted notice (i.e., a sign posted on the site). Because the “shall attempt” language is difficult to interpret and enforce, this section should clarify the type of notice required (e.g., published, posted, mailed, and electronic) and who is responsible for providing the notice (i.e., city or the applicant) based on national best practices and state law. Newer codes often also clarify the exact distance (i.e. 250 or 300 feet) from the subject parcel to which notices must be sent, and that the city’s good faith efforts to comply with these requirements based on available records will constitute acceptable notice, notwithstanding incidental failures to receive notice due to changes of address, errors of the newspaper or Post Office, etc..

Despite the electronic age, mailed and posted notice still seem to be the most effective and commonly used forms of public notice. However, some communities have added an optional provision through which the City will provide electronic notices to persons or organizations whose internet contact information is on file with the city and who may be affected by a zoning or land use matter under review.

Sec. 375-20. Decision

This section is inconsistent with General City Law § 81-a.8, which requires that a decision be made within 62 days, rather than 30 days.

Sec. 375-26. Variances

Newer codes group information on variances with the other specific regulatory procedures. Consistent with state law (General City Law § 81-b) this section provides for two types of variances – area variances and use variances. An area variance, or a request for relief from code requirements to address practical development difficulties or hardships related to a site’s configuration, location, terrain, etc., is a very common

type of variance and will be carried forward. The granting of use variances is generally disfavored, and is not included in most newer codes unless required by state law. Many communities handle requests for additional uses not using their special use or conditional use permit processes (i.e., a variance cannot be used to allow a use not identified as a permitted or special use). This eliminates any confusion regarding the allowance of a use based on an established hardship rather than general conformance with all other code provisions.

The standards for approving area and use variances track New York State law, but many are subjective, which makes it difficult for the Board to make consistent decisions. Newer codes generally include more measureable and objective standards. For example, under Sec. 375-26.B(1)(a)[1] the Board shall consider “whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area request.” Because an undesirable change to one person may be desirable to another, this standard is open to various interpretations. To make this standard more objective and enforceable the description of the variance procedure in the USDO could include specific types of impacts to reviewed, such as reduced connectivity or significantly increased traffic.

Other types of variance criteria (e.g., specific to signs or natural resources) are increasingly also incorporated into descriptions of variance procedures. However, the trend is to make the general criteria for area and use variances as broadly applicable as possible to avoid the need for unique variance criteria or procedures to address hardships related to site elements like parking lots and sidewalks.

Sec. 375-26.C(2) permits the Board to “impose such reasonable conditions and restrictions as are directly related to the incidental to the proposed use of the property” as part of a variance approval. In many newer codes, this ability to place conditions on an approval in order to mitigate impacts of a permit or approval is made generally applicable to most or all types of approvals, not just variances.

Sec. 375-27. Special Use Permits

In accordance with state law, this section allows certain “special” land uses, not permitted by right in a particular zoning district, to be permitted subject to specific regulatory criteria ensuring that the proposed use will not adversely affect the existing neighborhood. See General City Law § 27-b. Similar to the case for variances, the standards for approval of a Special Use are easier to administer consistently if they use more objective criteria to assess undue adverse effects on adjacent property (for example, criteria referencing traffic, parking, lighting, or utility impacts). It is also not clear whether the current Special Use standards reflect topics that have historically been raised by Albany’s neighborhoods as impacts that need to be addressed. If they do not reflect those topics and concerns, they should be revised to do so.

In addition, Albany’s current Special Exception procedures include “criteria,” “findings,” and “considerations”. Most newer codes do not list “considerations” since they tend to be very subjective and similar for most land use decisions, and because it is not clear whether a decision-maker can condition an application that meets all the “findings” and “criteria” if it does not adequately address “considerations.” A better practice would be to revise the consideration into objective criteria or delete them from the code. In

addition, many newer codes include “use-specific standards” for some uses (for example, limits on hour of operation for uses in or near residential areas), and require that each Special Use comply with the use-specific standards for that use in addition to general Special Use approval criteria. As a general practice, most newer codes reduce the number of Special Uses by clarifying use-specific standards that can make the uses good neighbors, requiring that the use comply with those standards, and allowing staff to administratively approve uses that do so. Applicants that do not comply with those standards are required to go through a variance or Special Use approval process.

Consistent with other comments above, we suggest that specific application submittal requirements in Sec. 375-27.A. (Application) be relocated to an administrative manual outside of the USDO. Because the circumstances of individual properties differ, however, most newer development codes also include a provision allowing the Director to waive the requirement for a site plan – or specific elements or application requirements of a site plan -- if he or she determines that USDO compliance can be demonstrated in other ways.

Article V. Amendments to Zoning Map

The text of this section suggests that applications for zoning map amendments do not need to have a recommendation by the Planning Board before being acted on by the Common Council, which is very unusual. It also doesn't clarify how amendments to the text of the USDO (rather than the zoning map) are reviewed and approved. In most cities the procedures are very similar, but map amendments often require different forms of public notice and due process because they are more likely to affect specific properties rather than a large area or the city as a whole. Finally, most newer codes do not specify Common Council voting requirements, since the Common Council's power to approve legislation is governed by State law and the City's charter.

Article VI. Site Plan Review

This is a standard administrative section in almost all development codes, but the information in this section is incomplete and unclear in the ways described in the sections below.

Sec. 375-32. Scope and Purpose

This section will be revised to correct the reference to General City Law § 27-a to § 274-a.

Sec. 375-33. Uses to be Regulated

Albany's current Subdivision Handbook (which is not codified) states that major subdivisions (involving the creation of five or more lots), need to follow this same procedures, and that requirement should be spelled out in the USDO. Similarly, most newer codes clarify what types of minor subdivisions can be approved administratively without the need for a site plan.

Sec. 375-34. Application

This short section indicates that the site plan review process begins with “an application for a zoning and building permit at the Building Department” and the Building Inspector determines the need for site plan review by the Planning Board. It also gives the applicant the option to present a conceptual site plan to the Planning Board for an informal review of submission requirements. It does not outline the procedural site plan steps beyond that.

Initiating this process with the Building Department is unusual since the Planning Board approves or denies site plans based on recommendations from the Planning Department. In most other large cities this procedure is managed by the Planning Department. It begins with an applicant’s request for a pre-application conference with Planning Department staff and other review departments (e.g., the Building Department) to discuss the process and specific submission requirement. Currently, this discussion occurs as part of the conceptual plan review, but many newer codes require that it occur sooner and at the administrative level before the Planning Board is involved.

We understand that the optional conceptual plan review phase is new and is not yet a routine practice, but this opportunity for an informal review by the Planning Board should be carried forward. Although an informal process and an optional step, the City should create a list of the site development elements to be presented at this initial phase, but that list should be in an administrative document outside the USDO. In fact, most newer development codes require pre-application conference for all large, complex, or potentially controversial projects (not just site plans).

Using a flow chart and text, this section could also be revised to indicate whether the conceptual plan phase flows into preliminary or final site plan review phase. Many newer codes clarify that site plan applications beneath a certain size threshold can be approved by Planning Department staff (subject to objective criteria) rather than the Planning Board.. This is a rapidly emerging practice in cities that formerly sent all site plans to their Planning Boards, and an important step in speeding up approvals and promoting reinvestment.

Sec. 375-36. Standards Specific to Certain Areas

This section contains development standards (e.g., dimensional, parking, landscaping, lighting) specific to the Pine Bush District and criteria for determining when a proposed development requires a site plan review based on its proximity to Normanskill Creek or a sensitive archeological area. Because Pine Bush is a special purpose zoning district (current Sec. 375-77, C-PB), the development standards found in this section could be incorporated as additional standards for that district in the new USDO, and the site planning standards could be updated to align with new Pine Bush Preserve planning documents.

Sec. 375-37.1 Standards Specific to Proposed New Development in PSPDOD

This section contains vague development standards for projects proposed in the Park South Urban Renewal Plan Area that was adopted in 2006. We understand that the

Urban Renewal Plan may expire in 2016, and its possible renewal is under discussion. If it is continued, these regulations should be carried forward.

Sec. 375-38. Planning Board Decision

The 45 day timeframe for the Planning Board to decide a site plan application should be reviewed to confirm that it reflects current practice. While prompt review of development applications is, important to the economic health of the city, establishing deadlines that have been shown to be unreasonable and are not enforced undermines confidence in the city's land use process.

Sec. 375-40. Demolition Review

The text of this section should clarify that demolition review is not a subset of site plan review, but its own process.

Article VII. Traditional Neighborhood Design Overlay District

This is a very unusual provision to find in a development code. It was created to preserve the rich diversity of housing stock in central/eastern Albany using more specific site and building design standards than found in the underlying residential zoning districts and to supplement the work of the Historic Resources Commission. Many older cities have similar overlay districts, sometimes referred to as neighborhood conservation districts. While the intent of this overlay district makes it worthwhile to carry forward, we understand that in its current form it is not adequately enforced. This section should be carefully reviewed to determine what standards are still relevant and consistent with *Albany 2030* and to rethink where those standards should appear in the USDO. Some of the included controls would probably be more understandable if they were integrated into standards for particular types of lots or development in base zone districts and standard development standards, rather than in an overlay district.

Sec. 375-41. Purpose and Intent

Neither Subsection B (providing that C-1 Neighborhood Commercial districts are included in the overlay), nor the following section (describing the boundary of the overlay district) belong in a purpose statement, because they are regulatory (they determine who is subject to the controls). In addition, the applicability of these TND district standards to C-1 zoned properties within the overlay area should be reviewed (and possibly revised) for two different reasons:

- § Some C-1 districts are located outside the current TND boundary. The wording of this section suggests that the overlay district extends to pockets of C-1 zoning in other areas of the city (including areas where the TND controls do not currently apply to adjacent residential properties), which is confusing.
- § The current zoning ordinance already contains extensive development standards that apply to the C-1 district to ensure high quality, contextual development, so additional TND controls are not needed. "Layering on" TND controls over C-1 controls within the overlay districts unnecessarily complicates development review, and may not make a noticeable difference in the type of development or redevelopment seen in C-1 districts.

Sec. 375-42. Traditional Neighborhood Overlay District Boundary

These boundaries include many of the R-1 and R-2 districts in the center of the City. We understand that these standards are not being consistently enforced, which is probably due to (1) the large size of the district, (2) the variety of properties, lots, and development types it attempts to regulate, and (3) the lack of objective development standards in the current text. As noted above, the intent of this overlay can probably be better achieved by including these standards (revised to be more objective) in other sections of the USDO. If the overlay is retained, its boundaries of the current TND overlay should be reviewed and revised to improve its enforceability.

Sec. 375-43. Building Permit Requirements; Sec. 375-44. Review Procedures

Currently, the approval process for development within the TND district revolves around a building permit. As a result, while the Planning Office can recommend approval based on compliance with the TND regulations, the final decision-maker is the Building Commissioner, and the final criteria for approval is compliance with building code standards. This makes the TND district, in essence, an advisory document, and confuses the distinction between zoning and building approvals. Many newer codes would include a zoning approval/clearance process administered by the Planning Department to development proposals within special character areas (such as the TND) as a precondition to applying for a building permit.

Sec. 375-45. Guidelines for Residential Properties

This short section provides general and subjective design guidance (e.g., non-binding advice like “all porches should be retained in their original style”) and some mandatory standards (e.g., “all fences shall be painted or finished with a solid color or stain”) for residential properties in the TND district covering. The topics covered include new construction in general, porches, fences, wooden staircases, fenestration, siding and trimwork, and additions/expansions. This section could be strengthened by removing guidance that is not important to the preservation of existing character (and to reduce confusion as to whether the overlay is advisory or mandatory) and by including more objective standards for those aspects of building form and design that are key to preservation of that character.

Sec. 375-46. C-1 District Design Standards

This relatively new section, which applies only to the C-1 (Neighborhood Commercial) districts, contains the most comprehensive list of form and development standards in Chapter 375. It regulates many aspects of commercial development, including site and building dimensions, parking, lighting, building design, and signage. These standards should not be part of the TND overlay for the reasons listed above. However, some newer development codes would make some of these standards generally applicable to other nonresidential development throughout the city through substantive updates such as the following:

- § Sec. 375-46.D.2-3 (introducing parking alternative) could be revised and expanded to further implement the city’s vision for a sustainable transportation

system by maximizing opportunities to encourage multimodal transportation options. For example:

- o Some codes exempt small, non-residential lots (smaller than 5,000 sq. ft.) from off-street parking requirements;
- o Some codes permit businesses to count on-street spaces in front of their building towards parking requirements;
- o Current parking reduction standards could be made more objective (e.g., the number of off-street parking spaces may be reduced by 20% if a proposed project site is within ¼ mile of a major bus connection point or a transit service center); and
- o Shared parking reductions could be determined using numerical parking reduction factors (adjusted for the amount of each use), to eliminate the need for a parking analysis and a contractual agreement, which generally discourage shared parking. The following table from another community is an example of how parking reduction factors can be used.

Table 4.4-2: Shared Parking Reduction Factors

Property Use	Residential	Public and Institutional	Food, Beverage, and Indoor Entertainment, Lodging, or Religious Assembly	Retail Sales and Personal Services	Office & Other Commercial
Residential	1.1				
Public and Institutional					
Food, Beverage, and Indoor Entertainment, Lodging or Religious Assembly	1.1	1.2			
Retail Sales and Personal Services	1.2	1.3	1.3		
Office & Other Commercial	1.3	1.5	1.7	1.2	

§ Sec. 375-46.D(4)(Site lighting). This section does not match emerging best practices. To address *Albany 2030's* key infrastructure issues, and to implement the city's energy conservation goals, improved citywide lighting standards could include objective standards to reduce glare on adjacent properties, improve public safety, and require energy efficient fixtures. Many newer lighting standards regulate minimum and maximum illumination values (footcandles), require downcast and shielded lighting (to minimize light spill), and establish maximum light pole heights for different types of zoning districts (residential, mixed-use, etc.) To promote energy-efficiency, an increasing number of communities are requiring that business signage (not simply parking lot lights) be turned off at night. . Community safety goals can be addressed through lighting contrast standards that avoid "hot spots" of light that cast adjacent areas into deeper shadows.



§ Sec. 375-46.E. (Building design). Of all the development standards in this section, those relating to building design are the most specific. While many of the design elements identified may be applied generally to other nonresidential

districts (e.g., building façade), the actual standards (e.g., 70% of the area of the entrance doors shall be of clear glass) should be reviewed closely, and some of them could remain specific to the C-1 district.

Sec. 375-46.1. Property Maintenance Standards

Property maintenance standards do not belong in a zoning code --These standards, specific to the C-1 district, would generally be found in the city's property maintenance code. If they remain in the USDO, they could be consolidated with other property maintenance standards (such as the requirement to replace required landscaping that dies or becomes diseased).

Sec. 375-47.1 Park South Planned Development Overlay District (PSPDOD)

See the discussion of Sec. 375-37.1 (Standards specific to proposed new development in PSPDOD) above. If this overlay districts carried forward, the content of this section addressing overlay boundaries, applicability, and permits should be reviewed for relevance and enforceability.

Article VIII. Establishment of Zoning Districts

This article contains eight very short sections. It establishes the city's zoning districts (Sec. 375-48), adopts the official zoning map (Sec. 375-49), gives the Commissioner the authority to interpret zoning district boundaries (Sec. 375-50), regulates the interpretation of unique boundary lines (e.g., street, highway, and railroad lines --Secs. 375-51 to 56), and (out of context) addresses historic site areas (Sec. 375-57). In the new USDO, all zoning districts will be established in the Zoning Districts article, the provisions for interpreting the zoning map boundaries will be included in the General Provisions article, and the historic site areas provision will be consolidated with other historic district regulations.¹

Sec. 375-48. Establishment of Districts

This section lists and establishes 21 zoning districts in Albany – nine residential; six commercial; two industrial; and four other/special districts (one land conservation, two waterfront districts, and a solid waste management district). Current overlay zoning districts (TND, PSPDOD, and Pine Bush) are not established under this section, but many newer codes would include the content of those sections in overlay zoning districts. In addition, newer codes clarify the relationship between base and overlay zoning districts and how conflicts between the two will be resolved. In a community of 100,000 people, 21 zoning district is not an unreasonable number. However, we will review the existing menu of districts carefully to evaluate whether it is adequate to implement the key goals of *Albany 2030*, to promote sustainable investment, and to protect stable residential neighborhoods.

Sec. 375-49. Zoning Map

This section adopts the revised zoning map. An emerging best practice is to identify the latest electronic version of the map reflecting Council decisions as the official zoning map.

Article IX. General District Regulations

This short article contains two sections – Sec. 375-59 (Schedule of Use, Area, and Height Controls, which simply refers a reader to the table at the end of the chapter) and Sec. 375-60 (Application of Regulations). The article is unnecessary, but similar content generally appears in other locations in newer codes.

Sec. 375-59. Schedule of Use, Area, and Height

The schedule of use, area, and height controls referenced in this section identifies the permitted uses and dimensional standards for each zoning district. While consolidation of so much key information in one table is admirable, the result is significant repetition, loss of some detail, and a very small and difficult-to-read font size. For user-friendliness, many newer codes would divide this information into (a) a Permitted Use Table for all zoning districts and (2) a Dimensional Table for all zoning districts. The result is less repetitious and more readable. Another best practice is to have these two new tables will replace, not supplement, the long lists of permitted uses and dimensional standards contained within each individual zoning district section, because repetition of the same content in two different ways (zoning district texts and then a table) often leads to inconsistencies over time. Examples of suggested use and dimensional standards updates are discussed for individual zoning districts below.

The review of Albany's lists of Permitted, Conditional, Accessory, and Temporary should focus particular attention on priority areas identified in *Albany 2030*, such as:

- Promoting economic reinvestment and business development and growth appropriately-scaled to different neighborhoods;
- Facilitating start-up business, micro-enterprises, and creative industries; and
- Urban agriculture and farmers markets.

Article X. Residential District Regulations

This article contains ten sections regulating the city's ten residential districts (including R-0 Residential Office) using long lists of permitted uses and dimensional standards. This is a very old and repetitive way to convey this information. As discussed above, the content of these regulations could be relocated to individual articles regulating zoning districts, permitted uses, and dimensional standards separately. In addition, the range of permitted housing types in some residential districts could be expanded to support the diverse and inclusive housing options called for in *Albany 2030*. Examples of newer housing options included in an increasing number of codes include the following:

- § Live-work structures, allowing a small business to be conducted in the property with a residential unit allowed above or behind the business portion of the

property. This use would be permitted (or conditionally permitted) in zones where it would be consistent with the established neighborhood character.

§ Co-housing developments, where each small dwelling unit has a small kitchen, but there is also a community house with a larger kitchen for regular shared meals. Some retirees and young professionals with smaller households are finding this type of development popular, and a growing number of cities are allowing them (as a permitted or special use) in higher density residential and mixed-use areas.

§ Small/cottage-scale infill dwelling developments, allowing smaller, freestanding dwelling units at higher densities on small pockets of infill land.



Photo credit: <http://accessorydwellings.org/2014/09/10/james-michelinie-kyra-routon-adu-starter-home/>

§ Accessory dwelling units (sometimes referred to as “granny flats” or “mother-in-law units”), which permit one additional smaller dwelling unit in an accessory building or in the primary building on a lot where a principal dwelling unit already exists).

Single-Family: Secs. 375-61 – 63

R-1LL (Large Lot), R-1A (Low Density), R-1B (Medium Density)

One land use that is noticeably missing from the single-family residential districts is community residences (i.e., group homes). This land use and definition should be reviewed closely for alignment with state and federal fair housing laws. Currently, “community residences” are permitted special uses in R-2, R-3, and R-4 districts.

Manufactured housing is another single-family dwelling type that is not permitted in any single-family district, in part, due to its outdated definition. In accordance with the federal National Manufactured Housing Construction and Safety Standards Act (NMHA), and parallel state laws, most modern codes clarify the distinction between manufactured homes (a permanent, single-family dwelling that meets HUD safety standards) and mobile homes (a manufactured home built prior to the NMHA standards becoming effective in 1976). In general, Manufactured Homes that meet NMHA standards must be treated as single-family homes in at least one single-family residential district, and that they be subject to the same types of design standards applicable to stick-built housing in that district.

Single- & Two-Family: Secs. 375-64-66

R-2A (Low Density), R-2B (Medium Density), R-2C (Row House)

These sections provide for three varieties of two-family housing, and should be reviewed to ensure that it matches the built environment of Albany’s two-family

neighborhoods and then revised if necessary to improve that match and encourage reinvestment in those neighborhoods. If large numbers of current residences are nonconforming due to the size or shape of lots or development density, revisions to reduce the number of nonconformities should be considered.

Multifamily: Secs. 375-68 – 69

R-3B (Medium-Density), R-4 (High-Rise)

These sections should be reviewed to ensure that the menu of zoning districts and the uses in each match the built environment of Albany's two-family neighborhoods and then revised if necessary to improve that match and encourage reinvestment in those neighborhoods. If large numbers of current residences are nonconforming due to the size or shape of lots or development density, revisions to reduce the number of nonconformities should be considered. Article XI. Non-residential District Regulations (Commercial Regulations)

This article provides permitted land use and dimensional standard regulations for the city's four commercial districts (Secs. 375-71-74) and two industrial districts (Secs. 375-75-76). We discuss the current R-O (Residential Office) district (Sec. 375-70) and, WF-1 (Waterfront Residential/Commercial) district (Sec. 375-78) with these districts because they are like the commercial districts in that they permit both residential and commercial development as primary uses of land.

Creating mixed use neighborhoods was one of the top community priorities identified in the *Albany 2030* visioning process. Many newer codes address this goal by reviewing their existing zoning districts and clarifying whether they already allow a mix of residential and commercial uses by right; if so, then they are relabeled as mixed use districts. In addition, most when most medium-sized and large U.S. cities review their dated development codes they find that a wider variety of commercial, office, and residential uses can be allowed in many districts (excluding zone districts for stable residential neighborhoods). Residential uses are generally allowed by-right, rather than as accessory uses or Special Permit uses in most mixed-use districts. This category of districts offers many advantages over districts designed to separate commercial and residential uses some areas of the city, and can help achieve several of Albany's sustainability development goals. Among other things, mixed-use districts can help to minimize vehicle miles traveled, which reduces traffic congestion and air pollution. These districts also appeal to developers because they no longer have to obtain variances or special use permits to get an innovative combination of uses approved.

Secs. 375-70 – 72.

R-O (Residential Office), C-1 (Neighborhood Commercial)

These two districts have very similar permitted uses, dimensional standards, and locations, and they both permit neighborhood scale non-residential development in convenient locations near residential areas. Although the R-O district limits this development to offices, most newer zoning controls allow a broader range of low-intensity,



neighborhood serving commercial uses in this type of district. In Albany there is very little land zoned and R-O, and most of that land is in close proximity to a C-1 district, which means that most of the adjacent residential neighborhoods are already accustomed to living next to a wider variety of small-scale commercial uses. These districts should be reviewed for possible consolidation.

However, the development standards will be updated as necessary to ensure that the form and scale of nonresidential uses are compatible with the scale and character of the surrounding neighborhood. The development standards could also be updated to further encourage the moderate mix of convenient neighborhood scale uses and buildings permitted in these areas. For example, the city should consider lowering or eliminating the 3,200 sq. ft. minimum lot size requirement in the current C-1 district; many cities do not impose any minimum lot size in these types of commercial districts. Sec. 375-72. C-O Commercial Office District

Like all of the current Albany zoning districts, this district lacks a purpose statement, so it is difficult to know what types of development it was designed to accommodate. Despite its title, our review of the permitted uses and locations suggests that it was intended to accommodate public and institutional uses. Principal permitted uses include hospitals, colleges, museums and art galleries, and most of the city's and state's large institutions are found in this district (e.g., St. Peter's Hospital, Albany Law, Albany College of Pharmacy, the Harriman Campus, etc.). Many newer codes include an institutional district (or two – one for the core of the campus and one for edge areas near neighborhoods) that allows for flexibility for different institutions to manage their internal affairs while regulating their impacts on surrounding areas. Another alternative would be to create separate zoning districts for each major institution, although that approach is less common in newer zoning districts.

Sec. 375-73. C-2 Highway Commercial District

This district accommodates arterial or collector street-oriented (often strip type) commercial development. Because there are so many commercial corridors in Albany (and most large cities) this type of district is common in most development codes. However, to implement the goals of *Albany 2030* and encourage safer, more livable, and vibrant land use patterns along existing commercial corridors, permitted uses and development standards should be



revised to remove barriers to creative mixed-use infill of vacant commercial sites. Like many U.S. cities, Albany has zoned more land for this type of commercial use than its market can support – which often leads to properties in non-prime retail locations remaining vacant or underused for many years. Allowing residential reuse of these properties by-right, rather than as an accessory or conditional use, could allow them to transition to more productive uses over time, and will expand the nearby markets necessary to support remaining commercial uses. In order to reinforce and strengthen

the current bus transportation system, this district could also permit higher building heights or densities (with pedestrian form-based controls) on properties located near major bus route intersections.

Sec. 375-74. C-3 Central Business District

This district regulates downtown Albany, the more urban blocks of Central Avenue, and some portions of the Warehouse District. However, it is not a good match for either the existing character of areas outside of downtown (or the intended character of those areas as described in *Albany 2030*). Under these existing standards, downtown Albany has been developed into an area with a rich and varied urban fabric that should be preserved and reinforced. However, the existing standards could be modernized to attract the residential development, higher-quality office space, improved transportation connections, and vitality called for in *Albany 2030*. Permitted uses should be reviewed to ensure that they permit the widest range of uses consistent with healthy downtown living and working, and development standards should be reviewed to ensure that they are not creating unnecessary barriers to reinvestment.



Secs. 375-75-76. C-M Light Industrial; M-1 General Industrial District

Like many older cities, Albany has two industrial districts (“light” and “general” or “heavy”). As the U.S. economy continues its transition to cleaner, greener industries, many communities are finding that they need one district designed to accommodate business and industrial parks and another district to accommodate heavier, truly industrial uses with greater impacts on their surrounding neighborhoods.



Article XII. Special Districts

Sec. 375-77. C-PB Commercial Pine Bush District

It is unclear whether this C-PB district is separate from the “Pine Bush Site Plan Review” overlay district established in Sec. 375-36.A.1 (Site Plan Review, Standards Specific to Certain Areas). Based on this section of the code and the zoning map, C-PB appears to be a base zoning district, yet it is regulated solely by the site plan review standards for the overlay district. The status of Pine Bush development standards as a base or overlay district should be clarified; it should be one or the other.

Secs. 375-78. WF-1 Waterfront Residential/Commercial, 375-79. WF-2 Waterfront Recreational District



Both of these waterfront districts run along the Hudson River and are constrained by I-787 to the west. These districts were adopted in the early 1990s to implement the City's Local Waterfront Revitalization Program (LWRP), which was developed in partnership with the New York State Division of Coastal Resources. Because these districts are within state's coastal zone, they fall under the jurisdiction of the state. A planned update of these districts has been suspended pending the completion of the ReZone Albany effort.

Although adopted more than 20 years ago to encourage residential, mixed-use development within the South End Sub-area and moderate-intensity recreational development adjacent to the Corning

Preserve, these districts have attracted little development. This can be attributed, in part, to the challenge of ensuring consistency between local, state, and federal policies and regulations and securing development approvals from various jurisdictional authorities. If Albany's goal is to more aggressively invite public and private investment in this area, the current list of permitted uses and development standards will need to be reviewed and revised. Mixed-use investment could be encouraged by allowing commercial and retail uses by-right, rather than through a special permit process, and use-specific standards could be applied to these uses to ensure that they fit into the residential context and comply with state laws governing coastal areas.

Sec. 375-80. LC Land Conservation District

This district is intended to maintain and enhance publicly-owned preserve, park, or greenspace areas (other than land included in the LWRP and Pine Bush areas) throughout the City. It may be necessary to consider some new dimensional standards to govern activities on any privately owned land in this district.

Sec. 375-83. C-SWM Commercial Solid Waste Management District

This district was specifically adopted to accommodate the Albany landfill. A district serving a single use is rare and generally unnecessary. Most communities, including Albany, permit solid waste facilities in their industrial districts, so this single-purpose district can probably be retired. Under current Sec. 375-76 (M-1, General Industrial District), solid waste management facilities are already permitted by Special Use permit.

Article XIII. Supplementary Lot, Height and Yard Regulations

This article includes eight sections addressing procedures to address pre-existing development, nonconformities, and general nuisances. Nonconformities are land uses, lots, signs, or buildings that were legal when created, but that no longer meet the requirements of the development code. Under standard zoning law, and common

practice through about 1990, nonconforming buildings may not be expanded or rebuilt after significant damage (the new building must comply with the current code) and nonconforming uses cannot be expanded or restarted if the owner ceases operation. This is an area where many large cities are rethinking their approach, however, in order to promote sustainable reuse of existing buildings and retain existing jobs. These provisions of this section should be reviewed to clearly distinguish between provisions applicable to nonconforming lots, buildings, land uses, and signs (which generally differ). In addition, the current text should be reviewed to distinguish between (a) nonconformities whose continuation needs to be discouraged in order to support the intended character of the surrounding neighborhood and (b) those that have little or no impact on the surrounding neighborhood, and should be allowed more flexibility to restart, rebuild, or expand.

Sec. 375-85. Zoned Nonconforming Lots of Record

This section deals strictly with residential zoning districts. It permits the building of single-family dwellings on nonconforming lots of certain sizes in certain residential districts. Those types of provisions are generally carried over to newer codes. This section should also clarify that a variance can be obtained to build a single-family dwelling on nonconforming lots below the size threshold in certain residential districts.

Sec. 375-90. Discontinuance of a Nonconforming Use

- § 375-90.B. This section permits the conversion of a nonconforming use to another nonconforming use with a use variance from the BZA. Unless legally required under state law, current best practice is to avoid use variances. Regardless of whether the city continues to allow use variances, we suggest that the Planning Department (rather than the BZA) be permitted to approve substitution of nonconforming uses if it finds that the alternative nonconforming use has fewer land use impacts on the surrounding area than the existing nonconforming use.
- § 375-90.C. Requiring code compliance in the rebuilding of nonconforming structures experiencing damage amounting to 51% or more of the cost of complete structural replacement establishes a very low threshold compared to many other large cities. We suggest that the city consider raising this threshold to 75% for those cases where the nonconformity is technical rather than harmful to the surrounding neighborhood.

Article XIV. Specific Use Regulations

This article contains 20 sections (Secs. 375-93 - 112) regulating specific land uses generally perceived to have greater land use impacts than other more customary uses. As discussed above, these standards are often referred to as use-specific standards, and some use special standards for every use listed as a Special Use. Generally, this section should be reviewed to bring more energy efficient and sustainable land uses into the code (e.g., wind energy conversion systems and urban agriculture), to align existing uses with state and federal laws (e.g., telecommunications, group homes, and other uses requiring state licensing), and to ensure the preservation of established and historic residential areas.

Some notable revisions to the existing standards in this article will include:

Sec. 375-94. Satellite Dish Antennas, Sec. 375-95. Radio and Other Antennas

Most new development codes list a wireless telecommunications land use and consolidate all related regulations as new use-specific standards. Section 375-94 should be updated to clarify that TV antenna and satellite dishes are permitted by-right in any zone district (except historic districts) if one meter in diameter or less, and in commercial and industrial districts if two meters in diameter or less, to comply with the federal over-the-air-reception-devices (OTARDs) rule. Section 375-95 should be revised to address wireless telecommunications facilities and ensure compliance with the federal Telecommunications Act of 1996, and related rules of the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA), as amended and interpreted by the federal courts. For example, recent federal rulemaking will require the city to:

- § Approval requests for “collocation” that do not “substantially change” the physical dimensions of the facility;²
- § Grant requests for “eligible facilities” within 60 days, other collocation requests in 90 days, and new tower requests in 150 days; and
- § State in writing the reasons for denying a siting application based on substantial evidence.

These standards could also include development standards regulating the setbacks and screening associated with new wireless towers.

Sec. 375-96. Skywalks

This section inappropriately classifies skywalks as a land use. Skywalks are a site design element more closely related to a sidewalk than a land use. Because they involve the use of “air rights” over city streets, they are generally addressed in public works standards.

Sec. 375-101. Entertainment Establishments

This section should be reviewed and updated to reflect any state law changes to the regulation of sexually oriented businesses. As discussed above, the city may also want to consider distinguishing between adult entertainment and retail uses because the secondary impacts of adult retail uses are generally smaller than for adult entertainment uses.

Sec. 375-104. Conversion From a One-Family Home to a Two-Family Home

This section regulates an administrative procedure rather than a use, so it should appear with other procedures in the USDO. The current policy of discouraging the division of single family homes in stable residential neighborhoods into two or more dwelling units should be continued.

² “Collocation,” “substantial change,” “eligible facilities” and other telecommunications related definitions, aligning with federal law will be included in the definitions article.

Sec. 375-106. Home Occupations

This section diverges significantly from emerging best practices, and should be reviewed and overhauled. The regulations are largely obsolete because they focus listing permitted home occupation rather than a smaller list of what is not permitted. Most newer codes broaden their standards to allow a greater range of activity in home occupations based on their impacts. Low- or no-impact home occupations are often treated as accessory uses permitted by right, some with moderate impacts could be permitted as special uses (although we generally don't find this level of control to be necessary), and a short list of heavy impact uses are generally prohibited.

Sec. 375-112.1. External Fuel-Burning and Heating Devices

This new regulatory section prohibiting the use or installation of an exterior furnace or device in Albany reflects the city's commitment to creating a cleaner, greener community and should be carried forward unchanged in the new USDO.

Sec. 375-112.2. Natural Gas Extraction

This section prevents the exploration for natural gas (i.e., fracking) within the City and further enforces Albany's commitment to sustainable revitalization, community health, and environmental quality. This section will be carried forward in the form of use-specific standards.

Article XV. Residential Cluster Development

Residential cluster development standards allow the creation of new residential lots that are smaller than would otherwise be required in return for "clustering" those lots in one portion of the property and protecting the remainder of the proposer as open space. Mature cities with little undeveloped land generally do not use this tool frequently, but it could still be useful in limited circumstances and will be carried over into the new USDO. However, the standards should be reviewed to confirm that they are only available in those portions of the city where their use would be consistent with *Albany 2030* --and not in those areas where established block and lot patterns would suggest that new or adjacent infill development continue those established patterns. If the provisions of Sec. 27-98.2 through .4 adopted January 27, 1987 have not already been included in the content of this article, they should be, since they relate to the ability to cluster lots.

Article XVI. Performance Standards

This article contains 14 sections regulating nuisances and nuisance-like impacts including electrical disturbance, radioactivity, noise, vibration, glare, smoke, odor, and air pollution. Most development codes contain these types of standards, so they should be reviewed for enforceability and then carried over into the USDO. Although some of these topics are also covered by general nuisance law, or addressed in other portions of the municipal code, making them a development code violation often simplifies enforcement. The city's general noise ordinance should be cross-referenced or brought

into the USDO (most cities keep it separate but cross-reference the need to comply with it in addition to complying with the zoning standards.

Article XVII. General Area, Yard, Height and Landscaping Regulations

This Article is a grab bag of dimensional regulations, spanning 13 sections, and covering more than its title implies. Topics include lot accessibility, exceptions and encroachments to dimensional standard, and property screening. The content appears to reflect to adjust fairly rigid lot and building dimensional standards to the varied fabric of the city over time) In several cases, the text appears to address conditions created by unusual but permitted buildings in zone districts where they are not the standards type of building addressed by the zone district (for example, churches located in residential neighborhoods). Many newer codes address this by having separate lot or building dimensional standards spelled out for these types of buildings. For example, the zoning rules for a residential district could have one set of dimensional standards for houses and another for churches or community centers that are permitted in that district. Additional comments and suggestions pertaining to specific sections of this article are listed below.

Sec. 375-131. Accessibility for Emergency Vehicles

This is the only section of Chapter 375 covering access and circulation within and among development sites and neighborhoods – and it does not address circulation and mobility for bicyclists, pedestrians, or automobiles. In newer codes, these provisions are often incorporated into a general set of standards addressing lot access, circulation, and connectivity, and in this case they should be aligned with the *Albany 2030* goals for increased transportation safety and transit mobility. Related standards contained in the Subdivision Handbook (e.g., general requirements for the subdivision of land including street arrangement, complete street design standards set forth in Chapter 323, Article VI) would normally be included a in this section of the development code.

Secs. 375-132. Front Yard Exception; 375-133. Projections into Required Yards

These sections permit exceptions and encroachments into or through required dimensional standards. The current list of permitted exceptions, which covers architectural design features like cornices, canopies, and balconies, is missing some sustainable design elements like including solar, wind, or geothermal energy equipment, rain gardens and rain barrels, and also fails to mention common building features like porches and stoops. The provision limiting the front yard exception to 10 feet when an unimproved lot is situated between two other unimproved lots is outdated and should be removed.

Sec. 375-134. Maximum Coverage

This section sets forth the total ground area of each lot that may be occupied by principal and accessory structures. With increasing concern over stormwater management and water quality, many cities have revised the definition of lot coverage to include paved areas (i.e. driveways) in the calculation of lot coverage. In addition, the

treatment of swimming pools (are they considered pervious or impervious surface) should be clarified.

Secs. 375-137. Unenclosed C-M and M-1 Uses; 375-138. Screening of Outdoor Uses; 375-139. Stripping of Topsoil

These three sections address general topics related to land management, landscaping, and screening. Aside from these minimal requirements, landscaping standards are largely absent from Chapter 375 and the broader city code. Currently, proposed landscaping and screening is required as part a site plan submission, and Article XIX (Off-Street Parking and Loading Requirements) provides for landscaping and screening of parking areas. These are fairly weak landscaping standards for a city of Albany's size and maturity, and we recommend that they be strengthened to help protect neighborhoods and to improve the visual appeal of the city. The new standards should address:

- § General Provisions – including plant species, minimum sizes, vegetative coverage, snow storage areas, etc.
- § Street Trees/Lot Frontage Landscaping – requiring landscaping and specifying the landscaping design along all street frontages for significant development or redevelopment projects.
- § Buffering along Side and Rear Lot Lines – only required when development or redevelopment differs significantly in type or scale from adjacent lands and along property edges occupied by surface parking lots, and incorporating current Sec. 375-180.G (Parking lot design for more than four vehicles, screening).
- § Interior Parking Lot Landscaping – required for significant development or redevelopment projects, and incorporating Sec. 375-180.F (Parking lot design for more than four vehicles, landscaping).
- § Preservation of Existing Landscaping (tree preservation) – giving landscaping credits against new landscaping required.
- § Wall and Fence Regulations – addressing location, height, and materials.
- § Buffering of Service Areas and Equipment – required for rooftop and ground mounted equipment (but not including solar collectors or wind energy devices) for multi-family, mixed-use, commercial, institutional, business, and industrial development (except in the M-1 zone).
- § Vision Clearance – requiring the protection of defined view triangles at major intersections for traffic safety.

To address the critical issue of stormwater management, and consistent with *Albany 2030's* green infrastructure goals, this section should incorporate Low Impact Development practices (e.g., permeable pavers and bioswales) to help mitigate total and peak stormwater runoff and reduce hard infrastructure costs. Albany's climate action goals could also be implemented through this section by incentivizing preservation of existing trees and vegetation. Because mature trees are much more effective at absorbing carbon dioxide emissions and shading urbanized areas (reducing summer cooling costs), many newer codes offer credits against required landscaping if the development preserves existing trees and vegetation – particularly larger trees. This section also provides the opportunity to introduce landscaping standards that improve

public safety using the principles of Crime Prevention Through Environmental Design (CPTED).

Article XVIII. Flood Management Regulations

In response to recent, catastrophic flood events, communities across the country are updating their floodplain regulations for consistency with Federal Emergency Management Agency (FEMA) regulations and to improve community resilience. Unlike many communities, Albany does not regulate its floodplain zones using an overlay district, but we think the overlay district approach based on the FEMA Flood Insurance Rate Map (FIRM) should be considered. We understand that the Albany's engineering staff is currently updating the city's flood protection regulations based on FEMA requirements. Because federal funding is contingent on meeting FEMA requirements, those update regulations should be incorporated into the text of the suggested overlay district.

During the ReZone Albany process, the city should also review what steps could be included in the USDO to help the city achieve credits under the National Flood Insurance Program's Community Rating System (NFIP CRS). The CRS is a voluntary program that rewards a community with discounts on flood insurance premiums based on credits earned for going above and beyond the minimum NFIP requirements. For example, credits can be earned by increasing regulatory protection of areas not shown on the FIRM or enforcing higher regulatory standards for stormwater management (for example through requiring or incentivizing Low Impact Development, where landscaping and open space are better integrated into storm water management systems). It is our understanding that Albany is not currently involved with this program, but we suggest that it should consider participating, and that the city consider including zoning provisions that could help reduce flood insurance costs in the new USDO.

Article XIX. Off-Street Parking and Loading Requirements

Throughout this document, we have suggested that the city needs to expand its development layout and quality standards (landscaping, lighting, connectivity, etc.) in order to achieve the vision of *Albany 2030*. Unlike the minimal landscaping standards discussed above, this article represents the most comprehensive set of existing development standards in the current zoning ordinance. It includes sections covering minimum off-site parking requirements, parking lot design, access, off-street loading requirements, and driveways. Review and revisions of this article should focus on the following:

- § Lowering required off-street parking standards where possible without harming surrounding neighborhoods or creating traffic congestion impacts;
- § Eliminating minimum parking requirements where doing so runs little or no risk of traffic congestion or neighborhood parking problems;
- § Allowing property owners to count on-street parking spaces in front of their property towards minimum parking requirements.
- § Allowing parking reductions when two or more uses share a parking facility, a property is located near a bus line, or on-street parking is provided in front of the property (in addition to the C-1 alternative provisions discussed above);

- § Permitting required off-street parking to be provided within a stated distance of most commercial uses (usually within 600 feet), but not in a residential district;
- § Allowing changes of use between broad categories without the need to recalculate and provide additional parking (with a few exceptions for high traffic uses such as restaurants, bars, and medical offices);
- § Allowing payment of fees-in-lieu of on-site parking that would be pooled by the city and used to provide shared or public parking facilities in the area from which the fees were paid; and
- § Addressing Americans with Disability Act (ADA) accessible parking and access requirements.

Additional specific comments and recommendations include are set forth in the sections that follow.

Sec. 375-173. General Provisions

Subsection A exempts the C-3 (Central Business District) from the off-street parking and loading requirements in this section. This is not uncommon, and is included in the majority of new codes for medium-sized and large U.S. cities. Even if the city does not require minimum parking in the downtown, it may want to set maximum parking limits – and this is a gradually increasing practice in several large U.S. cities. Maximum parking limits can help limit the expansion of surface parking lots, reduce inefficient use of land for seldom-used spaces, and reduce heat island impacts and stormwater management impacts from paved surfaces. Because parking is in high demand downtown and *Albany 2030* suggests the need for a city-wide parking management strategy, this topic will require additional discussions. The pros and cons should be discussed with the Planning Board, Zoning Advisory Committee, and Common Council before a decision is made.

Under subsection B, when a use is intensified or expands to occupy more space, the zoning ordinance requires any additional parking requirements be met. To help spur reinvestment, some newer codes include a threshold (e.g., expansion of floor area by 15% or more) to trigger the requirement for meeting higher minimum parking standards; smaller expansions are not required to add parking spaces.

Sec. 375-175. Parking in Required Front Yards or Unimproved Areas

This section broadly prohibits the parking of vehicles on lawns or other unimproved areas in residential districts. Enforcing this standard is an issue faced by many communities and is a constant challenge. Some communities provide the following:

- § Cars may only be parked between a public street and the wall of a residence facing that street if they are on a paved or hard surfaced driveway. Generally this applies to the front or side wall of the house, but it may occasionally apply to a rear wall on a through-lot with two opposing street frontages
- § Limit the width of the driveway to 24 feet (the width of a driveway leading to a two car garage) in order to prevent the “paving over” of front yards.

Because lot widths and building density limits vary across different zone districts, we suggest that the new USDO review this issue and consider tailoring these standards to the development patterns in different areas of the city.

Sec. 375-177. Design Guidelines for Parking Lots of More Than Four Vehicles; Sec. 375-180. Parking Lot Design for More Than Four Vehicles

Section 375-177 includes standards (not guidelines, as its title suggests) regulating parking aisle width and stall dimensions. These standards seem reasonable, but they will be reviewed against research we have recently compiled of the standards used in other communities, and updated accordingly. Some newer development codes include smaller and more land efficient standards to reflect the changing mix of vehicle sizes now on the road.

Section 375-180 provides guidelines for the design of critical parking lot elements including landscaping, lighting, screening, drainage, etc. These provisions should be reviewed, and the city should consider whether some of these guidelines should become standards. In most newer development codes, parking lot landscaping is grouped with other landscaping requirements, so that the screening and buffering of parking lot areas can be better integrated with required street frontage and site boundary landscaping and screening requirements. In addition, an increasing number of newer codes include provisions that allow interior landscaping areas to serve as storm water treatment facilities (instead of requiring that the landscaped “islands” be raised above the surface of the parking lot, require that they be located lower and be designed so that that runoff from paved parking areas flows down into these green treatment areas).

Sec. 375-183. Off-site Facilities

This section permits off-street parking requirements to be met within 250 feet from the property. Several newer development codes use a distance of 600 feet, which is generally between one and two residential blocks.

Sec. 375-185. Off-street Parking Requirements

This section includes a table regulating off-street parking requirements for the land uses permitted in the city. It needs to be updated to align with the new categories of land uses identified in the new Permitted Use Table. We recommend reviewing this table against the parking standards used in other medium and large U.S. cities, with the goal of lowering these standards to the greatest extent practicable. For example, requiring general retail uses to provide 1 space/250 square feet (sf) of gross floor area (gfa) in all zoning districts but C-1 is higher than the requirement used in many U.S. cities, and could discourage investment and reinvestment in the city. The C-1 requirement of 1 space/500 sf of gfa is more reasonable. Additionally, requiring restaurants to provide 1 space/50 sf of gfa is exceptionally high; many newer codes use a standard of 1 space/15- or 200 sf of gfa. Some of these standards can be restated as a “per seat” requirement (for example, for religious institutions, clubs, or theaters); standards based on the number of employees should be avoided, because staffing can easily change over time.

Sec. 375-191. Off-street Loading Requirements

This section should be revised to reflect changes in current loading and delivery practices. Today, deliveries often occur more frequently (to reduce the need for inventory stocking space) and with smaller trucks or vans, which means that at least some of those deliveries can be made in on-street parking spaces without the need for as many specially designed large truck loading docks. To accommodate this shift, the city should consider lowering the current requirement for one loading space/15,000 sf of gfa to about 1 space/25,000 sf of gfa (or part thereof), and should also consider exempting properties under 25,000 sf of gfa from loading requirements. Or it may want to consider eliminating off-street loading requirements except in areas where deliveries continue to present challenges to traffic flow or congestion.

In addition to updating the zoning provisions in Chapter 375 as outlined above, the new USDO should consider integrating information from other chapters of the city code that control the development, redevelopment, or management of private land in the city. In order to create an USDO that includes all relevant information related to land use and development, we have reviewed the following chapters of the Albany City Code. Our recommendations as to which content should be integrated into the USDO (and removed from these chapters) and how that content should be updated in the process, are explained in the sections that follow.

Chapter 42: Departments and Commissions

Chapter 42 of the City Code describes the membership, appointment process, terms of office, and authorities of many appointed advisory or decision-making groups in the city. Among those groups responsible for some aspect of land development or redevelopment are the following.

- § Part 4. Historic Resources Commission
- § Part 8. Sustainability Advisory Committee
- § Part 13. Planning Board of City of Albany
- § Part 15. Department of Urban Redevelopment
- § Part 24. Department of Development and Planning
- § Part 32. Urban Cultural Park Advisory Committee
- § Part 35. Office of the City Archaeologist

Chapter 42 is one area where the Albany City Code is better than many other city codes, in that the coverage of these topics is clear and comprehensive (except for describing the Board of Zoning Appeals, which was left in Chapter 375). In most other large city codes we have reviewed, the information on these types of groups is often scattered throughout the code.

Often, we draft USDOs with a subsection that lists the bodies identified above and their respective duties and authorities – especially the Board of Zoning Appeals and Planning Board – in a comprehensive chapter on Administration and Enforcement. In this case, however, that would require “pulling apart” Chapter 42 to move at least some of its

content into Chapter 375. In some cases – such as the Sustainability Advisory Committee and the Department of Urban Redevelopment – the bodies listed have some authorities related to Chapter 375 and some that relate to other chapters of the City Code, so moving the description of the body to Chapter 375 may make it harder for lay readers of the City Code to find this information. For those reasons, we suggest that instead of moving the description of the Planning Board and other groups into Chapter 375 we move the description of the Board of Zoning Appeals from Chapter 375 into Chapter 42.

In addition, many newer codes would split the responsibilities for interpreting the development ordinance between the Planning Director and the Board of Zoning Appeals, instead of placing all of that responsibility with the Board as described in the current Albany code. As a practical matter, the administration of a development code requires that the Director make almost daily decisions to interpret the code, so having the Director have primary responsibility for interpretation is more efficient. If an applicant or neighbor disagrees with that interpretation, it can be appealed to the Board. In addition, if an applicant or neighbor wants to get a formal interpretation in writing, that should be done by the Board of Zoning Appeals. In addition, all interpretations by either the Director or the Board should be promptly posted on the city's web site, so that they can be a matter of public record and the staff should be required to act consistently with that interpretation until a new or different interpretation is posted. This allows for efficient decision-making (not every routine interpretation of the code should require Board action) and for more public and transparent exercise of those powers.

Chapter 105: Alcoholic Beverages

Chapter 105 contains the city's regulations for licensing establishments that sell or serve alcohol). These are primarily business licensing standard and procedures. They are generally not included in a zoning or development ordinance, and we recommend that they not be included in the USDO. However, Chapter 105 contains many definitions of land uses and facilities (e.g. restaurant, hotel, grocery store) that could overlap or conflict with those in Chapter 375. Chapter 105 and Chapter 375 definitions should be reviewed together (as well as any New York State legislation that may constrain the City's ability to change these definitions for purposes of alcohol licensing) and a single definition should be used for each land use if at all possible. In addition, the Chapter 375 Permitted Use Table and use regulations should require that all establishments maintain all required local and state licenses in effect at all times – including but not limited the alcohol licenses required by this chapter.

Chapter 111: Amusements

Chapter 111 contains Albany's regulations for licensing places of amusement – including theaters, motion pictures, billiard and pool halls, games of chance, amusement devices and game rooms, and cabarets. The provisions focus on issuing, enforcement, and suspension of licenses, and building construction features designed to protect public safety. These provisions should not be included in the USDO. However, there are a few

definitions of land uses that could overlap and conflict with those in Chapter 375, and every effort should be made to make them consistent with each other. Again, Chapter 375 should clarify that any land use required by Chapter 111 to have a license from the city must keep that license valid and in effect at all times, and that failure to do so is a violation of both chapters.

Chapter 121: Auctions and Auctioneers

This short chapter addresses the licensing of auction houses and auctioneers. Like Chapters 110 and 111, it is a business licensing ordinance that should not be incorporated into Chapter 375, but the definitions should be reviewed for uniformity/consistency with zoning definitions and Chapter 375 should require that owners and operators have all required licenses in effect at all times.

Chapter 135: Buildings, Numbering of

Chapter 135 requires that each building in the city be numbered according to the city's numbering scheme. Because these requirements involve not only subdivision and zoning activities but need to be coordinated with the city's fire, police, and emergency response systems, they should be kept outside Chapter 375. However, the USDO should include a cross-reference reminding the reader of the need to comply with this chapter, and the definitions of "building" in Chapters 135 and 375 should be consistent (or one should cross-reference the other).

Chapter: 151: Commercial Standards

This chapter was intended to serve as a property maintenance law for commercial properties, but the wording of the chapter includes text that could apply to development and redevelopment as well. Unlike the chapters listed above, Chapter 151 does contain some standards that should be moved into, and integrated with, the new USDO. Article 1 contains many definitions of land uses and facilities that need to be made consistent with those in Chapter 375 to avoid confusion and inconsistent decision-making. In Article 2:

- § Sections 151-13 (Appearance), 151-15 (Signs and Billboards), 151-16 (Windows), 151-17 (Storefronts), 151-19 (Awnings) and 151-21 (Parking Lots) have some design guideline elements that need to be coordinated with land use and development standards in Chapter 375.
- § The reference to the Capitol Hill Architectural Review Commission & Historic Sites Commission in Section 151-13 should be deleted, since that body no longer exists.
- § Section 151-20 (Vacant Lots) includes property maintenance standards that should be integrated into the USDO.

- § Some of the design or operation standards for specific uses will need to be included in use-specific standards for that use in Chapter 375 (or at least a cross-reference inserted).

The remaining articles of Chapter 151 relate more to the city's building construction code and building safety inspections than to land use development and redevelopment, and do not need to be included in Chapter 375.

Chapter 181: Environmental Quality Review

This chapter includes the city's regulations for conducting environmental reviews for city actions – many of which are likely to be land use, land development, or redevelopment actions. It appears that the primary intent of this section is to keep the city in compliance with the New York State Environmental Quality Review Act (SEQRA). However, we understand that the Albany Environmental Quality Review Board created by this chapter is no longer operational, and much of the chapter addresses the functions of that entity. If the majority of actions that trigger a duty to comply with the SEQRA are land use development and redevelopment actions, this chapter should be moved into Chapter 375 and integrated into the administration and enforcement provisions of that chapter. On the other hand, if many of the actions that trigger SEQRA compliance are conducted by other departments of the city, or are actions that do not need to comply with land development regulations (for example, decisions to spend city funds on a new or better road, or to build a better utility or public safety facility), then these regulations should probably be kept in an independent chapter of the City Code. Even in this case, however, Chapter 375 should include a cross-reference to these requirements.

Chapter 197: Fire Prevention

This chapter contains the city's adoption of fire codes and fire safety provisions. Most of these provisions are not included in a USDO. However, the USDO should cross-reference specific sections of this chapter (for example, the prohibition against certain types of outdoor fires). In addition, the Chapter 375 use-specific standards for industrial uses and other uses that may store or use combustible materials, liquefied petroleum, or other listed materials, or that store or sell fireworks or pyrotechnics should cross reference the standards in this chapter.

Chapter 203: Freshwater Wetlands

Chapter 203 is very short and includes Albany's acceptance of responsibility and authority for implementing and enforcing the New York State Freshwater Wetlands Act within the city boundaries. Since most of the activities that need to be reviewed, monitored, and regulated under this act involve land development and redevelopment, it should be integrated into Chapter 375. More specifically, the duty of property

developers to comply with the act and the city's authority to enforce compliance with the act should appear in the USDO.

Chapter 211: Grading and Mining

This chapter includes the city's requirements that land owners, developers, and redevelopers obtain city permits before grading, filling, or mining land, in order to prevent environmental damage and water quality violations that may occur before an applicant applies for development permission or a building permit. The separation of these types of environmental permit requirements from other zoning and subdivision requirements is a source of frustration and confusion in many cities, and can result in costly mistakes by property owners. Most integrated development ordinances include these provisions, and we recommend that the definitions, substantive requirements, and administrative/enforcement provisions be incorporated into Chapter 375. Our initial review of the standards suggests that they are dated, so we also recommend reviewing the substantive standards against those recently adopted by other large cities. The standards should also be reviewed for consistency with archeological protection regulations. However, the provisions listing specific fees for different types of permits should not be included; all application, permit, and processing fees should be included in a comprehensive fee resolution adopted by Common Council, and Chapter 375 should just require payment of the fees listed in that resolution.

Chapter 231: Housing

This chapter includes Albany's housing maintenance code, which is very detailed. Housing codes are similar to building construction codes in that they involve very technical materials and are enforced through an inspection process that is generally kept separate from the city's zoning inspection process. In short, zoning generally controls and inspects what activities take place on the land and those aspects of site layout and construction other than the engineering and safety of the building itself; building codes regulate and inspect the technical aspects of how the building is built, and housing codes regulate and inspect how housing is maintained after it is built. Housing codes are generally not included in USDOs, and we recommend that these provisions not be included in Chapter 375. However, this chapter includes a long list of land uses and facilities that overlap with and probably conflict with those in Chapter 375, so the ReZone Albany effort should try to remove or reduce those inconsistencies.

Chapter: 239 Junk Dealers and Scrap Metal Processing

This chapter includes the city's authority to license the operators of these uses and, like other business licensing regulations, should not be included in Chapter 375. However, the definitions of regulated uses should be made consistent with the terms for these used in the Permitted Use Table, and the use-specific standards in Chapter 375 should cross-reference the requirements of this chapter (including but not limited to the duty to maintain a valid license to operate these facilities at all times).

Chapter: 246 Newsracks

This chapter establishes Albany's system for regulating the location and maintenance of newspaper distribution points on public rights-of-way. Generally, regulation of the operation and maintenance of the public rights-of-way is not included in zoning and development codes, and we recommend that these provisions not be included in Chapter 375. However, some cities require that all proposed facilities in the public right-of-way be reviewed through a site planning process, and that approach could be considered.

Chapter: 270 Public Pay Telephones

Chapter 270 establishes Albany's system for regulating the location and maintenance of public pay phones on public rights-of-way, or that are located on a building but require use of the public right-of-way to access and use the phone. Like newsrack regulations, these types of regulations of the operation and maintenance of the public rights-of-way is not included in zoning and development codes. In this case, the content and operation of the regulations is more closely related to police monitoring and prevention of drug-related activities, and we recommend that these provisions not be included in Chapter 375.

Chapter: 293 Second Hand Dealers

This chapter includes the city's authority to license the operators of these second hand dealers, and are related to police desires to identify and recover stolen goods. Like other business licensing regulations, it should not be included in Chapter 375. However, the definitions of regulated uses should be made consistent with the terms for these used in the Permitted Use Table, and the use-specific standards in Chapter 375 should cross-reference the requirements of this chapter (including but not limited to the duty to maintain a valid license to operate these facilities at all times).

Chapter: 299 Sewers

Chapter 299 is a lengthy section of the City Code addressing many issues related to sewers, but its provisions are much more closely related to the building construction code than to zoning and land use controls. There are two exceptions, however. Some of the content addresses the need for developing or redevelopment properties to connect to the sewer system (if they are not already connected), and those provisions should be cross-referenced in the Subdivision Regulations section of the USDO. In addition, some of the provisions are related to illegal depositing of waste and discharge of pollutants, and those should be cross-referenced in the USDO.

Chapter: 303 Sidewalks and Outdoor Cafes

This chapter authorizes the city to issue permits for outdoor cafes and sets forth the design and operating standards that apply to outdoor eating areas. In one sense, these provisions are similar to the regulations for public pay phones and newsracks described above, which we do not recommend for inclusion in the USDO. However, we recommend that these regulations be included in Chapter 375 for the following three reasons:

- § Encouraging successful outdoor eating areas is important to the vision of Albany's future (particularly downtown's future) outlined in *Albany 2030*;
- § The operation of outdoor cafes is closely related to the operation of the restaurants that provide the food and drink; and
- § ReZone Albany will include reviews of the city's current street design templates, and the design and operation of the edges of those streets – between the curbs and building facades, is key to the creation of improved streetscapes. Because these regulations were adopted in 1991, and many aspects of downtown living have changed in the intervening 18 years, we also recommend reviewing these regulations in light of experience in other cities and simplifying them if possible to remove unnecessary barriers to this activity.

Chapter: 307 Signs

These provisions are generally included in integrated development ordinances unless there is some reason in state law why they should not be grouped with zoning or subdivision controls. We are not aware of any reasons why this would be true in New York, and other New York cities have included them in their zoning regulations. In addition, it is important that the definitions used in sign regulations be consistent with and closely coordinated with land use definitions. Finally, the process for issuing sign permits and enforcing sign regulations are similar to permitting and enforcement in other land use areas. For all these reasons, we recommend that Albany's sign regulations be included in the new USDO, and that the procedures for issuing sign permits (and requests for special sign approvals variances to sign standards) be reviewed for efficiency and clarified.

Chapter: 313 Solid Waste

Like sewer regulations, municipal solid waste regulations address many topics (e.g. recycling, littering, landfills), only a few of which are closely related to land development and land use. In addition, primary responsibility for implementing and enforcing these regulations lies outside the Department of Planning. For those reasons, we do not recommend integrating these regulations into Chapter 375. As for sewer regulations, however, there are a few exceptions. First, the USDO Permitted Use Table should contain the sanitary landfill uses, the use-specific regulations for landfills should cross-reference this section, and the definitions related to sanitary landfills should be consistent with those in Chapter 375. Similarly, different types and scales of recycling collection points, transfer stations, and processing facilities should be addressed in the

Permitted Use Table, use-specific standards, and definitions of Chapter 375. In addition, the USDO sections on site design for multi-family, mixed use, and non-residential development could include provisions requiring the inclusion of recycling collection areas consistent with the requirements of the city's recycling program. Finally, the operating and maintenance standards in the USDO should cross reference the provisions of this chapter, including but not limited to the requirements for maintenance of vacant lots.

Chapter: 323 Streets and Sidewalks

This very important chapter of the City Code addresses many issues related to streets and sidewalks. For purposes of the ReZone Albany project, they fall into three categories: (1) content that we recommend should be moved from this chapter into the USDO, (2) content that we recommend should remain in Chapter 373 with cross-references in the USDO, and (3) provisions that mostly concern the maintenance and repair of public streets, which has little to do with land development and redevelopment. Our recommendations are set forth in more detail below:

- § Article I (General) contains a very lengthy list of operating, repair, and maintenance standards, most of which apply to the city's own maintenance and regulation of behavior on public thoroughfares (e.g. defacing, littering, etc.) Most of this content does not belong in Chapter 375.
- § However, provisions of Article I on the encroachment of awnings, signs, pipes, gutters, bay windows, balconies does belong in Chapter 375, because these are issues that come up in zoning approvals and site plan review.
- § The materials in Sec. 323-8 (Cake and Fruit Stands) is very dated, and should be revised into a general regulations about vending on sidewalks and coordinated with the outdoor café regulations discussed above. The materials in Sec. 323-37 on Areas Enclosed with Railings should be coordinated with the outdoor café standards, and could be removed from this chapter.
- § The materials in Sec. 323-18.B on minimum sidewalk widths, and Sec. 323-36 (Areas in Front of Buildings) should be reviewed in connection with design guidelines for streets.
- § Article II (Laying Out and Naming of Streets) sounds like it should be integrated into Chapter 375 subdivision regulations, but the title is misleading. The section only authorizes the city engineer to regulate this topic, which does not need to be included in the USDO.
- § Articles III (Where Petition Not Required for Street Improvements), IV (Pavement Openings), and V (Removal of Wires, Poles, and Fixtures from Certain Streets), VII (Smoking Near Health Care Facilities and Inside Bus Shelters) do not need to be included in the USDO.
- § Article VI (Complete Streets) was adopted specifically to encourage the types of multi-modal, pedestrian- and bicycle-friendly streets called for in *Albany 2030*. However, the section does not contain design standards; it sets forth city policy to consider a broader range of mobility issues (especially for bicycles and pedestrians) in the future design and redesign of city streets. The policy statements should probably be cross-referenced in the USDO, and (more

importantly), these broad policy directions should be reflected in revised street and sidewalk design templates.

Chapter: 329 Tattoo Parlors

This chapter includes the city's authority require tattoo parlors to register those businesses, some operating provisions for those establishments, and provisions for revoking the registration of the registration if the operating standards are violated. Like other business licensing regulations, this content should not be included in Chapter 375. However, the definitions of regulated uses should be made consistent with the terms for these used in the Permitted Use Table, and the use-specific standards in Chapter 375 should cross-reference the requirements of this chapter (including but not limited to the duty to maintain a valid registration at all times).

Chapter: 341 Transient Retail Businesses

This chapter includes the duty of transient retailers (on both public and private property) to pay city taxes, which should not be included in the USDO. However, the definitions related to transient retail should be made consistent with the terms for these used in the Permitted Use Table, and the Use-specific standards in Chapter 375 should cross-reference the requirements of this chapter. In addition, some integrated development ordinances list those zoning districts where transient retail sales can (and cannot) occur on private property (and also sometimes on public property).

Chapter: 345 Tree and Vegetation

This important chapter compensates for some of the weaknesses in the city's current landscaping and buffering standards in Chapter 375. We recommend that some of these provisions should be included in the USDO, while others should not. More specifically:

- Article 1 (Care of Trees and Shrubs) concerns vegetation on public spaces, and should be cross-referenced in the USDO, except as noted below.
- Sec. 345-17 (Planting of Trees Along Private Property) should be cross-referenced in and coordinated with proposed new street frontage landscaping provisions in the expanded landscaping and screening regulations of the new USDO.
- Sec. 345-18 (Site Plan Review Required for Clear Cutting) should be moved into Chapter 375, with clear cutting named in the Permitted Use Table, the requirement for site plan review included in a use-specific standard, and the standards for site plan review included in the administrative provisions of the USDO.
- Article II (Community Gardens) concerns the city's authority to make unused city property available for this use. Since it mostly concerns city management of its own property, it should not be moved to Chapter 375 (which mostly

addresses private development). However, Chapter 375 should name and regulate Community Gardens on private property, and should establish standards for that use.

Chapter: 363 Vendors

Chapter 364 authorizes the city to regulate and license the selling of items on public property, and should not be included in the USDO. It should, however, be included in the list of City Code chapters cross-referenced in the USDO, so that citizens and businesses realize that they cannot sell items on public areas and sidewalks without first complying with these requirements. These provisions should be coordinated with, or integrated with, the provisions on transient retail sales in Chapter 341.

Chapter: 371 Water & Waterways

This chapter addresses a wide variety of issues related to water and waterways, mostly related to the city's authority to regulate activities. Most of the regulations concern facility construction and design, situations that require city approval, or environmental protection. Only a few provisions concern the development or redevelopment of land, or the design of facilities on private land along waterways in the city. These regulations generally do not need to be included in the USDO

Interim Storm Water Regulations

These regulations address the issuance of building permits in the Beaver Creek Sewer District, Karlsfeld Sanitary Sewer District, and Krumkill Sanitary Sewer District, and contain additional stormwater management requirements related to conditions in those areas. These types of technical standards (which are not formally part of the City Code, but are regulations adopted pursuant to authority in the City Code) are not generally included in an USDO. The regulations are interim in nature, and may be revised when stormwater management, treatment capacity, or discharge issues have been resolved, and interim controls are generally not codified. We recommend that these regulations not be included in Chapter 375, but that the Procedures and Administration section on building permits include a reference that permits in these areas are subject to the interim regulations.

Land Subdivision Handbook

One of the primary purposes of an integrated development ordinance is to coordinate zoning and subdivision regulations, so much of the content in this (uncodified) handbook should be included in Chapter 375. Like many older cities, Albany's subdivision regulations are very dated (these were originally adopted in 1957) and have never been codified, so significant updates should be included. Over the last half-

century, the art and science of subdivision has taken great strides forward in ways that better protect the environment and create better, more cohesive, and more walkable neighborhoods, all of which are key goals of *Albany 2030*.

In addition, codifying these materials as part of the USDO will allow the city to be more consistent in its approach to site design, access, connectivity, mobility, landscaping and buffering. When zoning and subdivision controls are separated, cities often apply different standards to the layout of streets that are dedicated to the city as part of a new subdivision than they apply to the design of internal circulation for a multi-building complex on a single already platted lot. But the two cases may involve similar properties of roughly the same size; the only difference is that in one case the owner has subdivided into multiple lots and in the other case the owner has planned the layout on a single lot. Most cities want to apply similar design principles (and the *Albany 2030* goals do not call for different outcomes in those two cases), and integrating zoning and subdivision regulations helps achieve that goal.

For those reasons, subdivision-related definitions, procedures, and standards should all be included in the USDO. Just as importantly, the very general and dated regulations (some of which are so vague as to allow almost any outcome) should be updated based on national best practices for older, mature cities that are focused on both promoting reinvestment and improving quality of life. It does not appear that the current regulations include either a simplified procedure for minor subdivisions (those that create only a few lots, and that generally do not require the construction or dedication of infrastructure) or an administrative procedure for approving minor lot line adjustments that do not create new lots. Both should be included. On the other hand, the detailed (and dated) standards for street construction should not be included in the USDO, but should be included in an administrative document outside the USDO, because those standards are often updated as technologies and design needs change over time.

Other

Throughout the content described above – both the content that is currently covered in Chapter 375 and the content that we recommend be moved into that chapter – we recommend that lists of submission materials, specific application/processing fees, and technical engineering standards not appear in the City Code. Instead, Chapter 375 should cross-reference their existence in administrative documents or resolutions available on the web site. This allows planning/engineering/building to update technical standards and application requirements as technology changes without going back to Council with a code amendment. In the case of fees, the Council would still need to adopt the fees, but most cities decide that should be a resolution of Council – not a code amendment – that is cross-referenced in the code. The Code text will clarify that compliance with those cross-referenced regulations is mandatory.