



KEENE, NEW HAMPSHIRE

# CODE+ KEENE

DEVELOPMENT REGULATION ASSESSMENT



DECEMBER 6, 2016

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## CHAPTER I - INTRODUCTION

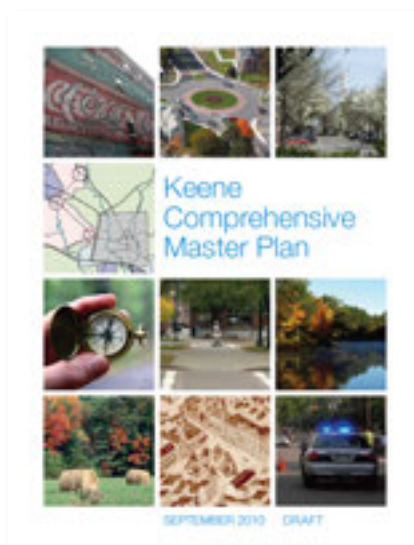
### BACKGROUND

Keene is a vibrant Southern New Hampshire community with a lively mixed-use downtown that draws people from the entire region to Keene. The presence of Keene State College also adds to the vibrancy of the City with an influx of younger residents during the school year. Keene aspires to become the best community in America, a community where the quality of life means beauty, dynamism and functionality. Keene is and wants to continue to be a great place to live, work and play, providing affordability and accessibility for all.

### COMPREHENSIVE PLAN

Keene adopted its latest Comprehensive Master Plan in 2010 after more than a year of public outreach and engagement efforts with nearly 2,000 participants. The vision articulated in the Plan reflects the hopes and desires of the community and presents a set of strategies for the community to achieve that vision.

The Plan speaks to the need for more mixed-use development downtown and in certain other activity centers of the City, for the addition of density within the downtown core, and an increase in the maximum height with which the community feels comfortable. The Plan also raises the desire to see architecture that is not too homogenous with the inclusion of urban design and architectural design standards into the City's development code and regulations. The preservation of neighborhoods and historic buildings is particularly important to the community, while appropriately providing for growth opportunities.



Keene Comprehensive Plan, 2010

The Comprehensive Master Plan recognizes that in order to achieve its objectives, the City's development code and regulations – the rules and processes that regulate where and what type of development can occur – need to be updated. The existing zoning code and development regulations are based on an ordinance that is over 90 years old and has been amended many times over the years. Development regulation in Keene is not written to create the built environment envisioned by the Comprehensive Plan.

### DEVELOPMENT REGULATORY UPDATE PROCESS

In the spring of 2016, the City engaged Town Planning & Urban Design Collaborative (TPUDC) to work with City staff, elected and appointed officials, and the community at large to perform the first phase of the Development Regulatory Update process. This phase, the Development Regulation Assessment, consists of assessing and reporting on the City's existing regulatory context, presenting a number of code revision strategies and alternative regulatory approaches, and providing recommendations to guide revisions of the City's development code and regulations that will come in the second phase of the project.

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Phase I of the project will be completed before the end of 2016, and will be followed by the second phase, in which the existing development code and regulations will be revised.

## HISTORY AND CURRENT STRUCTURE OF THE KEENE'S DEVELOPMENT CODE AND REGULATIONS

### ***Zoning Code***

The first Zoning Code for the City was adopted in 1927, with an update in 1970. As was customary for the time, Code was a conventional Euclidean-type ordinance, with uses separated into specific districts. The Zoning Code presently exists as Chapter 102 of the City Code.

This code still focuses on use regulation, separating them by district. There are a few exceptions to this approach, such as the SEED Overlay District and the Gilbo Avenue Overlay District, where a mix of uses is allowed and the form of development is regulated to some extent. The SEED Overlay District also includes incentivization to use sustainable and energy efficient development practices. The current Zoning Code includes some performance standards, such as the requirement for traffic analysis to consider the transportation impacts of land development, impervious surface limitations to help reduce stormwater runoff, and noise standards.

### ***Planning Board Site Plan & Subdivision Regulations***

Keene's current Site Plan & Subdivision Regulations were adopted in the 1950s, updated in 2008, and most recently amended in 2014 with the intent of reducing the potential adverse impacts of development on adjacent property owners as well as on natural resources within the community. These regulations are also intended to facilitate development in order to build a more "viable economy, enhance the attractiveness of the community, preserve the quality and function of natural systems in the City and maintain and enhance the City's quality of life, while not imposing unreasonable cost upon the City." *See City of Keene Site Plan & Subdivision Regulations, June 23, 2008.*

### ***Planning Board Development Standards***

The Planning Board adopted its Development Standards in 1994. These Development Standards cover a number of development-related topics. They are applied in the Site Plan Review process. While general and subjective in nature, they have provided a degree of oversight over development that the City's Zoning Ordinance does not provide.

### ***Historic District Commission Regulations***

A Historic Commission, a Historic District Overlay, and Historic District Development Standards were created in 2004, became effective in 2008 and were most recently in 2014 for Downtown Keene to help preserve the visual character of the City and preserve its rich heritage. New construction as well as changes to existing historic buildings are regulated to ensure compatibility with the historic fabric so that there is no loss of significance and charm.

## ***Development Regulation Assessment Report***

This Development Regulation Assessment Report is comprised of the following Chapters:

<b>CHAPTER 1</b>	<b>INTRODUCTION</b>
<b>CHAPTER 2</b>	<b>EXPLORATION OF ISSUES</b>
<b>CHAPTER 3</b>	<b>EVALUATION OF EXISTING REGULATORY CONTEXT</b>
<b>CHAPTER 4</b>	<b>ALTERNATIVE REGULATORY APPROACHES</b>
<b>CHAPTER 5</b>	<b>CODE REVISION STRATEGIES</b>
<b>CHAPTER 6</b>	<b>RECOMMENDATIONS</b>

**Chapter 1**, Introduction, provides background and a brief introduction to the City’s Development Regulation Assessment Update project.

**Chapter 2**, Exploration of Issues, summarizes input regarding issues raised about the existing code and regulations, as received from staff, citizens, policymakers, stakeholders, and others.

**Chapter 3**, Evaluation of Existing Regulatory Context, describes the City’s various existing plans, studies, and sources of development regulation and points out issues identified within those sources. Included for each identified issue is the code revision strategy discussed in Chapter 5, Code Revision Strategies, under which the issue would be addressed.

**Chapter 4**, Alternative Regulatory Approaches, discusses the several approaches that cities may use to regulate development and includes an analysis of their strengths and weaknesses, as well as their ability to address issues identified in Chapter 3’s Evaluation of Regulatory Context.

**Chapter 5**, Code Revision Strategies, describes six possible revision strategies of varying levels of comprehensiveness that may be used by the City to address the issues identified in Chapter 3’s Evaluation of Regulatory Context. Each of the described strategies includes a particular category of revisions, ranging from technical corrections to a consolidated code. Throughout Chapter 3, “Evaluation of Existing Regulatory Context”, a number of points are raised regarding ways in which the City may consider revising its development code and regulations. In each case, the Code Revision Strategy in which the possible revision would be made is noted.

**Chapter 6**, Recommendation, brings together the analyses of the Evaluation of Existing Regulatory Context, the Alternative Regulatory Approaches and the Code Revision Strategies into a recommendation for the City to proceed into Phase II of the Code Revision Project.

## CHAPTER 2 – EXPLORATION OF ISSUES

### INPUT FROM STAKEHOLDERS, CITY OFFICIALS, DECISION-MAKERS AND PUBLIC

The Development Code Diagnosis has included outreach to citizens and stakeholders, City officials and policymakers to gather their input about issues related to the City's development codes, regulations, and standards. This Chapter summarizes the input received in that process.

It should be noted that this Summary reflects the input of respondents, rather than the Evaluation of Regulatory Context.

#### **1. Development interface with environment and natural resources**

The regulatory interface between development and environmental and natural resource protection codes and regulations is thought to need improvement. This is expressed both by those who are pro-development and those who seek to protect the environment and natural resources. The city's hillside regulations and surface water and stormwater codes and regulations were specifically mentioned.

#### **2. Site plan and subdivision process**

The City's Site Plan requirements and the Site Plan / Subdivision process are perceived by some as excessive, subjective, and difficult to navigate.

#### **3. Development does not meet today's expectations**

Circumstances have changed since the City's development codes and regulations were adopted. Keene's development expectations also have changed. Development under the existing development codes and regulations does not meet today's expectations.

#### **4. The city's development codes, regulations, and process are perceived as developer unfriendly**

The City's development codes, regulations, and process are viewed by some as unfriendly to developers. There is a perception that it is difficult to get things done in the City and that City staff is difficult to work with. Some believe that the development regulations are not enforced consistently.

#### **5. Regulations are not clear and are difficult to administer**

Input included the view that (1) the City's development regulations require too much administrative interpretation and clarification, (2) more administrative approval is needed, but the codes and regulations do not lend themselves to administrative handling because requirements are not clear, and (3) the regulations need more clarity, but they also should be flexible and not too prescriptive.

There is a perception that the City's development regulatory process is complicated and slow. Some believe that the regulatory requirements are excessive and that requirements in addition to those prescribed by the ordinances and regulations are imposed.

#### **6. Applications**

The view was expressed that applications and submittal requirements for various procedures are too dissimilar. The Site Plan / Subdivision application is thought to be too long, with parts of it being applicable only infrequently.

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### **7. Variances granted liberally**

A number of comments were received to the effect that: (a) a high number of variances are issued; and (b) variances are issued liberally for significant deviations from requirements, including use.

### **8. Specific issues with substantive standards**

Comments have been made regarding a number of the specific standards of the development code and regulations, as follows:

- Transitions and Buffers – These are not required where needed, such as where different uses or heights are adjacent.
- Uses - The Zoning Code’s list of uses is out of date.
- Stormwater / Flooding - Infill development presents stormwater issues because many infill sites are low. Keene should require strict compliance with floodplain regulations.
- Compensatory Storage – There is no area in the City available for compensatory storage.
- Parking Requirements – These are confusing and it is thought that there is uncertainty as to what is required. The Central Business District does not require parking, leading to the concern that the onus of providing parking will fall on the City.

### **9. Zoning districts**

The following specific comments have been made regarding the City’s zoning districts:

- The City has 3 Corridor Gateways which include beautiful old houses which are no longer used for residential purposes. They get rezoned “Office”, which is for small offices.
- There is no land zoned within the Industrial Park Ltd district.

### **10. Organization**

It would be helpful if provisions were organized in a similar way across the various codes and regulations.

### **11. Procedural**

There were a number of specific comments made regarding procedural matters, as follows:

- Subdivision applications should be handled administratively if allowed under state law.
- New streets require Engineering Department approval for road design and City Council approval for dedication.
- Review responsibilities among departments for Site Plan applications are not clear.
- The relationship between the procedural rules and the responsibilities of the Planning Board, the Zoning Board of Adjustment, and the Historic District Commission are unclear.
- The City’s regulatory process is confusing for the public. There are multiple procedures, involving multiple departments, and timing of approval processes can cause difficulty or challenges (and in some cases can add several months to the process).
- Each City department has different but related responsibilities and their procedures overlap. Some of those procedures may be inconsistent or conflicting, creating confusion.

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- A question was raised whether the City’s development approval procedures are consistent with changes in state legislation.
- It was noted that State law grants authority to elected or appointed boards but does not grant much authority to staff. There is concern that too much responsibility is placed on the Planning Board to interpret whether applications are compliant.
- There is a question regarding what department has responsibility for granting/administering driveway permits and whether the City should issue driveway permits.

### **12. Road standards**

The point was made that there are no road standards in the subdivision regulations or zoning code. The code does require frontage on a Class 5 street (i.e. City owned and maintained) and Class 6 roads and private roads are not allowed.

### **13. Development standards**

The Planning Board’s Development Standards are not thought to work well in the Site Plan/ Subdivision Review process.

### **14. Sign code**

The view was expressed that the City’s Sign Ordinance needs improvement and that many variances are granted for signs. A question was raised whether the Sign Ordinance should be in the Zoning Ordinance.

### **15. Consistency**

There are perceived inconsistencies within and among the City’s development regulations. Specific examples noted were:

- Conservation Residential Subdivisions are included under zoning districts but are covered by Planning Board subdivision regulations.
- There are still Planned Unit Development (PUD) provisions in the zoning code, but the standards that are referred to in the code as governing PUDs have been gone since 1988.
- Standards and regulations within one City Code may have different requirements from those of another City Code, even though they may cover the same matter.
- The City’s Complete Streets Design Guidelines conflict with its Street Design Standards.
- Definitions are inconsistent, conflicting, or missing in the Zoning Ordinance and other City Codes.
- In the landscaping requirements of the Zoning Code, there is a conflict between Table 102-791 and the Landscaping Standards of Sections 102-1226-1230. There is also a conflict of paving setbacks between these sections.

### **16. Complex multi-layered system**

It was noted that both Staff and the public must look in multiple places to know what is required. Consistent indexing may be useful to improve organization, user friendliness, and the overall process and experience.

### **17. Communication**

A lack of communication between City departments is perceived. Inter-Departmental communication would be useful so that each Department better understands what the others allow.



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### **18. Enforcement**

There is a perception that the City's development codes and regulations are inconsistently enforced.

Driveway standards need to be reviewed for potential inconsistencies between the Code requires and how the City applies them. A question was raised regarding whether the City should be involved in driveway permitting.

### **19. Policy**

Several comments were received which touch on policies of the City. These include:

- The development code and regulations do not make clear whose responsibility it is to provide services or amenities.
- A question was raised as to how the City can reduce barriers to redevelopment while still addressing the question of adequate capacity to support increased impact on services.
- One comment raised the issue of the City implementing an Impact Fee Ordinance. This comment noted the concern that given the City's relatively slow growth rate may not support implementing an Impact Fee and this may be perceived as 'business unfriendly' and could be difficult to manage.
- There is a perception that current regulations focus on new development as opposed to redevelopment.

### **20. Nonconformances**

One respondent was of the view that there are issues with Non-Conforming Uses, Non-Conforming Sites and Non-Conforming Parking issues on sites. This comment was not specific as to what those issues are.

## CHAPTER 3 - EVALUATION OF EXISTING REGULATORY CONTEXT

### INTRODUCTION

Regulation of development in Keene is accomplished by a number of City Code chapters, Planning Board Regulations and Standards, and Historic District Commission Regulations.

Central to this regulatory context is the City's Zoning Ordinance, which was first adopted in 1927, and updated in 1970. Like those of many other cities, Keene's Zoning Ordinance is based on land use concepts that are over 400 years old, as incorporated into zoning legislation introduced in this country in the 1920s. In spite of many provisions regulating other aspects of development, the Ordinance is essentially a separation of uses ordinance. The principal focus of this type of ordinance, called "Euclidean" zoning, is to separate different uses from each other. The City's Zoning Ordinance has been amended a number of times over the 90 years since it was first adopted.

To supplement the Zoning Ordinance, the City relies heavily on the Planning Board Site Plan and Subdivision Regulations and the Planning Board Development Standards, which allow significant regulatory discretion and require subjective interpretation of some standards. This reliance seems to reflect that the City is not confident that its Zoning Ordinance effectively regulates development.



Downtown Keene

In an effort to better regulate development in key areas of the City, several overlay districts have been added to the Zoning Ordinance since it was adopted, such as the Downtown Historic Overlay District, the Sustainable Energy Efficient District, and the Gilbo Avenue Overlay District. In addition to providing supplemental regulation for special flood areas or environmentally sensitive areas, overlays have been used over the years as a way to fill some of the gaps of Euclidean ordinances. Those "gap-filling" overlay districts usually are a stopgap move toward current development regulatory and planning

practice and away from pure Euclidean concepts. They indicate that a city is aware that its development regulations are not working and that it wants to improve development in specific areas.

Input gathered in preparation for the City's Comprehensive Master Plan (2010), as well as discussions with Planning Staff, policy makers, and stakeholders, reflect that the City's development codes and regulations are not as effective as they could be in consistently delivering high quality development in keeping with the City's vision.

Current state of the practice calls for development regulations to be well-organized, consistent, laid out attractively, highly illustrative, readable, understandable, easy to use and administer, and to include standards that can predictably deliver the city's envisioned built environment. The City's Zoning Ordinance and its development regulations and standards could be improved in each of those respects.

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The City has a number of planning documents, studies, ordinances, regulations, and guidelines that are relevant to an evaluation of its existing development regulatory context. Each of those items has been reviewed and the findings of that review are summarized in this Chapter.

### Existing Planning Documents & Studies

The following relevant planning documents and studies were reviewed for this evaluation:

- a. Comprehensive Master Plan 2010
- b. Climate Change Action Plan
- c. Climate Change Adaptation Plan
- d. Community Vision Plan
- e. Downtown Parking Analysis 2010

### Existing Development Ordinances, Regulations, and Standards

In Keene, development is regulated by several City Code Chapters, site plan and subdivision regulations, and development standards. The following City Code Chapters may affect development in Keene:

- a. Chap 102 Zoning Ordinance
- b. Chap 1 General Provisions
- c. Chap 18 Building Regulations
- d. Chap 38 Environment
- e. Chap 42 Fire Protection/Preventions
- f. Chap 54 Natural Resources
- g. Chap 70 Public Improvement Standards
- h. Chap 82 Streets, Sidewalks, & Certain Other Public Places
- i. Chap 90 Telecommunications
- j. Chap 94 Traffic, Parking & Public Ways
- k. Chap 98 Utilities

In addition to those City Code Chapters, the Planning Board and the Historic District Commission have adopted the following regulations and standards, which affect development:

- a. Planning Board Site Plan & Subdivision Regulations (also includes Conditional Use Permits)
- b. Planning Board Development Standards
- c. Historic District Commission Regulations

## EXISTING PLANNING DOCUMENTS AND STUDIES

### *Comprehensive Plan*

Keene adopted its Comprehensive Master Plan in 2010 after more than a year of public outreach and engagement efforts with nearly 2,000 participants. The vision articulated in the Plan reflects the hopes and

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desires of the community and presents a set of strategies for the community to achieve that vision. The vision statement speaks of a vibrant, dynamic, beautiful and functional Keene, of a community that will continue to grow in a sustainable fashion while creating jobs, well-designed and safe neighborhoods as well as preserving the City's unique natural resources.

### Keene's Vision for the Future

Keene, in 2028, is the best community in America. Our city is vibrant, dynamic, beautiful, and functional. Our community consists of engaged, diverse, multicultural, dedicated, caring, and respectful citizenry supported by a strong and clear vision for the future, open and accessible leadership, collaborative relationships, and ongoing civic dialogue.

In 2028, we have strategically managed our community's physical growth, maintaining its small-town character and friendly and inviting atmosphere, while simultaneously fostering our cultural and artistic identity. By successfully managing our physical growth we have created a city that is livable and accessible to all residents. Our built environment consists of mixed-use development and appropriate density within the city limits; public gathering spaces that allow for interaction between people; well-designed, safe, and maintained neighborhoods with affordable housing and neighborhood amenities; clean and efficient public transportation that connects us to our community, the region, and beyond; pedestrian and bicycle infrastructure that is present throughout our community and that places import on people rather than automobiles; and a well-developed trail system that provides connections between neighborhoods, open spaces, and other communities while simultaneously supporting a healthy lifestyle.

In 2028, people that live in and visit Keene are drawn to our affability and the personable interactions that our community nurtures. We enjoy abundant opportunities to partake in community and cultural events and support our arts and heritage. We enjoy our natural areas, parks, and open spaces that are characteristic of the spirit and landscape of the Monadnock Region. We recognize the role Keene plays in the continued success of the region and we welcome meaningful participation from everyone, including those in surrounding communities.

In 2028, our city continues to grow economically. Our dynamic economy is diversified, innovative, and entrepreneurial, producing abundant business opportunities and living wage jobs. We lead the region in environmental protection, resource conservation, renewable energy, clean industry, and sustainable development. As such, our community is a destination for people from all over the world.

We understand our impacts upon, and responsibilities to, others. We have created a community that supports the health, safety and wellness of our citizenry. We have cultivated an ethic of lifelong learning and provided a well-rounded, broad-based education from kindergarten through college. Our caring, combined with a strong sense of citizenship, creates positive change in our community, across the Monadnock Region, throughout the State of New Hampshire and around the world.

Source: Keene Comprehensive Master Plan, 2010

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This vision statement is also supported by a set of goals under the following six focus areas:

1. A Quality Built Environment
2. A Unique Natural Environment
3. A Vibrant Economy
4. A Strong Citizenship & Proactive Leadership
5. A Creative Learning Culture
6. A Healthy Community

The Future Land Use Map of the Comprehensive Master Plan (see page 14) identifies three Neighborhood/Village Activity Centers outside of the Downtown Core that should provide opportunities for a greater mix of uses. These locations will expand services offerings to residents, hopefully within walking or biking distance of their homes. It will be essential for the updated development code and regulations to allow and encourage this mix of uses to occur.

Strategies of the Comprehensive Master Plan that relate directly to land development are being brought forward below.

### Downtown Specific

- Expand the opportunity for mixed uses
- Provide for additional density
- Create opportunities for infill development that complements existing development
- Ensure that architecture of new construction is not too homogenous and is a balance of existing character and contemporary
- Provide for more diverse housing types – live/work, condos, lofts, and apartments
- Allow for the desired height of 3 to 7 stories
- Bring building frontage closer to the street to improve pedestrian experience

### City-wide

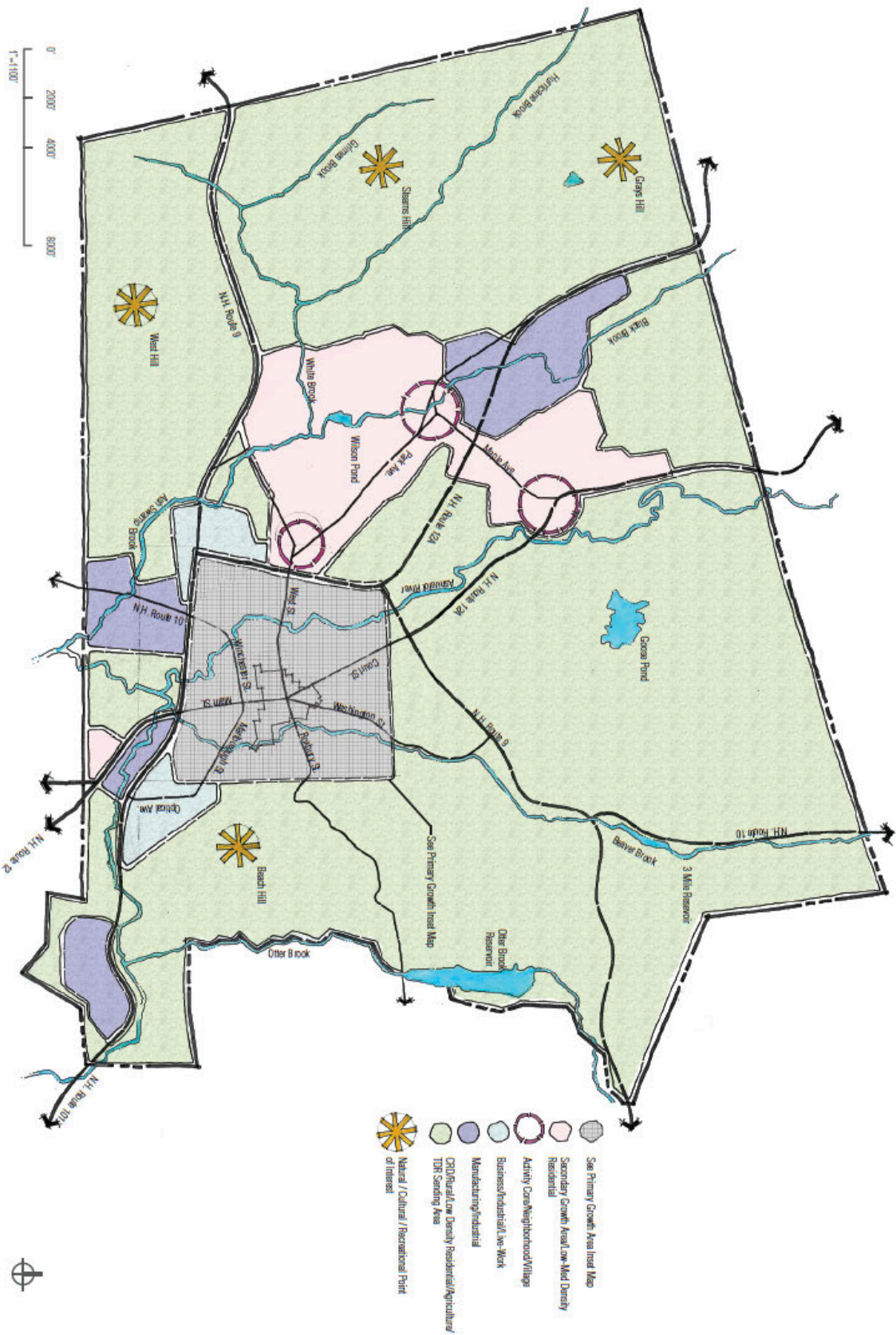
- Allow for more infill opportunities that are consistent with existing neighborhoods throughout the community
- Allow the creation of accessory dwellings
- Allow the conversion of large houses into condominiums
- Allow mixed-use development in neighborhood activity centers to help strengthen them
- Allow urban agriculture activities to take place throughout the community
- Consider adding energy efficiency standards in land use code
- Consider flooding issues when developing the new land use code
- Provide for more diverse housing types

### Process

- Streamline the permitting process to improve businesses' bottom line

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FUTURE LAND USE MAP  
 City of Keene, NH

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The City's work on the Comprehensive Plan coincided with the Great Recession. The socio-economic factors on which it was based changed dramatically, impacting the growth anticipated for the City. Due to pre-recession growth, the Comprehensive Plan called for low or slow growth. Six years after the Comprehensive Plan was completed, growth has been much slower than anticipated. That slowed population growth, coupled with an aging population and the out-migration of young professionals from Keene brings new challenges.

Opportunities for senior citizens to "age in place" should be a main consideration in the future development of land in the City. This would allow senior citizens to have the health and social supports and services needed for safe and independent living in their homes and communities for as long as they may wish and are able. Key considerations for "ageing in place" include services close to home and appropriate and affordable housing. Allowing for the creation of accessory dwelling units, senior housing facilities and/or additional types of dwellings would help address the needs of this population.

Several studies have found that in addition to finding steady, engaging jobs, millennials are focused on attaining high levels of well-being, meaning that they want a purposeful life, an active community and social ties. Employment and housing are key concerns among millennials, so a thriving job market and affordable rents and home prices are essential in a community that seeks to attract or retain this group. A [recent study from the Urban Land Institute](#) found that "millennials represent a strong driver of demand for compact, mixed-use development formats, in suburban or other locations." According to that report, most millennials desire single-family homes, though most also say they would like to live somewhere they rarely need a car. This desire ties in directly with the Comprehensive Plan goal of strengthening mixed-use areas throughout the City of Keene, including within the downtown area.

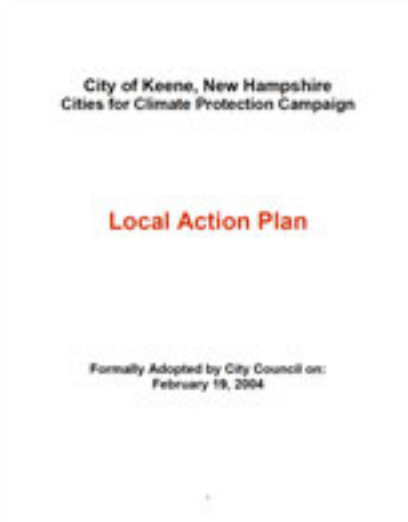
Establishment of the Sustainable Energy Efficient Development (SEED) Zoning Overlay District in 2010 incentivized the development of denser off-campus student housing located near Keene State College that meets green building standards. Since then, there has been a noticeable transition of students from rental housing in residential neighborhoods to student-focused complexes. This is resulting in availability of units that could become owner-occupied or rental housing for young professionals. This transition is important to the provision of housing that is accessible and affordable for young professionals and seniors.

The Implementation section of the Comprehensive Plan directly calls for the update and rewrite of the City's development code and regulations to proactively achieve the community's vision and goals for the future. Specifically, here are some areas that need either to be updated or added as mentioned in the Plan:

- Revise the sign regulations
- Adopt urban design/architectural design standards
- Incorporate historic district regulations into the code
- Adopt inclusionary housing requirements to ensure affordability
- Adopt thoroughfare standards which would help create more attractive streetscapes
- Adopt Low Impact Design (LID) standards as part of the Subdivision and Site Plan Regulations

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### ***Climate Action Plan***

Keene developed and adopted its Climate Action Plan in 2004 with the goal of reducing Keene’s greenhouse gas emissions by 10% by 2015, based on 1995 levels. Several measures have been identified in the Plan to help reach this goal. Several of them related directly to the development of land within the City. For example, promoting mixed-use development, characterized by a network of compact and walkable neighborhoods, is proven to considerably reduce the extent of automobile travel by making people less dependent on car travel and increasing the availability of services within walking distance. Knowing that transportation is one of the largest generators of greenhouse gas emissions in Keene, a greater mix of uses could have a tremendous impact. Mixed-uses also reduce the need for parking, which in turn can mean more open/green space.

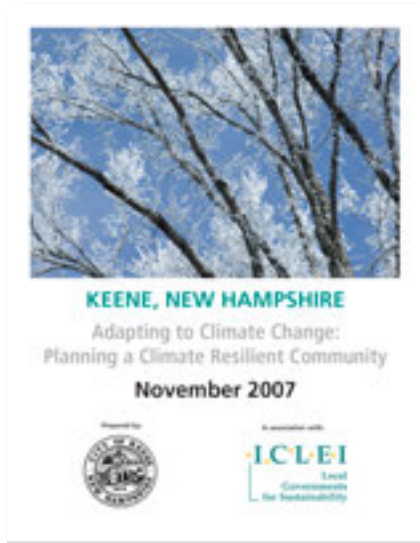
Increasing the energy efficiency of buildings also relates to development regulation, specifically building construction standards. Zoning may often address energy efficiency. The installation of renewable energy facilities, such as solar panels, also may be regulated via zoning and standards.

### ***Climate Adaptation Plan***

Keene’s Climate Adaptation Plan was adopted in 2007 with the purpose of helping the City improve its resiliency to the impacts associated with climate change, and in its overall planning protection efforts. Similar to the Climate Action Plan, this document highlights several measures that relate closely to and can have an impact land development regulations.

The plan calls for a reduction in the likelihood of structural damage to buildings by preventing development within the 200-year floodplain, and encouraging pitched roofs when considering snow loads. Reducing sprawl and promoting infill development/redevelopment is another top goal. These strategies relate closely to how land development occurs and should be taken into consideration when updating the development code.

Better managing stormwater to reduce runoff, protecting existing and future wetlands and wildlife are also goals of the Comprehensive Plan and City’s development codes and regulations.



### ***Downtown Parking Analysis 2010***

The downtown parking study was performed to document existing parking supply, demand and utilization characteristics, and to project future parking demand for the downtown area based on anticipated development. The study states that current parking supply, at the time of the analysis in 2010, was sufficient



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considering daily usage. This indicates that parking standards in the zoning code are most likely adequately providing for the parking needs.

One of the main recommendations of the parking analysis is an emphasis on the development of structured parking within the Downtown Core area, rather than surface lots. This recommendation is sensible for an urban downtown core such as Keene’s where the desire is to create a more walkable and vibrant environment for visitors, workers and residents. The placement and design of such structured parking facilities is, however, critical in order to maintain the urban fabric and pedestrian experience along the street. Development standards should be adopted as part of the update of the land use code to ensure that new structures are well integrated into the existing development pattern of the downtown.

## DEVELOPMENT ORDINANCES AND REGULATIONS

### Overview

The City’s development regulations are comprised primarily of its Zoning Ordinance (City Code Chapter 102 - Zoning), the Planning Board Site Plan & Subdivision Regulations (also includes Conditional Use Permits), and the Planning Board Development Standards. In addition, the City Code includes a number of other Chapters, which could impact development. All of these are considered separately in more detail below.

The Zoning Ordinance was adopted originally in 1927 and updated in 1970. There have been numerous amendments since then. It is rooted in English nuisance law and a model ordinance sponsored by the federal government, which was focused on separating uses. That type zoning is referred to as “Euclidean zoning”.



Keene Fire Station, 1926

Over the past 20 years, Euclidean zoning has been cited as one of the most significant contributors to sprawl development. Planning and coding practice has evolved to a point where other types of zoning are becoming the standard. Cities have realized that their ordinances are not turning out desirable development and have started revising their development regulations using other regulatory types.

The City’s development regulations are not badly flawed from a perspective of what they originally were essentially intended to do – separate uses. They have been effective at promoting and preserving density. Nor are they defective from the standpoint of planning and development regulatory practice of the time at which they were adopted. Instead, they need to be revised because it is now widely recognized that regulations of their type create sprawling development, which does not meet the expectation and desire of cities.

Like many other cities, Keene has tried to improve development results in the City by amending its regulations and adopting various procedural and regulatory mechanisms, such as overlay districts, PUDs, and broad site plan review. The inclusion of these tools is indicative of a zoning ordinance that is not delivering desirable development. Moreover, because the essential premise on which the regulations are

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based did not include any intent to create desirable development, those attempts have not been as successful as hoped.

The essence of Keene's Zoning Ordinance is specifying permitted uses and supplying minimal dimensional standards. These are not adequate to result in the City's envisioned built environment. While site plan review provides a degree of control over development to supplement the zoning ordinance, it also inserts additional elements of unpredictability and delay that could be avoided if the zoning ordinance regulated the essential elements of development more effectively.

One way that this could be accomplished would be to include in the zoning ordinance objective, empirically based, measurable standards for all development elements required for the City to realize the vision for its built environment. In this way, the development application and approval processes and resulting development become more easily understood, predictable, and expedited. Consideration could then be given to utilizing more administrative approvals, which would also free the Planning Board for its other responsibilities. This would be possible with objective standards that could be approved by right. Site plan review could then be limited to any additional matters, which may require subjective determination. Even if Planning Board approval of all applications is desired or legally required, objective standards and by right approvals of all except limited site plan determinations could make the application process and resulting development more predictable. Revising development procedures would be covered as a procedural enhancement under Strategy #4. Making development standards more objective would be accomplished under Strategy #5. These Strategies are described more fully in Chapter 5, Code Revision Strategies.

The City's development regulations are mostly dense text, somewhat disorganized, and laid out and formatted in a manner which makes them challenging to read and understand. This not in accord with modern coding and development regulatory best practices, which call for development regulations that are more readable and understandable than those of the past. This is accomplished by better organization, layout and formatting, and more use of tables and illustrative content. Strategy #2 would include revisions to address basic organizational issues. Issues regarding readability, understandability, and usability would be addressed under Strategy #3. These Strategies are described more fully in Chapter 5, Code Revision Strategies.

The City's procedures related to development regulation entitlement are complex, time-consuming, require significant Planning Board attention, and can lead to unpredictable and inconsistent results. It seems that the City relies on broad discretionary site plan review to regulate development because the Zoning Ordinance does not regulate development adequately to assure a consistent high quality built result. The site plan review process could be greatly simplified by providing sufficient regulation in the Zoning Ordinance so that all development components do not have to be reviewed at that level. Then, the site plan review process could be limited to matters that are highly technical or cannot be regulated with objective standards. These procedural revisions would be done as part of Strategy #4. This Strategy is described more fully in Chapter 5, Code Revision Strategies.

Development application and approval procedures are located throughout the regulations and should be more clearly presented. Procedural provisions should be set out separately from substantive provisions, then simply referred to where appropriate within the substantive provisions. Flowcharts should be used to aid in understanding the procedures. These would also be revised as part of Strategy #4, described more fully in Chapter 5, Code Revision Strategies.

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Definitions are spread throughout the regulations. For example, the City Code includes definitions in Chapter 1 and the Zoning Ordinance includes definitions in its Article I (In General), Article V (Supplementary Definitions), Article VII (Telecommunications Towers and Antennas), Article VIII (Sign Regulations), Article X (Earth Excavation), Article XVI (Surface Water Protection). Other Chapters of the City Code also include definitions. To the extent possible, definitions should be located in a single place. Within any Chapter where those definitions are used, a reference to the location of the definition should be used. This would be included as a basic reorganization item under Strategy #2, described more fully in Chapter 5, Code Revision Strategies.

In some instances, the same term is given different definitions in different parts of the City Code. While this is not incorrect, per se, it can create confusion when a user moves around in the Code. Where possible, a term should be given a single meaning. Where it is not possible, consideration should be given to using a different term. This would be addressed as a readability, understandability, and usability issue under Strategy #3, described more fully in Chapter 5, Code Revision Strategies.

Following is a detailed evaluation of the several components of the City's development codes and regulations, including the Strategy or Strategies described in Chapter 5, Code Revision Strategies that would be used to address the identified issues.

### ***City Code***

#### **Chapter 102 – Zoning**

Chapter 102 is the City's Zoning Ordinance. As noted in the Overview of this Chapter, it is a predominantly Euclidean use-based ordinance that was adopted 90 years ago and has been amended many times.

The Zoning Ordinance, along with the Planning Board Site Plan & Subdivision Regulations and Planning Board Development Standards, is one of the primary sources of development regulation in Keene. It is comprised of 16 Articles, including general provisions regarding applicability and effect and definitions of terms used in the Chapter, administration, nonconformances, zoning districts, supplementary regulations, performance standards, telecommunication towers and antennas, signs, a downtown railroad property redevelopment district, earth excavation, a downtown historic overlay district, hillsides protection, a sustainable energy efficient development overlay, shared parking within a SEED overlay, a Gilbo Avenue design overlay district, and a surface water and a surface water protection overlay district.

The following describes the various Articles of the Zoning Ordinance and certain technical errors, basic reorganization, readability, understandability and usability, procedural enhancements, substantive improvements to standards or regulatory approach, and consistency with Comprehensive Plan objectives which should be considered in revising the code:

#### Article I - In General

Article I provides for several matters that are applicable throughout Chapter 102, including definitions intended for use only in Chapter 102.

As would be expected in a predominantly Euclidean-Based code, some of the definitions are based on Euclidean concepts. Assuming that portions of the Zoning Ordinance would remain in effect even after a

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Development Code revision is completed, these definitions would largely remain in place and would be supplemented by any other definitions needed for any new provisions included in a revision. If the City decides to utilize either Code Revision Strategies #5 or #6 with one of the other alternative regulatory approaches, these definitions will need to be carefully reviewed so that Euclidean concepts are not inadvertently introduced into non-Euclidean regulations.

A number of Chapter 102's defined terms are also defined elsewhere in the City Codes. As part of Code Revision Strategy #1, consideration should be given to using the same definitions for terms where possible.

Section 102-4(c) provides that dwelling unit building permits are available only if the building has frontage on a public way, unless frontage is provided on a platted private way in a planned unit development. As is noted below, while it seems that the City at one time had provisions allowing planned unit developments, they appear to have been eliminated from the Site Plan & Subdivision Regulations. This would be corrected under Code Revision Strategy #1. In addition, Paragraph (c) has the effect of prohibiting residential or any other type development that includes dwelling units except along public streets. Consideration should be given as an improvement under Code Revision Strategy #5 to revising the paragraph to allow a limited number of lots to face a common space rather than a thoroughfare.

As noted in the discussions below regarding Chapters 18 (Building Regulations) and 42 (Fire Prevention and Protection), Chapter 102 should include a provision making it clear that any provision of Chapter 102 which is in conflict with a provision of one of those other Chapters would be resolved in favor of the other Chapter. This will assure that public health and safety concerns are given priority. This would be done under Code Revision Strategy #1.

Article II - Administration

This Article provides for variances, special exceptions, waivers, appeals, site plan review, and zoning amendments.

While it is necessary for zoning ordinances to include administrative provisions like those in Article II, such provisions may be applied in ways that can negate the effectiveness of the substantive regulations of the ordinance.

The variance provisions set out in Section 102-36 include 5 conditions that the Board of Adjustment must find before granting a requested variance. As part of the procedural enhancements under Code Revision Strategy #4, the City should consider adding that consideration of a variance request may include consideration of whether the applicant created the situation for it is requesting the variance.

Some cities strictly enforce the conditions required for granting a variance. In those cities, variances are rarely, if ever, granted and the requirements of the zoning ordinance direct development (for better or worse). Other cities grant variances freely without strict enforcement of the required conditions, effectively allowing development that otherwise would not be allowed by the ordinance.

In a similar way, if special exceptions and waivers are freely granted, and decisions are readily overturned, it can result in the requirements of the ordinance not being enforced.

If the City perceives that their development regulations are not delivering development consistent with the ordinance, it is possible that these relief mechanisms are being applied liberally, rather than in the limited

situations intended.

Liberal use of zoning map amendments also can result in development that is inconsistent with a city's vision. Some cities grant map amendments with little or no regard for their comprehensive plan and its future land use direction. It is important that map amendments be granted judiciously and according to the City's Comprehensive Plan.

The extent to which a City allows these relief procedures to be used liberally can significantly impact development results. This is a matter of City policy, rather than something that can be handled by code revisions.

Article II, Division 3 provides broad authority to the Planning Board to review and approve or disapprove site plans and to adopt site plan review regulations. This authority is implemented by the Planning Board Site Plan and Subdivision Regulations. Those Regulations, discussed in more detail below, provide significant discretionary authority to the Planning Board. Site Plan Review is a necessary step in the development entitlement process. There are a number of development issues that require oversight and cannot be regulated by objective standards or are technical in nature. Examples include development impacts such as traffic and stormwater. However, the City's extensive site plan review includes a number of development matters which would be better addressed by objective standards intended to deliver development desired or envisioned by the City. Revision of these provisions would be covered, respectively, as procedural improvements under Code Revision Strategy #4 and substantive improvements under Code Revision Strategy #5.

Various procedural provisions are distributed throughout Chapter 102. For example, an application for a sign permit is included within Article VII (Signs), which provides the substantive standards for signs. Some cities find it helpful to place all procedural provisions in a separate article, leaving other articles for substantive requirements. This revision would be accomplished under the procedural enhancements of Code Revision Strategy #4.

#### Article III - Nonconforming Buildings, Structures and Uses

It is important for a zoning ordinance to provide for nonconformances. Article III addresses the issues related to nonconforming buildings, structures, and uses in a similar manner to most other such provisions, with one exception. Sections 102-207 and 102-210 allow the Board of Adjustment to approve a change of one nonconforming use to another or an expansion of a nonconforming use in certain circumstances. Typically, cities prefer for nonconformances to end as soon as possible, and change or expansion of use are ways to accomplish that. A revision of Article III would be covered under Strategy #4.

#### Article IV - Districts

Article IV establishes 19 Zoning Districts and 8 Overlay Districts and sets out permitted uses and certain dimensional standards for each of them. This Article also provides for Planned Unit Development (PUD) pursuant to the City's Subdivision Regulations. Note, however, that the PUD provisions of the Subdivision Regulations have been removed, leaving it unclear whether PUDs are available or not. Removal of remaining PUD provisions would be done under Strategy #1.

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Planned Unit Development was one of several patchwork mechanisms with which cities experimented in an effort to improve development under Euclidean-based ordinances. Properly approached and used to create superior development, PUDs can result in excellent development that might otherwise not be possible under a Euclidean zoning ordinance. More often, however, PUDs have been used to avoid compliance with zoning regulations.

If development may be entitled as PUD, the process becomes one of negotiation of standards without regulatory direction and deviation from the norms of the zoning ordinance. Some cities that readily approve PUD applications have seen development dominated by PUDs and abandonment of applications that comply with the rest of their development regulations.

Overlays are another regulatory mechanism used in an attempt to improve development results under a Euclidean code. Typically, overlay standards are applied to supplement or vary standards that would otherwise be applicable to an area. Often, and similar to PUDs, the adoption of overlay provisions is indicative of development regulation that is not otherwise delivering desirable development. In both cases, a zoning ordinance that provides objective standards intended to result in predictably high quality development would be preferable. Revision of overlay provisions would be a matter addressed under Strategy #5.

The District standards provided in Article IV should be presented in a manner that is more readily accessible and understandable. Presently, the Code presents the general intent for each District and the uses permitted in the District. Dimensional standards are presented separately in Article V (Supplementary Regulations). It is useful for standards applicable to a District to be presented together, preferably in a single, easily understood table, which includes illustrations reflecting the standards where possible. Revision of district standards would fall under Strategy #5.

The City may want to consider consolidating some of the Districts. Several of them are very similar to others. If the City decides to convert completely to non-Euclidean zoning, each existing District would need to be converted to a substantially equivalent non-Euclidean district. If the City decides that certain parts of the City should remain under Euclidean zoning and that other parts should be regulated under a different type zoning, new districts will need to be added for the new zoning. Those revisions would be done under Strategy #5.

Division 3 provides for Conservation Residential Development (CRD). CRDs are intended to provide more design flexibility and creativity of residential developments, while conserving natural resources. Specifically, higher density is allowed in clustered development areas, while other areas are set aside for conservation open space. The principle on which CRD development is based, conservation of land by clustering development, is sound. It can be limited, however, by the absence of objective standards intended to assure that the developed area is desirable development and that the conserved land is valuable as open space. Revisions of the CRD standards would be accomplished as part of Strategy #5.

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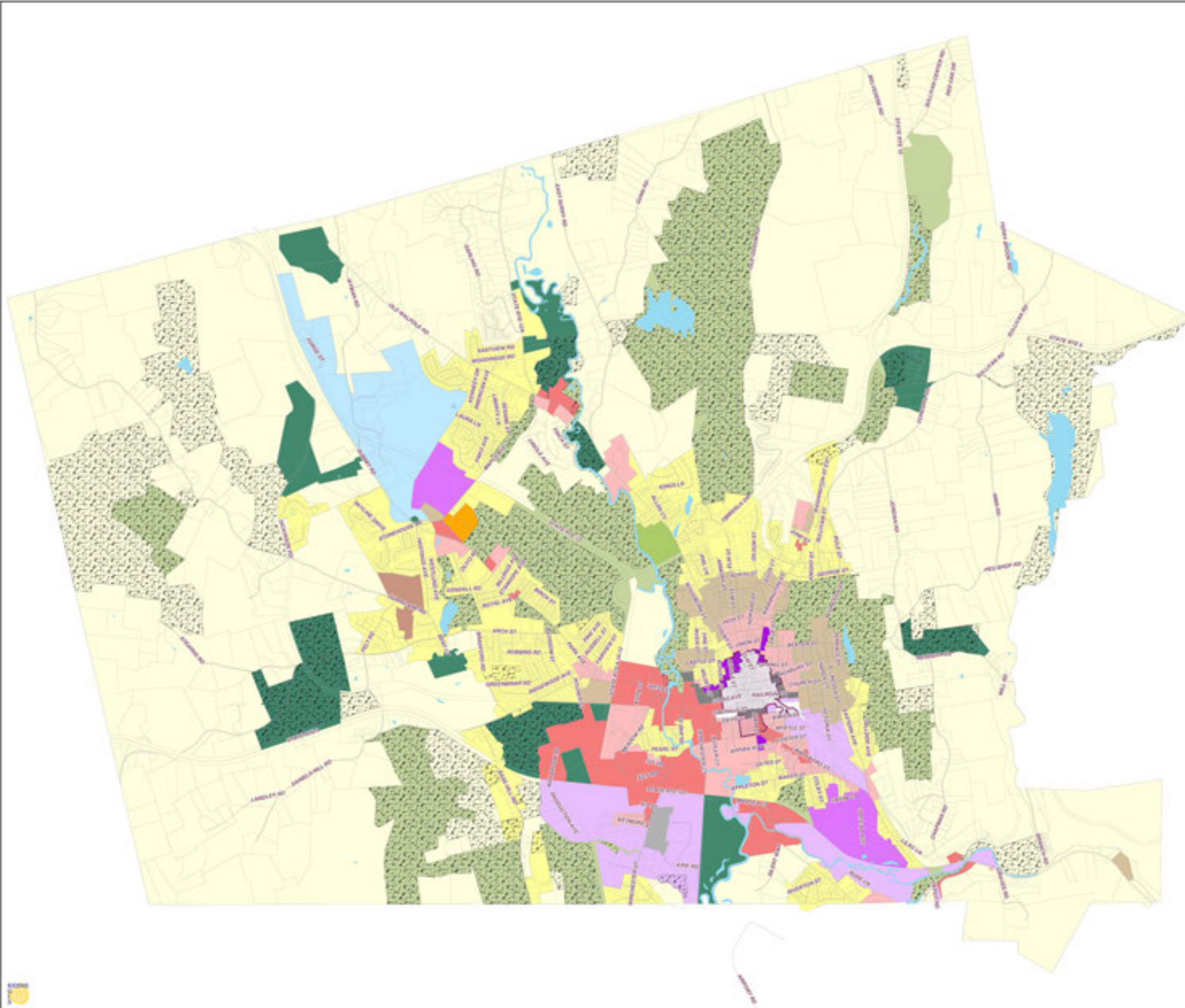
## Legend

- 100-year Floodplain
- Conservation 2005
- Historic District
- Zoning Districts**
- Central Business
- Central Bus. Ltd.
- Commerce
- Commerce Limited
- Office
- Low Density
- Low Density1
- Medium Density
- High Density
- High Density1
- Health Care
- Rural
- Industrial
- Industrial Park
- Corporate Park
- Agriculture
- Conservation
- Tax Parcels 2007

1 inch equals 1,200 feet



*The City of Keene makes no warranty or representation as to the accuracy, timeliness or completeness of any of the data. The City of Keene shall have no liability for the data or lack thereof, or any decision made or action taken or not taken in reliance upon any of the data.*



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Section 102-285 authorizes the Planning Board to adopt CRD rules and regulations. The Planning Board's Site Plan Review and Subdivision Regulations include provisions on CRDs, which are discussed below. Those regulations are somewhat cumbersome and require subjective determinations. While it provides the Planning Board a measure of flexibility for the CRD standards to be in their regulations rather than the zoning ordinance, it is inconvenient from a code user's perspective for them to be separate from the CRD District provisions.

Section 102-286 requires approval of a CRD by a conditional use permit from the Planning Board. Approval requires adherence to the CRD regulations. Within the zoning ordinance, standards are provided for location and minimum tract size, minimum dimensional standards, permitted uses, density, and open space percentage. Dimensional standards may be waived by the Planning Board.

Division 19 (Corporate Park CP) includes in Section 102-722 a requirement that all lots have frontage and access on a public road, but the following sentence allows frontage on an internal access road. This seems inconsistent. This would be a technical correction covered under Strategy #1.

#### Article V - Supplementary Regulations

Article V provides a variety of standards, including dimensional requirements for each District, parking requirements, a number of miscellaneous provisions, as well as a several use-related provisions.

Note that provision for rowhouse development may need to be made within one or more of the Districts by reducing the minimum lot width. That would be a substantive improvement under Strategy #5.

As mentioned above, the Supplementary Regulations may be better located within the District standards in Article IV for ease of use. Standards which do not vary by District could be left in Article V, and some standards which presently are located in the Site Plan and Subdivision Review Regulations and/or the Development Standards could be moved into the Zoning Ordinance here. These revisions would be included under Strategy #3.

#### Article VI – Performance Standards

Although entitled "Performance Standards", this Article essentially establishes use conditions for agricultural-related educational and recreational activities as a business and outdoor recreation uses and establishes landscaping standards for lots in certain Districts. Many standards in zoning ordinances may include a performance-based component, so it is confusing to separate some items as performance standards. Consideration should be given to moving the use conditions so that they are with the City's other use conditions. Alternatively, a new Article entitled "Uses" could be added to the Code to address all use-related topics, including conditional uses. The landscaping standards could be moved to Article III (Supplementary Standards). These items would be revised as part of Strategy #3.

#### Article VII – Telecommunications Towers and Antennas

Article VII establishes guidelines for siting of telecommunications towers and antennas. The telecommunications area is largely regulated at the federal level. Therefore local regulation is limited to that



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which is allowed by the FCC. This Article also establishes a View Preservation Overlay, which limits siting of towers and antennas.

Section 102-1269(a) provides that site plan review is required. The following paragraph (b), however, contemplates issuance of a conditional use permit. It should be clarified which is required. This would be a technical correction covered under Strategy #1.

### Article VIII – Sign Regulations

Article VIII should be simplified and made more illustrative. Many of the standards presently set out in textual form could be converted to tabular form, which would make them easier to use and understand. In addition, while the Article includes several useful illustrations, sign standards lend themselves particularly well to graphically oriented regulation and the Article could be made much more understandable with additional graphical content. Revisions to make the sign regulations more graphical and tabular would be covered by Strategy #3. Substantive revisions would be accomplished under Strategy #5.



Downtown Keene Sign

As with several of the other Articles, Article VIII includes its own set of definitions. To the extent possible, all definitions should be provided in Chapter 1 or with the definitions in Chapter 102, Article I. This would be a Strategy #3 item.

### Article IX – Downtown Railroad Property Redevelopment District

This Article establishes a special redevelopment district as an overlay, leaving in place the minimum standards for the underlying Districts, but adding and prohibiting certain permitted uses, and providing certain uses by special exception. Any change to this Article would be a substantive improvement under Strategy #5.

### Article X – Earth Excavation

The City's Earth Excavation Article governs earth excavation activities, provides for an earth excavation overlay district, establishes permitting requirements for those activities, and sets out standards for operation and reclamation of excavation sites.



Earth Excavation

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### Article XI – Downtown Historic Overlay District

This Article of Chapter 102 establishes a downtown historic overlay district. Permitted uses and minimum standards of the underlying zoning districts remain in effect. Article XI does not include or reference overlay standards for the district. The Historic District regulations presently are in Chapter 18, with the City's Technical Codes. Additional Historic District Commission Regulations further regulate the issuance of Certificates of Appropriateness. It would be better if all Historic District-related provisions were located in a single place if possible. Revisions necessary to address these items would be included in Strategy #2.

In addition, a number of the Historic District standards are not necessarily specific to Historic Districts. Instead, they are standards necessary to assure good community development patterns and design. The City should improve its development regulations by including standards directed toward design and overall community development patterns. If that is accomplished, many of the current Historic District provisions and concepts could be included in City-wide or Downtown and activity center standards, rather than being limited to the Historic District. Revisions of this type would be made under Strategy #5.

### Article XII – Hillside Protection

Article XII provides regulations and standards to protect the City's steep slopes, ridgelines, and visually sensitive lands. It has an impact on development in that it restricts development in certain areas.

### Article XIII – Sustainable Energy Efficient Development Overlay (SEED)

The SEED Overlay provides an opportunity for innovative smart growth, mixed use, and green development with height, density and use incentives within the City's urban core. In addition to green building standards, the overlay expands uses otherwise permitted in the underlying zoning District and establishes special density, height, dimensional and parking standards. Article XIII also adds screening requirements for SEED overlay developments.

While the SEED overlay addresses a number of important development issues, it seems still to rely heavily on site plan review, rather than establishing objective standards intended to result in a high quality built environment. This overlay district could be strengthened by adding such standards. An alternative would be to include the areas eligible for SEED development within a group of areas governed by objective standards, and providing SEED incentives within the SEED areas. Revisions would be included as part of Strategy #5.

### Article XIV – Shared Parking within the Sustainable Energy Efficient Development Overlay

This Article is separated from the other SEED provisions of Article XIII. As an organizational matter, it would seem appropriate for Articles XIII and XIV to be combined. This would be a Strategy #2 revision.

As noted above, the City may want to consider adding provisions to Chapter 102 which would allow shared parking in other areas of the City. Those would fall under Strategy #5.

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### Article XV – Gilbo Ave Design Overlay District

Article XV establishes another overlay district. The concepts underlying the Gilbo Avenue Design Overlay standards are the same as the basic principles on which character- or form-based zoning standards are based. Typical character-based provisions have additional standards.

### Article XVI – Surface Water Protection

Article XVI establishes a surface water protection overlay district. A 75-foot buffer is created surrounding all surface waters, except as reduced in certain zoning districts. In addition to the requirements of the Article itself, Article XVI requires compliance with New Hampshire Revised Statutes Annotated 482-A (Fill and Dredge in Wetlands), 483-B (Shoreland Water Quality Protection Act) and other applicable state or federal law. Article XVI also further regulates uses within the district.



Ashuelot Dam, Keene, NH

Section 102-1480 (Authority) states that the overlay district “shall be considered as overlaying all other districts”. In contrast, Section 102-1483 (District Defined) defines the district as “all surface waters and all lands within a 75-foot buffer zone surrounding these surface waters”. Section 102-1483 presumably is consistent with the overall intent of the Article. This discrepancy should be eliminated by refining the statement in Section 102-1480 so that it is not overly broad. This would be one of the technical corrections under Strategy #1.

As noted before, definitions should be moved to Article I for ease of use. In addition, the “District Defined” definition of the district should be located with the other definitions applicable within Article XVI, wherever they are ultimately placed. Those would be done under Strategy #2.

## Chapter 1 – General Provisions

Chapter 1 of the City Code includes general provisions, which are applicable throughout the Code, including certain definitions. Most Codes include a Chapter similar to Chapter 1. In the context of development regulation, it is important for there not to be inconsistency between definitions of terms within this Chapter and those defined or used elsewhere in the Code. To that end, Section 1-2(a) should be revised by expressly stating that if a term is defined in Chapter 1 and another Chapter, the definition in the other Chapter will control. This would be a Strategy #1 revision.

Chapter 1 includes a provision in which conflicts among different Chapters of the City Code are resolved. Because health and safety concerns are paramount, this provision should be supplemented to provide that any conflict between any provision of Chapter 18 (Building Regulations), Chapter 42 (Fire Protection and Prevention), or Chapter 54 (Natural Resources), and any provision in another Chapter (including, for example, Chapter 102 (Zoning Ordinance) shall be resolved in favor of the provision of Chapter 18, 42 or 54, as applicable. This also would be a Strategy #1 revision.

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### Chapter 18 – Building Regulations

Chapter 18 includes the City’s Technical Codes (Article II), including the Building Code and building permit requirements, Property and Housing Standards (Article III), demolition regulations (Article IV), and certain Historic District provisions (Article V). The Chapter includes in Article I the definitions for certain terms used in it. The Historic District division includes additional definitions used within that division. Some terms are defined in both places. This should be streamlined by using a single definition where possible. This would be done as a usability revision under Strategy #3.

While Building Regulations can indirectly affect development, they typically are not considered part of a city’s development regulatory regime. Building Regulations are concerned primarily with physical construction standards and safety. In rare instances, Building Regulations may conflict with other Code provisions, regulations, or standards, which are intended to directly, regulate development. For example, a Building Regulation that requires certain construction techniques may affect the ultimate height of the building.

The evaluation of the City’s Building Regulations was limited to reviewing them for provisions that may impact the City’s development patterns. The Building Regulations were not evaluated to determine their effectiveness in prescribing safe and sound construction practices.

The Building Code, rather than setting out specific requirements, incorporates the State Building Code by reference, and then provides exceptions to it. A review of the State Building Code is beyond the scope of this evaluation, and it was not reviewed.



Historic Building, Downtown Keene

It is unusual for the City’s Building Regulations to include Article V “Historic Districts”. The provisions of Article V would be better located in Article XI of the Zoning Ordinance with the Downtown Historic District Overlay District or in the Historic District Commission Standards. These would be relocated as part of Strategy #2.

Chapter 18’s Historic District provisions, like those of many other cities, are subjective and in some cases are more like guidelines than law. While it typically is better for provisions of a Code to be more objective and mandatory, Historic District provisions traditionally have been an exception to that general rule and are more

subjective, nearly by necessity. These are supplemented by the Historic District Standards, which are discussed further below. It was also noted that whereas Section 18-363(2) includes a compatibility requirement, there is not one in Section 18-363 (1). It should be determined whether that was intentional. If it is determined that this needs to be revised, it would be done under Strategy #1.

The Historic District application procedures, set out in Section 18-364, are relatively simple, particularly as compared to the City’s Site Plan application requirements. It should be noted that the Historic District application is for a Certificate of Appropriateness required either for development or demolition, whereas Site Plan Review is not required for demolition. For development, therefore, the application and Certificate in essence becomes an additional Site Plan requirement. In the case of demolition, the Certificate of Appropriateness review inquires only into compliance with the Historic District regulations instead of the

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## DEVELOPMENT REGULATION ASSESSMENT

many additional matters with which Site Plan Review are concerned.

As noted above with respect to Chapter 1 (General), it is important that no City Code provision conflicts with Chapter 18 (Building Regulations), as Chapter 18 is intended to protect the health and safety of the public. The recommended revision to Chapter 1 will assure that any conflict is resolved in favor of Chapter 18.

Finally, there are several specific provisions in Chapter 18, which will need to be made consistent with any zoning provision that covers the same topic:

- Section 18-241(11)(b) regarding location of bulk containers;
- Section 18-241(15) regarding address numbers; and
- Division 3 Housing Standards as they may conflict with affordable housing initiatives and so-called micro apartments and tiny houses that may be allowed under affordable housing provisions

These would be revised as necessary as part of Strategy #5.

### Chapter 38 – Environment

While many environmental regulations are not specifically development related, depending on their scope, they can have an impact on development.

Environmental regulation occurs most significantly at the federal and state levels. Presumably in recognition of that, Chapter 38 (Environment) provides minimal regulation, covering water pollution in a general way, nuisance by reference to a state statute, drive-in screening, animal and plant waste, transportation of refuse material, and parking lot cleaning.

As a matter of organization, screening of drive-ins would be better handled as part of the Zoning Ordinance, along with other screening provisions. This would be revised as part of Strategy #2.

### Chapter 42 – Fire Prevention and Protection

This Chapter is the City’s Fire Code. Fire Codes have an impact on development. Specifically, Fire Codes may regulate minimum distances between buildings, maximum building heights, certain uses, building egress, and public right of way widths, all of which can affect development.

In addition to provisions related to fire and carbon monoxide detectors and outdoor fires, Keene’s Fire Code adopts the NFPA 1 Uniform Fire Code (2009) and the NFPA 101 Life Safety Code (2009) by reference then excludes certain provisions of those Codes.

The evaluation of the City’s Fire Prevention and Protection Chapter was limited to reviewing them for provisions that may impact the City’s development patterns. They were not evaluated to determine their effectiveness in prescribing safe and sound practices as related to fire protection or prevention. We do not have access to the NFPA documents referenced in Chapter 42 and have not reviewed them. We have been advised, however, that the NFPA regulates driveway width, which should be considered as well.

It is important that the City’s development regulations and standards not create any inconsistency with Chapter 42, as Chapter 42’s provisions for public health and safety are most important. The above-recommended revision to Chapter 1 will assure that any conflict is resolved in favor of Chapter 42.

**Chapter 54 – Natural Resources**

Chapter 54 provides the City's floodplain and floodway regulations, including permitting. Communities participating in FEMA's flood insurance program are required to adopt such regulations. To a large extent, the substance of these regulations is directed by FEMA's regulations. Floodplain and floodway regulations can significantly impact development, as they may restrict development within such areas and may prescribe certain building measures to avoid flood damage.

Chapter 54 prohibits construction in high hazard floodway areas and requires any development within the floodplain to preserve its full function and capacity. In addition, the Chapter directs that construction or substantial improvement in any floodway be discouraged and be permitted only under certain circumstances. The Ash Swamp Brook special flood hazard area requires additional FEMA certification. The City's flood regulations also include provisions to achieve its policy of no net loss of net flooding holding capacity of floodplains.

As is typical, Chapter 54 includes its own definitions of certain terms. Flood regulation terminology is specific and some terms are defined in FEMA regulations, so it is appropriate for these definitions to be separated from those in Chapter 1.

The title of Chapter 54 is misleading, and should be changed to something like "Floodplains & Floodways" to better reflect its true scope. This would be a Strategy #1 revision.

As with the Building Regulation and Fire Protection and Prevention Chapters, the regulations of Chapter 54 are of utmost importance to public safety and it should be made clear that they supersede any other City Code provision that may be inconsistent with them. Strategy #1 would include this change.

**Chapter 58 – Parks, Recreation and Public facilities**

This Chapter contains limited operational regulations for parks, recreation and public facilities. As such, it does not affect development.

The City may want to consider including standards for different types of civic space. If those are to be added, it would be accomplished under Strategy #5.

**Chapter 70 – Public Improvement Standards**

Chapter 70 provides for public works inspections of materials and techniques used in construction of subdivisions, roads, drainage facilities, water systems, wastewater systems, utilities, improvements in the City right-of-way, and other facilities to be on or become City property. Chapter 70 includes standards for lot monuments, utility and street rights-of-way, streets, street grading, curbs, sidewalks, street lighting, traffic control signals, storm drains, water utility, sewer utility, floodproofing, trees, driveways (including driveway permits). The Chapter also includes standards and requirements for public improvements and references minimum standards for new streets and utilities as set forth in the City's Public Works Street and Utility Detailed Standards. This evaluation did not include a review of the Detailed Standards.

Public Works standards may significantly affect development patterns. Among the more important aspects of creating places with a particular character are the dimensions and features of the public right of way. For

that reason, Public Works standards that require or allow lane widths, curb radii, driveway cuts, or other elements which are inconsistent with the context and desired character of a place will frustrate efforts to achieve that context and character.

Once it is determined whether the City desires to utilize context-based development regulations intended to create places of character, it will be important to make sure that neither the Chapter 70 standards nor the Detailed Standards impedes that effort. This would be achieved as substantive improvements under Strategy #5.

Section 70-135(7) prohibits driveways from directing stormwater onto City streets. In most places, the city street is one of the most important parts of the overall drainage facility. No change will be necessary to this section if the City’s intent is that stormwater not being conveyed by streets or their drainage facilities.

Section 70-56 provides, “All public improvements shall be laid out and approved by the City council”. Section 70-86 includes a similar provision. While it appears that this requires the City council to layout and approve public improvements, it seems unlikely that is what was intended. It is also unclear whether this is a pre-condition to construction of improvements that may later become public, or a condition to the City’s acceptance of public improvement which may be later satisfied. In any event, if City Council approval of a development feature is required, it would create an obstacle to administrative approval of certain projects. It may be determined that City Council acceptance of an improvement is sufficient. Any revision of these Sections would be covered under Strategy #1.

Finally, note that some cities prefer for both at- and above- grade street elements to be included within their development regulations. Others prefer them to be dealt with separately as Keene’s presently exist. A decision will need to be made which approach works best for the City. If the City decides to include those in the development regulations, it would be done under Strategy #5.

### Chapter 82 – Streets, Sidewalks and Certain Other Public Places

This Chapter includes a range of requirements related to streets, sidewalks and other public places. Some of these are operational in nature, while others provide for permitting of certain activities such as creating new accesses and excavation. Other provisions cover naming of public facilities, building numbering, mapping, scenic road designation, and treatment of trees.

To some extent, it seems that because their topics are similar, Chapter 70 and Chapter 82 could be combined. This would be a basic organizational revision included as part of Strategy #2.

Section 82-31, requiring Planning Board approval of new accesses to public ways, seems to overlap somewhat with the driveway permitting provisions of Chapter 70. The Section also would create an obstacle to administrative approval of certain development applications if the City decides to pursue that. A better approach may be to prescribe standards for such



Keene Roundabout – Credit: NH DOT

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accesses and allow them by right if those standards are met. Coordination between Section 82-31 and Chapter 70 would be a technical correction item under Strategy #1.

With respect to trees, Section 82-187 prevents the destruction of any tree within the City limits without the permission of the Mayor and City Council. By its terms, this would seem to cover trees on privately owned property (“land within the city limits”), but that may not be what was intended, particularly in view of the subject of Chapter 82, Streets, Sidewalks and Certain Other Public Places. In any event, requiring Mayor and City Council approval to remove a tree would prevent many types of development from being administratively approved if that is desired. Another approach would be to include objective standards for by right removal and replacement of certain trees, particularly for trees on private property. These would be substantive improvements under Strategy #5.

### **Chapter 90 – Telecommunications**

Chapter 90 regulates franchising of cable television. Its effect on development is minimal. Note that Chapter 102 (Zoning Ordinance) includes an Article covering siting of Telecommunications Towers and Antennas. It may be better to move that Article to Chapter 90. This would be a basic organizational revision under Strategy #2.

### **Chapter 94 – Traffic, Parking and Public Ways**

This Chapter concerns operational aspects of vehicle use and traffic control. As such, it does not significantly impact development, with a few possible exceptions. Chapter 94 provides for loading zones at the frontage along, and prohibits parking on, certain streets. Additionally, there are provisions in Section 94-236 which designate certain one-way streets. If the City decides to include in code revisions either loading zone location provisions or street assemblies with on-street parking and/or two way traffic, they may conflict with this provision and the related special residential parking permit district provisions of Division 3. These revisions would be made under Strategy #5.

### **Chapter 98 – Utilities**

This Chapter covers public and private utilities. It does not impact development patterns.

### ***Planning Board Site Plan and Subdivision Regulations (also includes Conditional Use Permits)***

#### **Overview**

The Planning Board Site Plan and Subdivision Regulations are central to development regulation in Keene. They regulate Site Plan Review, Subdivision, and Conditional Use Permits, providing the opportunity to confirm compliance with the City’s codes, the Regulations themselves, and the Planning Boards’ Development Standards. At the same time, the Site Plan and Subdivision Regulations also vest significant discretionary authority over development in the Planning Board, or in the case of administratively processed applications, the Planning Staff.



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It is important for municipal regulations to rigorously protect the interests of the City. It is equally important for such regulations to operate within certain parameters, which assure that an applicant is treated fairly, and can rely on specific regulatory standards and requirements and actions taken by authorized City representatives with whom they are dealing.

These Regulations permit a reviewing authority to require additional information, and to meet, discuss, advise, and make determinations without binding the City. This allows significant opportunity for inconsistency, confusion, delay, and miscommunication to enter into the process. Revision of these provisions would be procedural enhancements under Strategy #4.

While they refer to the Planning Board's Development Standards, a notable aspect of these Regulations is the absence of detailed specific standards with which an applicant must comply in order for a proposal to be approved. The application review is required to confirm compliance with the City's codes, the Regulations, and the Planning Board's Development Standards, but it is not expressly limited to that confirmation. The Regulations seem to allow the reviewing authority discretionary authority to disapprove or grant conditional approval even where an applicant has complied with all codes, regulations and standards. This can lead to an unpredictable entitlement process.

Part of the unpredictability ingrained into the Site Plan Review process is the result of the referenced codes, regulations, and standards being incomplete, unclear, or subjective. Certain Site Plan Review items such as traffic and stormwater impact are so variable, situational, and technical that it may be impractical to provide by right approval for such items. As noted elsewhere, however, a number of other development elements are appropriate for objective standards and by right approval, and those should be provided. Any change away from discretionary approval would require revisions under Strategy #4.

Finally, the standard of review to which the reviewing authority is held is not clear. Instead, the Regulation seems to allow the reviewing authority to approve, approve with conditions, or disapprove a project as it may elect, regardless of whether a proposal complies with the codes, regulations, and standards referred to in the Regulations. Any revision addressing the standard of review and/or by right approval would be done under Strategy #4 if the City decides that it is appropriate.

Most specific submission requirements in the Regulations are supplemented by language allowing the reviewing authority to add information or requirements to those specified in the Regulations. This, of course, protects the City in covering an oversight in the specific list or an unexpected situation that may arise. From the perspective of an applicant, however, it leaves an open-ended requirement that represents an opportunity for surprise, expense or delay to fall on it. This adds to the possible perception that the process is balanced against the applicant. It would be preferable, if possible, to provide an exhaustive list of all items needed to review and act on the submission. This would be done under Strategy #4. Assuming that certain of the items presently required for site plan review were made subject to objective standards and by right approval in the Zoning Ordinance rather than in site plan review, the list of items required for site plan review could be substantially shortened.

The tone and approach of these Regulations are understandable and possibly justified in context of the City's overall development regulatory regime. The City is required to place tremendous reliance on these Regulations, because the Zoning Ordinance itself does not adequately direct development in a way that produces a desirable result. However, cities with development regulations with these characteristics may earn a reputation as being anti-development or difficult to deal with. This challenge may be met by providing

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standards for development that do not require as much support from a discretionary process which may be perceived as being weighted in favor of the City. Standards would be improved as part of Strategy #5.

These Regulations could be better organized. For example, many provisions for Site Plan Review, Subdivision Review, and Conditional Use Permit Review are included within Section III (Jurisdiction). The jurisdiction Section could be minimized and then each of the 3 types of review could fall under its own Section. These would be relocated under Strategy #2.

**Site Plan Review**

Site Plan Review is accomplished either by the Planning Staff for minor projects or by the Planning Board for projects that meet thresholds set out in the Regulation. These thresholds are somewhat difficult to understand and should be made more readable and clear. Specifically, the thresholds do not make it clear whether development must receive Planning Board Site Plan Review where there is no new primary use, is not an increase of a structural foot print, expansion of a use that will increase vehicular traffic, reconfiguration of a site that generates or increases adverse impacts, or changes landscaping, screening, lighting, driveways, parking lots, architectural or visual appearance of a structure or site. Presumably the last threshold item would encompass all development, but that is not entirely clear. A more direct statement of the thresholds, or at a least ordering them with the most frequently encountered situation first, would be preferable. These revisions would be covered under Strategy #1.

Under Section III.B.3, it should be noted that minor projects subject to Staff review are not *required* to be administratively approved (if found in compliance, “*can* be administratively approved”). Any revision of this provision would be done under Strategy #1.

Additionally, note that in exception (a) paragraph 5 of Section III.B, the phrase “on an existing parcel” is used. All parcels of land are existing parcels. The provision should be modified to make it clear this is referring to a site that does not require subdivision. This would be a Strategy #1 technical correction.

Paragraph 5(a)(1) and related Accessory Dwelling Unit provisions in the City’s Code and regulations in which a Conditional Use Permit is required, may have the tendency to limit availability of ADUs. This is important in the context of encouraging Affordable Housing and clustering of density. Additionally, these provisions should be reviewed against the new state Accessory Dwelling Unit Law, which takes effect on June 1, 2017. That law includes a definition of “Accessory Dwelling Unit”, and requires municipalities to allow internal or attached ADUs in all districts where single family dwellings are permitted. The law also gives municipalities the option of permitting detached ADUs. Revisions to the ADU Conditional Use provisions would be covered under Strategy #4 as a procedural enhancement and revisions to reflect the new state law would Strategy #5 as a substantive improvement.

Paragraph 5(a) and its subparagraph (2) are awkwardly constructed, as (a) provides an exception and subparagraph (2) seems to place the burden on the applicant to show that it is entitled to the exception by demonstrating some of what Site Plan Review would have required relative to adverse impacts. It also is unclear when subparagraph (2) would be applicable, as (a) is applicable only if the development is on an existing parcel, whereas (2) is applicable only where development of “the proposed new parcels” can be shown to avoid or mitigate adverse impacts. This should be considered further and re-written to accurately express the intent. This would be a technical correction under Strategy #1.

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Paragraph 5(c) should be revised to make it clear that the 3 listed excavation or filling activities are not all required for the exception to be applicable. Such a revision would be a Strategy #1 technical correction. Further, note that Paragraph 5(c)(2) provides an exception pursuant to which significant damage could be inflicted on a site as “site work associated with proposed development or subdivision of land” before the proposed development is ever approved. This may create an undesirable degree of leverage in favor of a developer who has excavated a site, then seeks to proceed with a nonconforming or otherwise undesirable project. Revision of this provision would be a procedural enhancement under Strategy #4.

**Subdivision Review**

The Subdivision Review provisions cover any division of land.

Under Section III.C, paragraph C(2) requires the subdivision process to “follow the CRD process” if the subdivision consists of 3 or more lots that meet the minimum lot size requirements for CRD subdivision and require a new street. Although the language is clear, it is not clear whether the provision intends for compliance with the substantive CRD requirements to be necessary or whether only the CRD process is applicable, as stated. However, paragraph C(2)(a)(2)(a)-(c) seems to indicate that the substantive CRD requirements would be applicable, by referring to “conventional subdivision design” and “CRD design”. It also may be inferred that compliance with both is necessary from the fact that the substantive requirements for CRD subdivisions are so embedded into the process. Paragraph C(2), however, should be revised to make that clear. These revisions would be technical corrections under Strategy #1.

Paragraph C(4) (Voluntary Merger) is interesting in that it is one of the only appearances of a “by right” approval within the documents reviewed. The City should consider requiring a survey plat to be recorded for a merger of parcels to prevent confusion in conveyances following the merger. This would be a procedural enhancement under Strategy #4.

Punctuation in paragraph 6(b) needs to be corrected as a Strategy #1 technical correction.

**Conditional Use Permit Review**

Section III.D provides regulations for Conditional Use Permits. The title of the Regulations should be changed to reflect that they also cover CUPs. This is a technical correction.

Section III.D does not include review criteria for Hillside Protection. The City should consider providing those. If review criteria were added, they would be substantive improvements under Strategy #5.

As noted above, requiring a CUP or Special Exception for Accessory Dwelling Units may discourage them. The City could encourage Accessory Dwelling Units by allowing them by right.

The second sentence in Section III.D(1)(c) should refer to Conservation Residential Developments rather than Accessory Dwelling Units. This is a Strategy #1 technical correction.

**Submission and Procedural Requirements**

Section IV provides submission and procedural requirements for these Regulations.

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## DEVELOPMENT REGULATION ASSESSMENT

Paragraph A(2) of this Section incorporates the Planning Department's application forms by reference. This arises again in Paragraph D(2)(b). Not including all requirements within the Regulation itself may make the application process more difficult. In addition, it would be best if additional requirements that are not included in the Regulation not be inserted into the process by referring to an application form that may change from time to time. They could be moved into the Regulations as part of Strategy #4.

Paragraph D(2)(f)(2)(e) (Plan Sets – Existing Conditions Map) and Paragraph D(2)(f)(3)(e) (Plan Sets – Proposed Condition Site Plan/Subdivision Map) require wooded and vegetated areas to be indicated on plans. If the City decides to strengthen its tree and landscaping regulations, it would be useful if trees of a certain size and species were also specifically shown. This could be done as a procedural enhancement under Strategy #4.

Paragraph D(2)(f)(4)(b) requires a grading plan to show finish slopes in excess of 25%. It would be useful for purposes of confirming compliance with the Hillside Protection Regulations and Standards if Paragraph D(2)(f)(2) (Plan Sets – Existing Conditions Map) required the map to show all “prohibitive slopes” and “precautionary slopes”. This also could be done as a procedural enhancement under Strategy #4. Revisions to make include hillside protection standards would be under Strategy #5.

Paragraph D(2)(f)(5) and Paragraph D(2)(f)(6), respectively, require a landscaping plan and a lighting plan. As with the Existing Conditions Map and Proposed Condition Site Plan/Subdivision Map, it would be useful to indicate trees of a specific size and species. Again, this would be a Strategy #4 item. Revisions to landscaping and lighting standards would be under Strategy #5.

Paragraph D(2)(g) (Technical Reports / Supporting Analysis) has open-ended requirements (“including but not limited to”) and (“other special reports, analysis, and information as may be reasonably requested by the Planning Board including but not limited to...”). It is preferable to state the requirements specifically. Revisions to accomplish this would be procedural enhancements under Strategy #4.

Paragraph D(5) includes an “initial” completeness review. If revisions are made to an application, Paragraph D(7)(c)(2) seems to provide for another completeness determination. Paragraph D(9)(b) allows the Planning Board another opportunity to determine whether an application is complete. It is important for an applicant to be able to rely on a determination that the application is complete. If allowed by N.H.R.S.A Section 676:4, it may be helpful to simplify and shorten the completeness determination process in order to expedite the overall application process. The protracted completeness determination provisions continue to extend this deadline and delay action on an application. The time may be extended further if “the Board feels that more time is needed”. Although this may not presently extend the approval process, it leaves potential for delay. Any change to address these items would be procedural enhancements under Strategy #4.

Finally, Paragraph D(9)(c)(5) allows the Planning Board yet another chance to require additional information. It would also be a Strategy #4 revision to change this.

Paragraph D(9)(c)(7) allows the Board to continue the public hearing if it requires the applicant to provide additional information or modify its proposal. This has the potential of lengthening the process. Any change to address this would be a Strategy #4 procedural enhancement.

Paragraph D(9)(c)(8) requires at the closing of the public hearing that the Board deliberate and then approve, approve with conditions, or disapprove an application. As noted previously, the Board's standard of review is not clear, and in view of multiple subjective requirements in the Zoning Code, the Regulations, and the

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Development Standards, the Board has broad discretionary authority in rendering its decision. Revisions to address the standard of review would be procedural enhancements under Strategy #4 and substantive improvements to move toward objective standards would be under Strategy #5.

The procedures for administrative review of a minor project are similar, but seem to facilitate a more expeditious decision. It is not clear, however, against what standard an administrative decision is to be made. Revisions to address the standard of review would be procedural enhancements under Strategy #4. Most administrative decisions require that there be clear, objective standards to eliminate the necessity of interpretation or exercising judgment or discretion in taking an action. This is difficult in light of multiple requirements of the Zoning Ordinance and Development Standards being subjective. It is made more difficult by the Regulation's direction that the administrative decision possibilities are "approve, approve with conditions, or disapprove". It is generally thought to be beyond appropriate administrative action to make a determination other than to approve or disapprove an application based on clear standards. Revisions to make standards objective would be under Strategy #5.

#### Section V (Procedures Associated with Conditional Use Permit Application Review)

Conditional Use permitting is used widely to impose conditions on certain uses deemed to have possible adverse effects on adjoining development. It is most useful when Euclidean zoning separates widely disparate uses, and does not otherwise effectively minimize the effects on adjacent owners.

As pointed out above, older zoning philosophy did not fully consider whether adjoining uses were complementary, and was based on a concept that any dissimilar uses, such as retail and residential, adversely impact each other, even if the uses were complementary. Part of the public's concern regarding proximity may not be actually related to adjacent uses, and instead may be related to the quality of development that is adjacent. For example, most people would not find it desirable for a big box retail home improvement store fronted by a massive parking field to be next door to their single family home, but may find it very useful for a small hardware store to be nearby.

Conditional Use regulations and permitting may impose buffer, time, design, performance or other conditions. Conditional Use regulations and zoning ordinances may include provisions that specify certain conditions for certain uses, may grant authority to a regulating body to impose conditions, or both.

Measures like those typically imposed on conditional uses remain useful even under modern zoning ordinances with objective standards based on context and mixing complementary uses. However, under modern ordinances, reliance on the conditional use mechanism may be minimized except in extreme situations, such as where a heavy industrial district adjoins a predominantly single family residential district. This is because such ordinances have built in transition mechanisms, including a keen focus on context.

Some cities that have a development regulatory system which does not adequately handle development matters rely on Conditional Use permitting as a primary method of negotiating most development entitlements, including matters that are not in fact uses, and imposing conditions which may not actually minimize adverse effects.

In addition to specifying conditions for certain uses, Keene's Conditional Use regulations grant broad authority to the Planning Board to impose conditions on conditional uses. In some cases, requirements for a conditional use are set out in the Zoning Ordinance and others are located in the Site Plan and Subdivision Review Regulations. It would be helpful if all specific conditions were located in one place or the other, or at

least set out in one place and referred to in the other.

To the extent that the City elects the Form-Based alternative regulatory approach, it may also decide to reduce its reliance on Conditional Use Permits. This would require procedural enhancement revisions under Strategy #4 related to Conditional Use Permits and substantive improvements under Strategy #5 to change to another regulatory approach.

**Conservation Residential Development**

Conservation Residential Development is among several mechanisms added to Euclidean regulatory structures to ameliorate their sprawl-inducing effect. This is done by requiring development to be clustered and reserving a percentage of undeveloped land as open space. The basic concept is laudable. However, with a few exceptions, CRD regulations are either inadequate to result in good development and valuable open space, or require compliance with so many subjective standards that they are rarely used.

Keene’s CRD regulations are extensive and include some specific objective standards for some items such as lot size and percentage of open space (in the Zoning Ordinance), and a number of requirements that cannot be objectively measured. The requirements for CRD approval and the unpredictability that is built into this system may result in CRD not being utilized voluntarily as often as it might otherwise be used.



Conservation Residential Development – Credit: Natural Lands Trust

In addition to voluntary CRD applications, the City seems to have used CRD in another interesting way. As noted in the discussion of the Subdivision Regulations above, where a subdivision application proposes division of an existing parcel that meets the minimum CRD lot size requirements into 3 or more lots and construction of a new road, the subdivision must follow the CRD process “set forth in the City’s zoning ordinance and the Planning Board’s Development Standards.” Assuming that this requires compliance with substantive CRD requirements, it provides a tool, even if partly subjective, to help limit sprawl development of larger parcels in less urban areas.

Section X provides for waivers of the Site Plan and Subdivision Regulations and the Planning Board’s Development Standards.

***Planning Board Development Standards***

The Planning Board established these Development Standards. They cover an array of development elements, some of which also are addressed in whole or in part in the Zoning Ordinance or the Site Plan and Subdivision Review Regulations. In some cases, the standards may be better located in the Zoning Ordinance, and in any event, provisions covering the same topic should be placed in a single location. Because such a change may also require a significant revision of these standards as well as adjustment of the approval process, relocating them would be done under Strategy #5.

In many instances, the City's Development Standards require subjective evaluation. This may be unavoidable in some cases, and avoidable in others. Evaluation of development elements that requires policy determinations may be better suited to subjective standards. Examples may include drainage, erosion, slope, flood, air quality, sewer and water, traffic, hazardous materials, wetlands, and surface waters. Elements that are known to exist in desirable development and can be empirically measured are well suited to being regulated with objective standards. Those include architectural, frontage, landscaping, lighting, and standards that impact the public realm. Revising the Development Standards to be more objective would be done as substantive improvements under Strategy #5.

While it is not altogether clear, the Planning Board Development Standards seem to be key to the Site Plan Review process. The Site Plan and Subdivision Regulations, including the Conditional Use provisions, include references to the Development Standards, sometimes seeming like the associated process is limited to review to assure compliance with the Development Standards. In other respects, the City's entitlement processes seem to reflect the intent that compliance with the Development Standards is one of several requirements. The City may want to revise these provisions to make the intent less ambiguous. This would be a procedural enhancement under Strategy #4.

The Development Standards appear to be thought of as an adjunct to the Site Plan and Subdivision Regulations. The Development Standards do not separately recite the authority under which they were adopted, explain how they relate to the Zoning Ordinance or Site Plan and Subdivision Regulations, or otherwise include provisions typical to standalone regulatory material. If they are part of the Regulations, they should be better incorporated by reference to them within the Regulations, and they should be attached as an Appendix to the Regulations. If they have independent authority, they should include provisions typically found in standalone documents. These revisions would be made as part of Strategy #1.

The City's approach to Drainage and Sedimentation and Erosion Control regulation is progressive in that it requires incorporation of Low Impact Development accommodations.

The Hillside Protection, Flooding, and Noise standards merely reference the provisions of the Zoning Ordinance.

The Landscaping standards call themselves "guidelines". Some of the language used in them is permissive ("preferably", "encourage", "should"), rather than mandatory ("shall"). If these standards are intended to be mandatory, they should not be characterized as "guidelines" and should use mandatory language. Some of the standards purport to alter the landscape provisions of the Zoning Ordinance. These standards are focused primarily on parking lot landscaping. It is not clear, though, whether some of the landscaping standards are intended to have broader application. Revisions described in this paragraph would be substantive improvements under Strategy #5.

The Screening standards also use a mix of permissive and mandatory language. This could be revised as a substantive improvement under Strategy #5. The use buffer provision assumes that residential and non-residential uses, and single family and multi-family uses, are incompatible. As noted above, this likely is based on undesirable development types typically found in non-residential and multi-family uses, rather than the actual uses being incompatible. These items could be revised as a substantive improvement under Strategy #5.

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The Traffic Standards could be integrated easily with traffic provisions of the Site Plan and Subdivision Regulations. This would be a basic reorganization revision under Strategy #2.

Comprehensive Access Management standards are provided to cover several development concerns. They are primarily concerns of multimodal movement, including walking, bicycle and transit as related to roads and streets. The inclusion of this Section is a beginning step to complete streets and creating a walkable, multimodal built environment. It is significantly behind best practices for planning and coding, and should be supplemented. Revisions to supplement these standards would be covered under Strategy #5 as substantive improvements.

Driveway cuts are addressed here in addition to other places in the Zoning Code, the Public Improvements Code, and Site Plan and Subdivision Regulations. They should be placed together to the extent possible, or cross-referenced where not possible. This would be accomplished under Strategy #2 as basic reorganization.

Section 15, Filling and Excavation, requires compliance with the City's Fill and Excavation regulations, but the location of those regulations is not referenced. Referencing those regulations would be a technical correction.

Section 17 is reserved for Surface Water standards. It should refer to the Surface Water provisions of the Zoning Ordinance.

The Architecture and Visual Appearance Standards are vague, and appear to have been written with the intent that they would enable a subjective and discretionary approval process. As mentioned, standards such as these are appropriate candidates for revision using objective standards. There are very few important architectural standards that cannot be reduced to objective, clearly worded provisions. Revision of these standards would fall under Strategy #5, substantive improvements.

Section 19's standards are minimal. The City should at the very least consider adding frontage standards either in the Zoning Ordinance or the Development Standards.

***Historic District Commission Regulations***

As noted previously, Historic District-related provisions are included in 3 places in the City's codes and regulations. They should be consolidated if possible. This would be basic reorganization under Strategy #2.

The Historic District Commission Regulations include requirements that involve subjective evaluation as well as objective standards. Although it would be better if they were made as objective as possible, some degree of subjectivity may not be avoidable. If the City decides it wants to have more objective Historic District regulations, those would be substantive improvements; however, historic district standards typically are not included development code revision projects. If those are to be included under Strategy #5, it would result in Strategy #5 being more expensive and time-consuming than estimated in Chapter 5, "Code Revision Strategies".

Many of the concepts on which these Regulations are based should not be limited to historic buildings and districts. Many of them are based on sound development and design principles, which could have much broader applicability to the City's other activity centers. Revising the City's Development Standards or Zoning Ordinance to include such concepts would be substantive improvements under Strategy #5.



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## DEVELOPMENT REGULATION ASSESSMENT

### AUDIT OF DEVELOPMENT ORDINANCES AND REGULATIONS

As discussed above, best practices for municipal development regulations call for them to be well-organized, consistent, attractively presented, illustrative, readable, understandable, easy to use and administer, predictable, and written to realize the city’s vision.

Beyond those general best practices criteria, the preceding detailed review of the City’s Development codes and regulations notes a number of provisions which could be better organized or made more consistent, readable, easy to use or understandable. Most of the specific points made above related to consistency, readability, ease of use, or understandability could be addressed by revising the City’s existing Development codes and ordinances. Specific revisions may be made to correct, reorganize, or make provisions consistent. Presentation, illustration, readability, ease of use, and understandability could be improved by reformatting and adding graphical content.

As discussed above, the extent to which development codes and regulations and approval processes are predictable depends largely on whether approvals and application requirements are discretionary and whether development standards are subjective and/or require interpretation, or are objective and clear. The subjective standards, variances, special exceptions, conditional use permits and discretionary Site Plan Review process in the City’s existing Development codes and regulations create obstacles to reaching the goal of a predictable development approval process and predictable development results. It will require a significant change in the City’s approval process and development codes and regulations to reach the goal of predictability. Specifically, standards will need to be made more objective; much of the review presently relegated to the Site Plan Review process will need to be moved to the zoning ordinance. Discretionary approval of all aspects of development applications other than those requiring on-going policy decisions also should be converted to a system in which most compliant application elements are entitled to by right approval.

The following Table sets out general criteria for best practices for development codes and regulations, ranks the existing codes and regulations against each of them, and explains the reasoning for the rankings:

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CRITERIA	Existing	Explanation
WELL ORGANIZED - The topical presentation of material in a rational manner.		Several parts of code could be combined &/or located together to make them easier to find.
HIGHLY ILLUSTRATIVE - Graphical depiction of standards, requirements, and concepts.		Few standards are illustrated.
READABLE - Information is presented clearly and laid out attractively.		Code layout could be improved by reformatting, tables, and illustrations.
EASY TO USE - Extent to which users can navigate material.		Code could be made more navigable by reorganization, better cross-referencing, improving readability, and enhancing graphical content. Several similar or overlapping standards are in different sections, making location difficult.
UNDERSTANDABLE - Extent to which the material is easily comprehended.		Mostly well written and easily comprehensible. Understandability could be improved by simplifying language and adding illustrations for concepts.
PREDICTABILITY - Whether the code and procedures may be relied on to achieve a predictable result.		Not intended to deliver any particular development result; code essentially is comprised of use separation standards and a few dimensional standards; development approval process depends on Site Plan Review process, which is based on discretionary approvals rather than objective standards. Neither the approval process nor the resulting development is predictable.
ACHIEVED COMMUNITY VISION - The ability of the regulations to implement the vision articulated in the Comp Plan.		The code and regulations are not coordinated to achieve the Comp Plan vision. See Table summarizing Comprehensive Plan elements and extent to which the existing code addresses those.
EASY TO ADMINISTER - Whether the regulations and procedures are clearly set out and simple to implement.		These are fairly easy to administer in their current form. Regulations and procedures are for the most part clearly set out. Reorganization of administrative provisions would be helpful. The Site Plan Review process could be simplified or streamlined. Due to the generality and sometimes subjective nature of the Development Standards and the Site Plan process, Site Plan Approval requires extensive Planning Board consideration and interpretation.
CONSISTENCY - Freedom from conflict within the regulations.		There are a few conflicts and inconsistencies.

Excellent      Good      Fair      Poor

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**DEVELOPMENT REGULATION ASSESSMENT**

Finally, critical to a development regulatory evaluation is consideration of the extent to which a city's regulatory regime addresses and/or is consistent with the regulatory and development-related goals of its comprehensive plan. Set forth above under "Comprehensive Plan" are the Comprehensive Plan goals related to development and development regulation, as well as specific direction regarding certain code and regulatory provisions that are to be revised. A number of the strategies of the Comprehensive Plan relate to items noted above under "Development Ordinances and Regulations". Many of these could be accomplished by revision of the City's existing Development codes and regulations. Others, however, would be difficult to address solely with the City's existing regulatory approach, or would be better addressed by another regulatory approach. Alternative regulatory approaches are discussed more fully under the "Alternative Regulatory Approaches" chapter of this Report.

The Keene Comprehensive Plan highlights specific goals and objectives related to development. Some of these are Downtown-specific, while others are applicable throughout the City. The current development code, regulations and standards do not achieve those goals and objectives in a number of cases as noted in the following:

**DOWNTOWN**

The Comprehensive Plan calls for more mixed-use opportunities Downtown. The current development code focuses strongly on separation of uses. This limits complementary uses from being allowed in a district. If a mix of uses is desired, then the code should make that possible. Certain alternative approaches that focus more on the form of development rather than what happens in the building itself are well suited for that.

The Comprehensive Plan also calls for additional density and height in the downtown. That would require revision of the density standards in places where more density is appropriate. With respect to height, the Zoning Code presently allows by right a maximum height of 4 stories, which can be increased to 6 stories by Special Exception. The Comprehensive Plan calls for a range of height between 3 and 7 stories. To allow that, the height standards the Code will need to be revised. Moreover, if a certain maximum height is determined to be appropriate in an area, it should be allowed by right, rather than by requiring a Special Exception.

Another goal of the Comprehensive Plan is to create opportunities for infill development that complements the existing character. Infill development is not prohibited under the current development code, but in order for any infill development to complement the character of the district and/or adjacent buildings, standards that regulate form will be necessary.

One Downtown strategy of the Comprehensive Plan relates to architectural character. Specifically, the Plan calls for buildings to be rooted in Keene's local aesthetic, influenced by character-defining features of historic buildings, with a balance between old and new. The Plan calls for new buildings not to be homogeneous and built with quality materials, as well as for development not to feel generic. Although the Historic District Regulations and the Gilbo Avenue and SEED Overlay standards begin to address development form and architecture, that regulation is limited as to specific locations. In addition, even that regulation is less specific than necessary to address the Comprehensive Plan goal. Finally, there are Planning Board Development Standards with which development is required to comply, but those standards are general, minimal, and subject to interpretation and discretionary application. To address the architectural character strategy of the Comprehensive Plan, specific and objective standards would need to be adopted. Those standards could

## DEVELOPMENT REGULATION ASSESSMENT

regulate basic form and design without prescribing style or resulting in homogenous buildings or generic development.

The Comprehensive Plan also calls for more diverse housing types. The existing Zoning Ordinance allows multi-family units in Downtown. Rowhouses, live/work and other types of dwelling units could also be allowed in Downtown, which would help provide more diverse housing types. In addition, building types and their characteristics could be specifically regulated to better provide for more diverse housing types.

Finally, the Comprehensive Plan calls for buildings to be built more closely to the street. Presently, front setbacks are not prescribed within the CB district. Deep front setbacks are specified in other districts of the Downtown area. In order to allow buildings to be built closer to the street, especially in more urban areas, standards for front setbacks will need to be revised to be more shallow.

## CITY-WIDE

Among the Comprehensive Plan strategies for the City is facilitation of infill development that is compatible with the existing neighborhood. To accomplish this, standards will need to be provided which regulate the form of infill development.

Creation of accessory dwellings is another City-wide development objective of the Comprehensive Plan. Presently, a Conditional Use Permit is required in order to create an accessory dwelling unit. This condition has the potential of discouraging accessory dwelling units. This could be avoided by allowing accessory units by-right if they meet certain standards.

The Comprehensive Plan calls for large houses to be allowed to be converted into condominiums. Because large houses may be located in single-family residential districts, conversion into condominiums or other multi-family buildings would not currently be allowed. It would require a rezoning or revision of district standards to implement this strategy.

The Comprehensive Plan identifies Neighborhood Activity Centers throughout the City. These areas are meant to be mixed-use and provide services to the residents in the vicinity as well as be accessible by walking or biking. This will require development code revisions and rezoning to create walkable/bikeable activity centers.

Another strategy is to allow urban agriculture within the City. The existing Zoning Code does not expressly allow urban agriculture activities to take place in the City. Implementation of this strategy would require revision of district standards to allow urban agriculture as an accessory use, a principal use, or as civic space.

Both the City-wide strategies of the Comprehensive Plan and the Climate Adaptation Plan call for action related to development within the City's floodplains. The Comprehensive Plan calls for flooding issues to be considered in revising the City's development code. The Climate Adaptation Plan has a goal of prohibiting development within the 200-year floodplain. The existing City Code addresses development within floodplains, but does not prevent development within the 200-year floodplain. It would be necessary to revise the development code to address the 200-year floodplain.

Addition of energy efficiency standards within the development code is a goal of both the Comprehensive Plan and the Climate Action Plan. Currently, the SEED Overlay District includes energy efficiency and sustainability provisions. In addition, certain development patterns within a community may also be more,

## DEVELOPMENT REGULATION ASSESSMENT

or less, energy efficient and sustainable than other forms. Zoning codes that facilitate more compact development are inherently better at protecting or creating more energy efficient and sustainable places than those that do not. The Gilbo Avenue Overlay District also has some inherent energy efficiency built into its basic form-based standards. The SEED and Gilbo Avenue Overlay standards have limited applicability. Realization of the City's energy efficiency vision would require expansion of the concepts on which the SEED Overlay District and Gilbo Avenue Overlay District are based throughout the Zoning Code or including them in the Building Code.

As in the Downtown-specific development strategies, the Comprehensive Plan calls for allowing more diverse housing types. Presently, the Zoning Code and its standards are focused more on uses than providing for a range of housing or building types within which different housing options may exist. A further complication is that several residential districts have minimum lot widths that would not allow certain housing types, such as rowhouses. A Zoning Code that allows a mix of complementary uses and building types in more urban areas would address this Comprehensive Plan objective. These housing types could include rowhouses, large and small multifamily buildings, and live/work buildings, as well as adaptive reuse of buildings and by-right permitting of accessory dwelling units.

The Comprehensive Plan addresses streamlining of the development approval process. In many respects, this process is required by State law. However, one aspect of the process that could be streamlined would be the Site Review process. This could still be accomplished within the requirements of state law by providing objective standards which would be applied in a non-discretionary manner that entitles an applicant to by-right approval to the extent of compliance with the objective standards. Any items requiring policy determinations could still be decided in the discretion of the Planning Board.

The implementation section of the Comprehensive Plan calls for the adoption of several standards and requirements that are not currently included in the development code and regulations. Those include thoroughfares standards to help create more attractive streetscapes, Low Impact Design (LID) standards, as well as inclusionary standards to ensure affordability. In addition, the Plan calls for revisions to the City's sign regulations. Those standards and requirements would need to be provided in the code revision process.

Although the current code includes sign standards, the Comprehensive Plan calls for them to be revised. The existing sign regulations could be simplified and presented in a more graphical manner to increase with ease of use and efficiency.

Another implementation item from the Comprehensive Plan directs that urban design and architectural standards be adopted. Presently, urban design and architectural standards are loosely regulated by an assortment of measures: limited dimensional standards, Development Standards requiring interpretation and negotiation through a discretionary Site Plan Review process, Historic District Regulations, and certain standards applicable within Overlay Districts. Specific, objective standards could be adopted to regulate development patterns and building form.

The Comprehensive Plan also calls for the Historic District Regulations to be integrated into the development code. They could be incorporated into the Zoning Code to address this item.

The following Table sets out the elements of the Comprehensive Plan, Climate Action Plan, and Climate Adaptation Plan related to development and indicates the extent to which the various applicable parts of City's codes and regulations satisfy those elements:

COMPREHENSIVE PLAN	Ranking	Explanation for ranking
<b>DOWNTOWN SPECIFIC</b>		
Expand the opportunity for mixed uses	●	Zoning Code is very focused on separation of uses, which limits complementary mixed uses in each district. It should be easier to mix residential and other uses.
Provide for additional density	●	The existing density levels are the base line against which additional density would be measured. Density in addition to that would require revision of the density standards in places where that is desired.
Create opportunities for infill development	●	The existing code allows infill development, but it does not regulate its form, so there is no assurance that it will be compatible with the existing form. For assurance that infill development would be compatible with the existing form, form-based standards would be necessary.
New buildings rooted in local aesthetic, balancing old and new, influenced by character-defining features of historic buildings, and built of quality materials. New buildings not homogenous and development not generic	●	Although the Historic District Regulations and the Gilbo Ave and SEED Overlays begin to address development form and architecture, that regulation is limited as to specific locations. Planning Board Development Standards with which development is required to comply are both general and minimal, and are subject to interpretation and discretionary application. To satisfy this goal of the Comp Plan, objective standards should be adopted.
Provide for more diverse housing types – live/work, condos, lofts, and apartments	●	The existing Zoning Code allows multi-family units in downtown, rowhouses, live/work and other types of dwelling units should be allowed as well. In addition, building type could be regulated to better provide for more diverse housing types.
Allow for the desired height of 3 to 7 stories	●	The Zoning Ordinance presently allows by right a maximum height of 4 stories in the downtown core, which can be increased to 6 stories by Special Exception. The district height standards will need to be revised in places where the City wants to allow 7 stories.
Bring building frontage closer to the street to improve pedestrian experience	●	The Zoning Ordinance does not prescribe a front setback in the C-6 district. In other districts, deep front setbacks are called for. In the more urban areas, front setbacks should be shallow, and could be provided within ranges.
<b>CITY-WIDE</b>		
Allow for more infill opportunities that are consistent with existing neighborhoods throughout the community	●	Same reasoning as above.
Allow the creation of accessory dwellings	●	A Conditional Use Permit is now required for Accessory Dwelling Units. This may discourage them.
Allow the conversion of large houses into condominiums	●	Large houses may be in single family residential districts, so turning them into condominiums or other multi-family configurations would not be allowed. If multifamily is desired, the district provisions would need to be changed, or a zoning map amendment would be necessary.
Allow mixed-use development in neighborhood activity centers to help strengthen them	●	More flexibility in the uses allowed as well as some of the dimensional standards would need to be changed to help create more walkable, pedestrian-oriented, mixed use activity centers.
Allow urban agriculture activities to take place throughout the community	●	The existing code does not expressly allow urban agriculture activities. The district standards would need to be revised to accomplish this. In some cases, this could be an accessory use, and in others, it could be a principal use or a civic space.
Consider adding energy efficiency standards in land use code	●	The SEED Overlay District includes energy efficiency and sustainability provisions. The Gilbo Avenue Overlay District has some inherent energy efficiency built into its basic form-based standards. Energy efficiency could be required or incentivized more broadly by expanding the concepts on which the SEED Overlay District and Gilbo Avenue Overlay District are based throughout the Zoning Code or including them in the Building Code.
Consider flooding issues when developing the new land use code	●	Chapter 64 regulates development in the floodway and floodplains areas of the City to ensure compliance with the FEMA National Flood Insurance Program.
Provide for more diverse housing types	●	The various zoning districts are focused on uses, rather than providing for a range of housing types or building types within which different housing options may exist. Several residential districts have minimum lot widths that would not allow rowhouses.
<b>PROCESS</b>		
Streamline the permitting process to improve businesses' bottom line	●	The existing process includes a comprehensive discretionary site plan review process based on standards that require interpretation. This process could be streamlined by using objective standards and by-right approvals of compliant development.
<b>IMPLEMENTATION</b>		
Revise sign regulations	●	Sign Regulations could be simplified and presented in a more graphical manner.
Adopt urban design/architectural design standards	●	Urban design and architecture is loosely regulated by an assortment of measures: limited dimensional standards, Development Standards requiring interpretation, negotiation through the discretionary Site Plan Review process, Historic District Regulations, and certain standards applicable within Overlay Districts. Specific, objective standards should be adopted to regulate development patterns and building form.
Incorporate historic district regulations into the development code	●	Historic district regulations are now separate from Chapter 102 and part of the regulations are located in 3 separate pieces in the development code and regulations. These should all be brought together for ease of use and consistency.
Adopt inclusionary housing requirements to ensure affordability	●	There are no inclusionary housing provisions in the existing development codes and regulations. These could be added either as a requirement (if allowed by state law) or incentivized.
Adopt thoroughfare standards to help create more attractive streetscapes	●	Thoroughfare standards are not included in the current development code, although certain aspects of streets such as width are covered by public works standards. Standards for all aspects of the public frontage between the private frontages on each side of the public right of way could be established either within public works regulations or the Zoning Code.
Adopt Low Impact Design (LID) standards as part of the Subdivision and Site Plan Regulations	●	Low Impact Design standards are not included in the current development code. They could be included as requirements or as alternatives to conventional practices.
<b>CLIMATE ACTION PLAN</b>		
Promote mixed-use and transit-oriented development	●	The Zoning Code is focused on the separation of uses. This limits promotion of mixed-use and transit-oriented development. The Code should be revised to include form-based districts which enable mixed use.
Encourage installation of sources of renewable energy	●	Presently, only the SEED Overlay District addresses renewable energy sources. This provides a means by which renewable energy sources are encouraged. If the City wants to broaden that, it will be necessary for the Code to be revised to incentivize those practices or make it clear they are allowed more broadly. In addition, any conditions on their use could be included, such as the location of solar panels.
<b>CLIMATE ADAPTATION PLAN</b>		
Prevent development in 200-year floodplain	●	Development is currently prohibited in the floodway but not in the 200-year floodplain. Chapter 64 will need to be revised to implement this objective.



Satisfied



Needs Improvement



Not Satisfied

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## DEVELOPMENT REGULATION ASSESSMENT

Some of the development-related objectives of the Comprehensive Plan could be accomplished within either the City’s current regulatory approach or changing to or adding another approach. Others will require one of the other Alternative Regulatory Approaches described in Chapter 4, “Alternative Regulatory Approaches”. Among the Comprehensive Plan goals that could be accomplished within either the City’s current regulatory approach or by changing to or adding another approach are the following:

### Downtown Specific

- Provide for additional density
- Allow for the desired height of 3 to 7 stories
- Bring building frontage closer to the street to improve pedestrian experience

### City-wide

- Allow the creation of accessory dwellings
- Allow the conversion of large houses into condominiums
- Allow urban agriculture activities to take place throughout the community
- Consider adding energy efficiency standards in land use code
- Consider flooding issues when developing the new land use code
- Incorporate historic district regulations into the land use code
- Adopt inclusionary housing requirements to ensure affordability
- Adopt thoroughfares standards which would help create more attractive streetscapes
- Adopt Low Impact Design (LID) standards as part of the Subdivision and Site Plan Regulations

### Process

- Streamline the permitting process to improve businesses bottom line

A common link among these goals is that they are either matters that are already regulated by the existing code or regulations, or cover matters which are manageable by a predominantly Euclidean approach, by performance-based provisions, by a Form-Based Code or by a Hybrid Code. With respect to streamlining permitting, it would be necessary for the City to move more in the direction of objective development standards within the Zoning Ordinance and reduce reliance on the comprehensive discretionary Site Plan Review process and subjective standards. Alternative Regulatory Approaches are discussed in Chapter 4, “Alternative Regulatory Approaches”.

Among the Comprehensive Plan objectives that may call for a different or an additional regulatory approach are the following:

### Downtown Specific

- Expand the opportunity for mixed uses
- Create opportunities for infill development
- Ensure that architecture of new construction is not too homogenous - it should be contemporary

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## DEVELOPMENT REGULATION ASSESSMENT

- Provide for more diverse housing types – live/work, condos, lofts, and apartments

### City-wide

- Allow for more infill opportunities that are consistent with existing neighborhoods throughout the community
- Allow mixed-use development in neighborhood activity center to help strengthen them
- Provide for more diverse housing types
- Revise the sign regulations
- Adopt urban design/architectural design standards

These are essentially Form-Based Code concepts or concepts which lend themselves to a Form-Based approach. For that reason, the best tool with which these revisions could be made would be either a predominantly Form-Based Code or a Hybrid Code with a Form-Based component. Specifically, Form-Based provisions specifically call for mixed-use centers in more urban areas, infill that is in keeping with existing neighborhood development, and diverse housing types. While sign regulations are not necessarily a Form-Based concept, they are particularly well suited to the highly graphical methods used in Form-Based Codes. Urban design standards are a hallmark of Form-Based codes and architectural design standards can be easily incorporated into a Form-Based code as a feature of building form. Finally, as noted above, most all of the development-related goals and revisions called for by the Comprehensive Plan could be accomplished with Form-Based provisions. More specific information on Form-Based Code is provided in Chapter 4, “Alternative Regulatory Approaches”.

## CONCLUSION

The City’s Zoning Ordinance accomplishes its primary intent of separating uses. However, the City’s development regulations do not fare well when viewed against best practices criteria. Moreover, they are not equipped to accomplish the many of the development objectives of the City’s Comprehensive Master Plan.

Shortcomings of the City’s development codes and regulations are primarily the result of their being based on outdated concepts and practices. Measured against practices prevalent when they were adopted, they were sufficient. However, planning and development regulation practices have advanced tremendously since the 1920s and even since the 1970 Zoning Ordinance update.



## CHAPTER 4 - ALTERNATIVE REGULATORY APPROACHES

### INTRODUCTION

There are a number of basic development regulatory approaches that may be utilized by a city. These regulatory types frequently are categorized by reference to their predominant underlying philosophy -- a Euclidean Code focuses mostly on separation of uses; a Performance-Based Code is centered primarily on assuring development compatibility by providing standards related to the way in which development impacts or affects the adjoining property or the community; and a Form-Based Code (sometimes called “Character - Based”) is concerned principally with the form and character of the built environment. In addition to those, there is a subtype of the Form-Based Code, called a Lean Code, Incentive-Based Zoning, which is less of a code type and more of a tool for use in other types of codes, and Hybrid Codes, which includes components of more than one of the other 3 principal code types.

There are differences among these code types in terms of their underlying regulatory philosophies and the regulatory elements they typically include. Additionally, in their typical forms, some of these code types are better than others in meeting the general code criteria discussed above in “Evaluation of Existing Regulatory Context”, including their potential to achieve certain aspects of a city’s vision.

Like those of many cities, Keene’s development codes and regulations are predominantly Euclidean, but also include Performance-Based provisions, as well as two Overlay Districts that contain some Form-Based concepts. As such, the City’s approach could be categorized as a predominantly Euclidean Code, but it also would be accurate to call it a Hybrid Code.

Euclidean Codes, Performance-Based Codes, Form-Based Codes (and their Lean Code subtype), Incentive Zoning, and Hybrid Codes are described in the following sections, including a discussion of their respective strengths and weaknesses and the extent to which one or more of these alternative approaches may be useful to address the issues discussed in Chapter 3 “Evaluation of Existing Regulatory Context”.

### CODE TYPES AND THEIR ADVANTAGES AND DISADVANTAGES

#### *Euclidean (Use-Based) Codes*

The zoning ordinances of many cities are concerned principally with separating uses. Such ordinances are referred to as Euclidean Codes. Euclidean Codes have their roots in the 1600’s English common law of nuisance. Nuisance law protected property owners from their neighbor’s use of their property for an offensive purpose. Common nuisance complaints included odors coming from the neighbor’s property and blocking light.

This approach was expanded in early land regulations in the United States. In the early 1920s, the U.S. Department of Commerce published the Standard State Zoning Enabling Act (“SZA”), a model-enabling act intended for adoption by states. The SZA prominently featured separation of uses into different districts as one of its key concepts. The SZA was enacted by most states and remains in effect, in some amended form, in most parts of the country.

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## DEVELOPMENT REGULATION ASSESSMENT

In 1922, the Village of Euclid, Ohio adopted an ordinance that created use, height, and area districts. Ambler Realty challenged the ordinance’s separation of industrial from residential uses, but ultimately failed to prevail. The U.S. Supreme Court upheld the constitutionality of the ordinance in 1926. Euclidean zoning became the standard. Keene’s zoning ordinance, also dating back to 1926, is essentially a Euclidean Code.

Euclidean zoning was not intended to create sprawl or any other development pattern. In fact, its effect on the built environment was not a concern at all---if uses were separate, pretty much any development was allowed. Euclidean zoning has been cited as one of the most significant contributors to sprawl development.

In the 1960s and ‘70s, after realizing that their zoning ordinances were not resulting in development they wanted, Keene and many other cities started adopting a patchwork of zoning revisions. In these, they tried to make their ordinances something they were not intended to be – regulations that would result in better development. Among the various devices were Conditional Use Permits, Variances, Planned Unit Development (PUD), Conservation Zoning, Overlays, Site Review Procedures, and Design Guidelines and Design Review Committee oversight. All of these are present in Keene’s development codes and regulations.

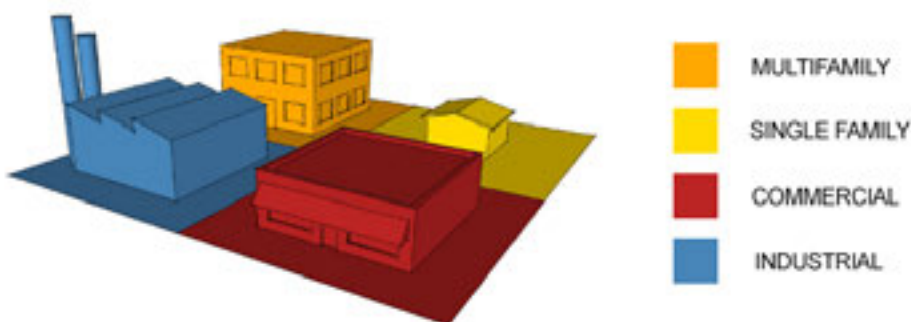
Unfortunately, none of those patches has proven very effective. Some have been associated with long approval delays and expense, and others with involving an undesirable degree of discretion, subjectivity, and unpredictable process and outcomes.

Euclidean Zoning is familiar to administrators, developers, and decision-makers. Its requirements typically are objective. For those reasons, it is relatively easy to administer.

In their purest form, Euclidean codes essentially are equipped to separate uses and otherwise to provide minimal setback, lot size and height standards. However, Euclidean Zoning typically does not provide standards intended to guide development patterns and form. They do not include standards intended to result in a predictable high quality built environment. The predominant development pattern that has resulted from Euclidean zoning is segregated uses, loosely spread along highway corridors or haphazardly located across the countryside in a sort of “anything goes” way.

There is nothing inherent in Euclidean codes that prevents them from being well organized, readable, understandable or easy to use. The typical Euclidean code, however, does not place an emphasis on readability, understandability or ease of use.

### EUCLIDEAN ZONING



Separation of uses in Euclidean Codes

## DEVELOPMENT REGULATION ASSESSMENT

The issues identified above in Chapter 3 “Evaluation of Existing Regulatory Context” regarding technical corrections, basic reorganization, readability, understandability and usability issues could be addressed using predominantly Euclidean coding. However, a number of the Comprehensive Plan’s objectives require much more than the regulation that can be provided using Euclidean principles. Separation of uses and basic dimensional standards are not well suited to accomplish the following objectives:

## Downtown Specific

- Expand the opportunity for mixed uses
- Create opportunities for infill development
- Ensure that architecture of new construction is not too homogenous - it should be contemporary
- Provide for more diverse housing types – live/work, condos, lofts, and apartments

## City-wide

- Allow for more infill opportunities that are consistent with existing neighborhoods throughout the community
- Allow mixed-use development in neighborhood activity center to help strengthen them
- Provide for more diverse housing types
- Revise the sign regulations
- Adopt urban design/architectural design standards.

Finally, it should be noted that in cities where protection of single-family residential neighborhoods in their existing form is important, existing Euclidean single-family residential zoning districts may be adequate without moving the zoning for those areas away from Euclidean principles. Those areas are primarily single use single-family residential, and in the absence of development pressure or infill concerns, the existing zoning may be appropriate. Many cities have elected in their development code revisions to focus their efforts on their goals of creating walkable, mixed-use activity centers by using a new zoning approach for those activity centers, rather than rezoning existing single family residential neighborhoods.

***Performance-Based Codes***

Performance-Based zoning is a type of development regulation initially conceived in the 1950s. It is focused on regulating the effects of development, or stated differently, how development performs. Performance-Based zoning includes essentially two types of standards, one regulating activities and the other regulating sites. Either type or both types of standards may be included.

The first type, which regulates activities, is essentially use-based. However, rather than separating specifically named uses, it provides external impact standards intended to manage compatibility of uses. The other type of standard, site-related, is intended to manage intensity of development, providing standards for Floor Area Ratio, Lot Coverage, and the like.

Performance-Based zoning was not widely accepted, and some cities that experimented with it later moved to abandon it. As in Keene, certain Performance-Based concepts made their way into otherwise predominantly Euclidean Codes, such as Floor Area Ratios, Lot Coverage, Landscape Surface Ratio, and

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## DEVELOPMENT REGULATION ASSESSMENT

Lighting and Noise standards. While standalone Performance-Based Codes are relatively rare, some Performance-Based provisions continue to exist in Euclidean and other types of codes.

Performance-Based zoning provides more development flexibility than does Euclidean zoning. The developer is permitted to develop in any number of ways if the proposal is able to meet the Performance-Based standards. Development outcomes are therefore unpredictable. Many Performance-Based standards are objective, which makes administration and compliance more predictable and less subject to interpretation.

Many Performance-Based standards are fairly technical, which may make them more challenging and expensive to comply with and administer. Performance-Based zoning has some of the same weaknesses as Euclidean zoning. Both essentially are focused on compatibility of development, one approaching it by measuring impacts (Performance-Based), the other by listing uses (Euclidean). Like Euclidean zoning, Performance-Based zoning is not intended to result in development of places of character. Even its site-related standards are limited to those related to the extent of development, rather than its type or form.

Performance-Based standards, such as sound, lighting, and landscape, can be useful to supplement other types of regulations.

Keene’s identified issues related to technical corrections, basic reorganization, readability and usability issues could be addressed with a predominantly Performance-Based code, although readability and usability are not closely associated with Performance-Based Codes. Due to its predominant focus on regulating the external impacts of development, a Performance-Based code would not be well equipped to achieve some aspects of the Keene’s Comprehensive Plan objectives.



Examples of Performance-Based Standards

### ***Form-Based Codes***

Frequently referred to as Character-Based Codes, Form-Based Codes are development regulations that enable predictable built results and the creation and preservation of a high-quality built environment and public realm. This is accomplished by providing standards for both uses and physical form, with an emphasis on context. Form-Based standards are based on tested planning principles and are usually intended to result in compact, walkable, mixed-use development.

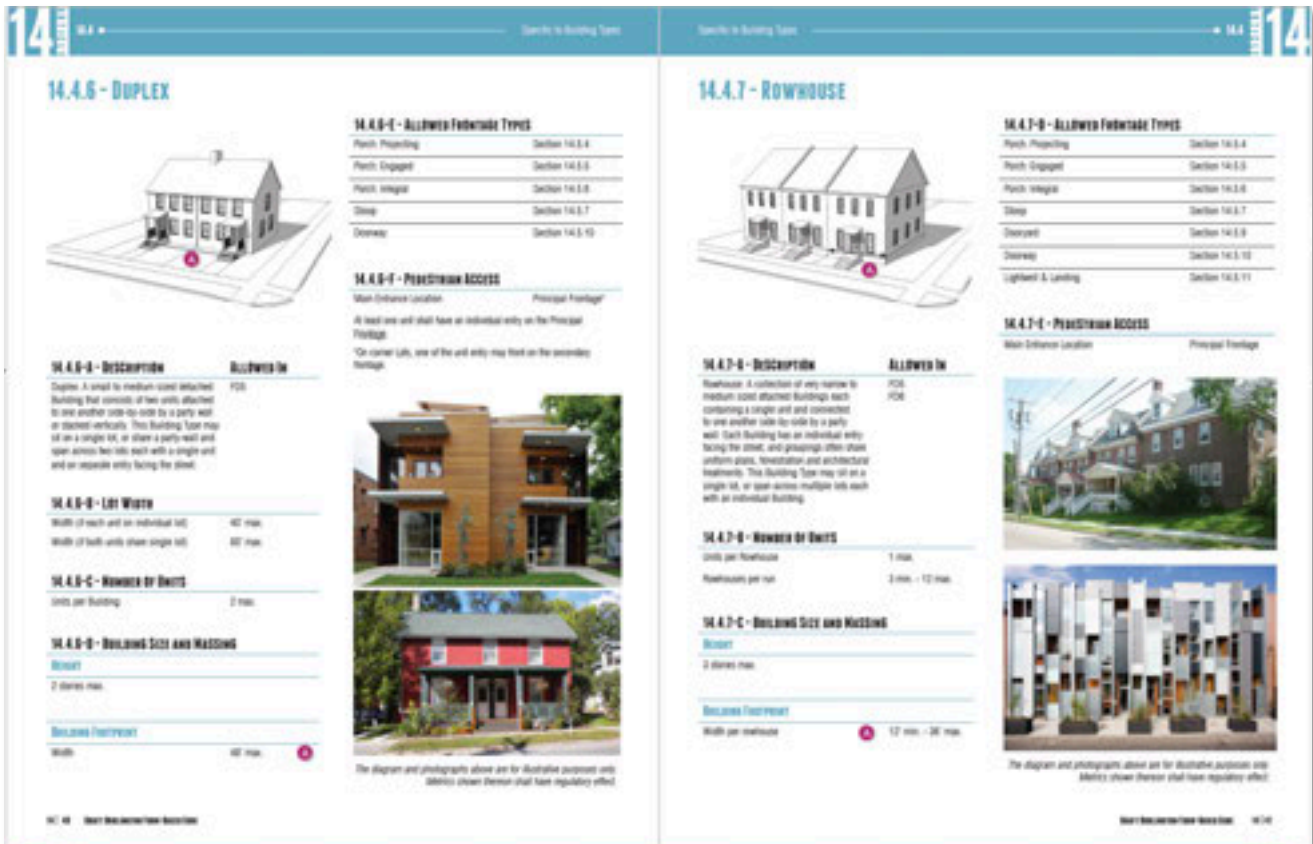
Form-Based Codes started being used by private developers and planners in the early 1980s to address the unsatisfactory results of developing under other types of zoning ordinances. A model Form-Based Code, the Smartcode, was published in 2003, after more than 4 years of study and drafting. The first municipal Form-

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## DEVELOPMENT REGULATION ASSESSMENT

Based Code was adopted that same year. Since then, over 340 Form-Based Codes have been adopted by cities, towns and counties, with many additional ones still in process.

Form-Based Codes emphasize ease of use, understandability, and highly graphical and tabular standards. They address the relationship between private frontages and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks. Form-Based Codes are intended to result in development or redevelopment of places in which people want to walk, live, work, play, and gather.



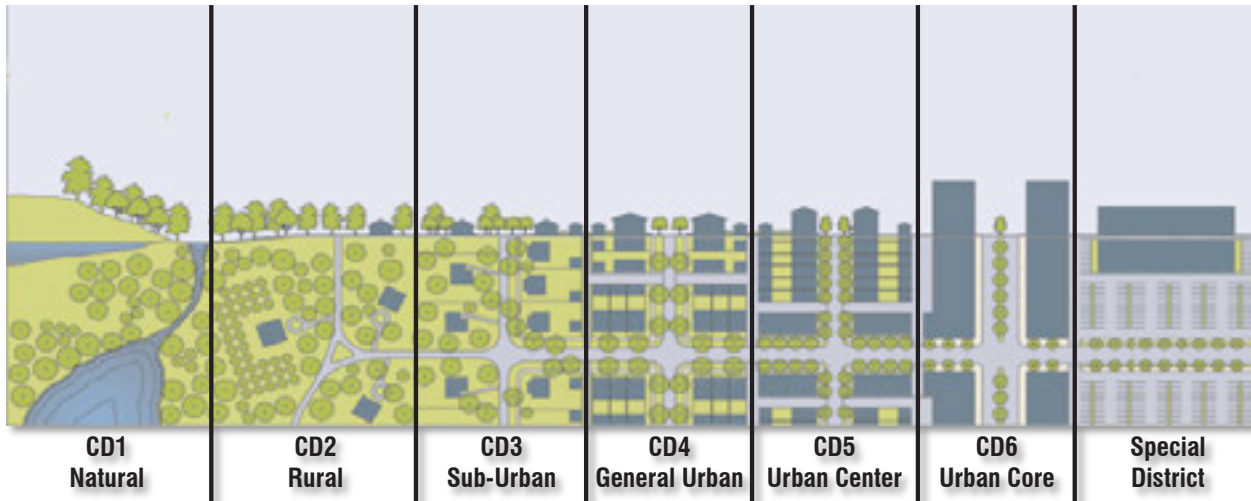
Example of a Form-Based Code page spread.

Form-Based Codes are implemented and activated by assigning Character Districts to specific areas by a zoning map amendment. The standards for the applicable Character District thereby become applicable to development and redevelopment of those areas.

Because not everyone wants to live on a farm, in a residential subdivision, in a village, or in a downtown, however, Form-Based Codes provide a range of places of differing intensity and character for people with different preferences. This is accomplished by using a system known as the Transect.

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Form-Based Code Transect, SmartCode

The Transect describes a range of natural to urban environments. The prototypical Transect, illustrated above, has 6 Transect Zones, or Character Districts, and provides for the following range of places with the following basic characteristics:

CD-1 Natural consists of lands approximating or reverting to a wilderness condition, including lands unsuitable for settlement due to topography, hydrology or vegetation.

CD-2 Rural consists of sparsely settled lands in open or cultivated states, including woodland and agricultural land.

CD-3 Sub-Urban consists of low-density primarily single-family residential areas, adjacent to higher zones that include some mixed use. Planting is naturalistic and setbacks are relatively deep. Blocks may be large and the roads irregular to accommodate natural conditions.

CD-4 General Urban consists of a mixed use but primarily residential urban fabric. It may have a wide range of building types, including houses, townhouses, apartments, and mixed use and commercial buildings. Setbacks and landscaping are variable. Streets with curbs and sidewalks define medium-sized blocks.

CD-5 Urban Center consists of higher density mixed use development that accommodates retail, offices, commercial, townhouses and apartments. It has a tight network of streets, with wide sidewalks, steady street tree planting and buildings set close to the sidewalks.

CD-6 Urban Core consists of the highest density and height, with the greatest variety of uses, and civic buildings of regional importance. It may have larger blocks; streets have steady street tree planting and buildings are set close to wide sidewalks. Typically, only large towns and cities have an Urban Core.

Form-Based Codes, and the Transect itself, are based on context — the principle that certain development forms and elements belong in certain environments. For example, deep setbacks are characteristic of more rural or suburban settings and shallow setbacks are a more urban condition. A farmhouse belongs in a more rural setting; a multifamily building in a more urban one. Similarly, a road with drainage swales belongs in a more rural setting and a street with curbs is more appropriate in a more urban setting. Unlike other types of

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## DEVELOPMENT REGULATION ASSESSMENT

zoning codes that apply similar standards in disparate development contexts, Form-Based Codes assign contextually appropriate standards to create or preserve places with an intended intensity and character.

In many instances, district standards of non-Form-Based Codes have been arbitrarily assigned. In comparison, standards of Form-Based Codes are developed by actual measurement of the best places of a city. This “Synoptic Survey” is used to extract the essential “DNA” of what makes that place have its particular character. Setbacks, lot dimensions, lot coverage, frontages, building mass, building type, facades, parking location, streetscape, and thoroughfare elements and dimensions are all important factors in the character of a place. Each of these elements varies according to the character of a place and is accounted for in the Synoptic Survey. The Synoptic Survey is then used to determine the standards that will be applicable to each Character District, assuring that development or redevelopment in accordance with those standards will create or preserve an intended form or character.

Form-Based Code standards also include permitted uses for each Character District. Typically, however, Form-Based Codes provide a broad range of complementary uses within the more urban Character Districts. These uses may exist both horizontally and vertically, including multiple uses within the same lot and/or building.

Form-Based Codes have become the standard for cities’ zoning code revisions as they undertake to improve and make the form of development and redevelopment more predictable.

Form-Based Codes may be adopted as the only development regulation for a city, or they may be included with a city’s other development regulations and made applicable to key areas of the city. Most cities are more comfortable initially with the latter approach, as it leaves in place existing zoning concepts and districts in all other parts of the city. In situations where a city wants to completely replace its existing zoning ordinance with a Form-Based Code, it may still be necessary to retain certain procedural and other concepts from the city’s existing code.



Example of Form-Based Code Sign Standards

A Form-Based Code subtype, the so-called Lean Code, attempts to reduce Form-Based regulation to certain critical concepts. Proponents of Lean Codes have discussed reducing Form-Based regulations so that they will fit on the front and back of a single sheet, which can be folded and carried in a pocket. One example of a Lean Code is a model infill code from which all provisions not related to neighborhood protection and infill regulation have been stripped out of the model SmartCode. It is not unlike many municipal Form-Based Codes, which have been customized to address the particular concerns of a city. In other words, if the city is “built-out,” greenfield development

provisions may not be necessary. If the city has an adequate comprehensive plan with a future land use plan, then the model provisions for comprehensive planning would be excluded. If the city has adopted a policy to let market forces dictate the amount of available parking, then the model parking standards would be excluded. If the city is satisfied that other included standards such as height or lot coverage will

## DEVELOPMENT REGULATION ASSESSMENT

effectively regulate density, separate density standards might be excluded. If the possibility of new roads is very remote, or if the Public Works department regulates roads, then the model thoroughfare standards would not be included.

The Lean Code concept is laudable in terms of its attempt to minimize enormous city development codes and simplify introduction of Form-Based concepts in cities that may not otherwise be prepared to undertake a proper code revision. In practice, however, development codes are required to regulate many other matters than can be handled by a Lean Code.

Form-Based Codes are based on sound planning principles and time-tested development patterns and are better suited to achieve most cities' visions than are other types of ordinances. They contain clear standards intended to provide predictability both in terms of the entitlement process and resulting development. Form-Based standards are based on empirical measurements known to exist in places having a desired development form. They are the only type of zoning code capable of predictably delivering context and character-based development based on the vision of a city.

Because they are different from conventional codes that have been used over the past 90 years, there is a learning curve involved in changing to a Form-Based Code. The length of the learning curve varies for different people based on the specific circumstances. However, the typical learning curve is not long, as Form-Based Code concepts are easy to understand and the public, stakeholders, city officials and staff will become familiar with Form-Based Codes during the pre-code adoption process. The learning curve may be shortened with training and the availability of materials such as a user's guide and submission checklists.

Because a Form-Based Code regulates elements that may not have been regulated under a conventional code, it may create nonconformities. These nonconformities typically would be allowed per the city's customary nonconformity provisions.

It typically takes between six (6) and twelve (12) months to develop a Form-Based Code in connection with a city's code revision project. This would include project planning, public outreach and code drafting and staff review. This may vary based on the city's objectives and desired schedule. The adoption process for a Form-Based Code would include a zoning text amendment and a zoning map amendment, and those would be handled in accordance with the city's typical approval processes.

Once a user becomes familiar with Form-Based Codes, they are easier to use and administer than other types of codes. They feature graphical content to describe standards and concepts. Standards are objective and clearly stated, minimizing the need for interpretation and subjective evaluation. In addition, a Form-Based Code may allow many of the determinations typically made by a planning board to be made instead by Staff.

All of the issues identified in Chapter 3 "Evaluation of Existing Regulatory Context", could be addressed with a predominantly Form-Based Code. As noted, Form-Based Codes emphasize readability and usability, reduction of text and extensive use of graphical and tabular content. More importantly, Form-Based Codes are focused on preservation and creation of contextually appropriate center-based, walkable, mixed use places supported by a vibrant public realm. It is this aspect of Form-Based Codes that make them or a Hybrid Code with a significant Form-Based component critical to implement much of the City's development-related vision. While some of the other identified issues with the City's codes can be addressed, at least partially, with one of the other types of codes, a Form-Based Code or a Hybrid Code with a significant Form-



Based component is the only type that can deliver several aspects of the Comprehensive Plan's development-related vision.

### ***Incentive Zoning***

Incentive Zoning is not a different type of zoning, per se, but a feature that may be added to any type of zoning code to encourage certain development practices or elements that achieve one or more goals of a city. For example, if a zoning code allows a building height of 4 stories and the city wants to encourage affordable housing, an incentive may be allowed in which the maximum building height might be increased by 2 stories if the development provides a certain amount of affordable housing.

Incentives in zoning regulations have been criticized because they can have the effect of allowing development that is not otherwise thought to be appropriate. For example, if there is consensus that 4 stories is the maximum appropriate height for an area, is it difficult to understand how it is also appropriate to allow 6 stories to encourage a builder to use energy efficient building methods. Many times, existing zoning already has granted such broad development rights, there may not be items that have any incentivization value. For instance, if existing zoning allows 100 units per acre, or a maximum building height of 30 stories, increasing either of those may not provide a basis for incentivizing a developer if there is no market for the additional development. On the other hand, if there are standards in a zoning code with respect to which a valuable incentive may be offered and the city is not prepared to require development that responds to city goals (or if it is illegal to require such development), incentives may be useful to encourage that response.

### ***Hybrid Codes***

A Hybrid Code is one which has elements of two or more of the primary types described above. As has been done here, zoning codes frequently are categorized by reference to their predominant underlying philosophy. A Euclidean Code focuses mostly on separation of uses; a Performance-Based Code is centered primarily on assuring development compatibility by providing standards related to the way in which it impacts or affects the adjoining property or the community; and Form-Based Codes are concerned principally with the form and character of the built environment.

Irrespective of those convenient designations, however, most codes contain regulatory elements associated with two or more coding approaches. Euclidean Codes typically include the expected use provisions, as well as some provisions which are essentially Performance-Based (e.g. Lot Coverage standards) and others that may minimally affect development form (e.g. setback standards). Similarly, Form-Based Codes typically include use provisions and some Performance - Based standards (such as noise). So, in that respect, most zoning codes are Hybrid Codes.

The strengths and weaknesses of Hybrid Codes follow the strengths and weakness of their component types. However, an additional strength of a Hybrid Code is that it can combine the most appropriate types of zoning provisions to accomplish a city's development objectives.

**SUMMARY COMPARISON OF PRIMARY CODE TYPES**

Euclidean Codes are focused primarily on separation of uses. They may provide basic standards for setbacks, height, and lot size. They are the type code with which more people are familiar, as they are based on the country's original zoning concepts. Purely Euclidean Codes typically have objective standards that are easy to apply. Their concepts are simple, so they are not inherently difficult to understand. They are predominantly textual and as a result, may not be as user-friendly or easily understood as if they were more graphically presented. They are not intended to result in any particular type or quality of development. Some of the "patches" that have been added to Euclidean Codes in an effort to improve them, such as site plan review and overlays, have introduced a high degree of subjectivity and discretion, leading to unpredictability of process and outcome.

Performance-Based Codes are focused on the external impact of development on adjacent or nearby property. They may regulate activities and/or site development with specific objective standards. Those standards may be technical, so they may require professional assistance for both applicants and the city to assure compliance with them. Like Euclidean Codes, they are not intended to result in any particular type or quality of development.

Form-Based Codes are focused on creating and/or protecting a high quality built environment. They include use standards as well as objective context-based building and frontage standards intended to result in high quality places. Form-Based provisions are essential to implement many cities' comprehensive plans -- if a city's vision calls for high quality, walkable, mixed-use, pedestrian-scaled neighborhood activity centers and/or infill development that is consistent with the existing form of neighborhoods, a Form-Based Code is the most effective way to provide for that. The typical Form-Based Code is presented in a very readable, understandable, and user-friendly format. Form-Based Codes typically minimize textual provisions, present development standards graphically and/or in tabular form, and include illustrations to assist in understanding.

Hybrid Codes include elements of more than one of the other 3 primary code types. A Hybrid Code may be an effective way to address the vision, needs and desires of a city. A Form-Based component is typically necessary to address certain comprehensive plan development-related goals, as noted in the preceding paragraph.

The Tables below illustrate and explain the rankings of each of the primary code types in terms of the General Code Criteria discussed in Chapter 3, "Evaluation of Existing Regulatory Context" and the Code Elements discussed in in this Chapter.

CRITERIA		Lucidean Codes	Performance-Based Codes	Form-Based Codes*	Hybrid Codes	Explanation
WELL ORGANIZED - The topical presentation of material in a rational manner.						1. <b>Lucidean:</b> May be well organized. 2. <b>Performance-based:</b> May be well organized. 3. <b>Form-based:</b> May be well organized. 4. <b>Hybrid:</b> May be well organized.
HIGHLY ILLUSTRATIVE - Graphical depiction of standards, requirements, and concepts.						1. <b>Lucidean:</b> Typically sparsely or not illustrated. 2. <b>Performance-based:</b> Typically sparsely or not illustrated. 3. <b>Form-based:</b> Typically highly illustrated. 4. <b>Hybrid Codes:</b> Any Form-based components typically highly illustrated.
READABLE - Information is presented clearly and laid out attractively.						1. <b>Lucidean:</b> Typically not very readable, but readability may be improved by revising layout and formatting, and adding tables, graphics and illustrations. 2. <b>Performance-based:</b> Typically not very readable, but readability may be improved by revising layout and formatting, and adding tables, graphics and illustrations. 3. <b>Form-based:</b> Typically highly readable due to graphical, tabular, and illustrative content, as well as modern layout and formatting. 4. <b>Hybrid:</b> Any Lucidean or Performance-based components typically would not be very readable, while any Form-based parts typically would be highly readable due to graphical, tabular, and illustrative content, as well as modern layout and formatting.
EASY TO USE - Extent to which users can navigate material.						1. <b>Lucidean:</b> Ease of use typically not an area of focus; variable according to organization, cross-referencing, readability, and graphical content. 2. <b>Performance-based:</b> Ease of use typically not an area of focus; variable according to organization, cross-referencing, readability, and graphical content. 3. <b>Form-based:</b> Typically designed to be easy to use due to focus on organization, graphical, tabular, and illustrative content, and modern layout and formatting. 4. <b>Hybrid:</b> Ease of use typically not an area of focus for Lucidean or Performance-based components and would be variable according to organization, cross-referencing, readability, and graphical content; any Form-based parts typically would be designed to be easy to use due to focus on organization, graphical, tabular and illustrative content, and modern layout and formatting.
UNDERSTANDABLE - Extent to which the material is easily comprehended.						1. <b>Lucidean:</b> Lucidean concepts of use separation and bulk standards are relatively simple so understandability typically is not an issue; depends in part on extent of use of text, rather than graphical and tabular content. 2. <b>Performance-based:</b> Understandability typically not an area of focus; some technical standards may be abstract or require professional assistance; understandability depends in part on extent of use of text and may be improved by enhancing graphical and tabular content. 3. <b>Form-based:</b> Typically developed to be easily understandable with a focus on simplified concepts, principles, and language, as well as reduction in text and extensive use of graphical, tabular, and illustrative content. 4. <b>Hybrid:</b> Understandability is typically not an area of focus for Lucidean or Performance-based components; Lucidean concepts usually are simple, so any Lucidean concepts should be understandable; Performance-based concepts and standards may be technical and therefore not easily understood; understandability may depend in part on extent of use of text and may be improved by enhancing graphical and tabular content. Any Form-based parts typically would be developed to be easily understandable with simplified concepts, principles, and language, as well as reduction in text and extensive use of graphical, tabular, and illustrative content.
PREDICTABILITY - Whether the code and procedures may be relied on to achieve a predictable result.						1. <b>Lucidean:</b> Not intended to deliver any particular development result; typically limited to use separation standards, bulk standards, and setback standards. Resulting development is like to be unpredictable. 2. <b>Performance-based:</b> Focused on managing external impacts of development on adjacent or nearby land, and typically including only use (activity) impacts and site impacts. The impact on the character of an area is not considered. Allows broad development flexibility if impact standards are met, so resulting development is unpredictable. 3. <b>Form-based:</b> Includes range of standards specifically intended to achieve a predictable high quality built environment. 4. <b>Hybrid:</b> Any Lucidean or Performance-based parts are not intended to result in any particular quality or form of development; any Form-based part would be focused on achieving a predictable high quality built environment.
ACHIEVEDCOMMUNITY VISION - The ability of the regulations to implement the vision articulated in the Comp Plan.						1. <b>Lucidean:</b> Most Lucidean codes are not able to achieve the goals and objectives of a Comprehensive Plan except to the very limited extent that they can be accomplished with use and bulk standards. 2. <b>Performance-based:</b> Typically, would be able to achieve Comp Plan vision only to limited extent that they are focused on external impacts of activities or site development. 3. <b>Form-based:</b> Typically include a range of development standards that address a wide array of typical Comp Plan goals. 4. <b>Hybrid:</b> Any Lucidean, Performance-based, or Form-based components of a Hybrid code is equipped to implement a Comp Plan vision to the same extent as that type of code alone could achieve the vision.
EASY TO ADMINISTER - Whether the regulations and procedures are clearly set out and simple to implement.						1. <b>Lucidean:</b> Typically easy to administer, as their requirements are usually limited to use separation and bulk standards. 2. <b>Performance-based:</b> Because standards typically are specific, administration may be easier than more general standards; however, some Performance-based standards are highly technical and may require professional assistance to determine compliance. 3. <b>Form-based:</b> These are designed to be easy to administer. Their standards are objective so that compliance with them can be readily determined. Additionally, standards are presented in a way that facilitates application review. 4. <b>Hybrid:</b> Lucidean, Performance-based and Form-based portions of a Hybrid Code would have the same ease of administration as a standalone code of the same type.
CONSISTENCY - Freedom from conflict within the regulations.						1. <b>Lucidean:</b> There is nothing inherent in Lucidean codes which prevents them from being consistent. 2. <b>Performance-based:</b> There is nothing inherent in Performance-based codes which prevents them from being consistent. 3. <b>Form-based:</b> There is nothing inherent in Form-based codes which prevents them from being consistent. 4. <b>Hybrid:</b> Hybrid codes may be as consistent as any other type code.

Excellent

Good

Fair

Poor

\* Also includes Lean Codes

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	Euclidean Codes	Performance-Based Codes	Form-Based Codes*
<b>KEY ELEMENT</b>			
SEPARATES USES	✓		
REGULATES EXTERNAL IMPACTS OF DEVELOPMENT		✓	
CONTEXTUAL STANDARDS INTENDED TO PROTECT/CREATE WALKABLE HUMAN-SCALED MIXED-USE DEVELOPMENT AND EXCELLENT PUBLIC REALM			✓

\* Also includes Lean Codes

## CONCLUSION

There are essentially three principal types of zoning codes, each categorized by its predominant underlying regulatory philosophy – Euclidean, Performance - Based, and Form-Based. In practice, each of these typically includes elements associated with at least one of the other categories and may be supplemented by Incentive - Based provisions. Each category has advantages and disadvantages. Some are better able to meet the General Code Criteria and include more of the necessary Code Elements than others. A hybrid code, which has elements of 2 or more principal code types, may be used to direct development so that it realizes a city’s vision.

## CHAPTER 5 - CODE REVISION STRATEGIES

### INTRODUCTION

This Chapter describes various strategies for the revision of Keene's development codes and regulations to address the issues pointed out in Chapter 3 "Evaluation of Existing Regulatory Context". The Code Revision Strategies, numbered 1-6, range from very specific revisions addressing identified errors to the development of a unified development code. Two of the discussed strategies include adjusting the City's existing Euclidean regulatory approach to one of the other alternative regulatory approaches, either combining the existing Euclidean approach with another approach, or moving entirely to another approach. See Chapter 4 "Alternative Regulatory Approaches".

Choosing a strategy will establish a direction for the format and organization of the Keene code revision project, as well as the ways in which development proposals are reviewed.

The selection of a revision strategy does not in and of itself change development regulations, standards, or procedures, revise or create new zoning districts, result in specific decisions about what content remains or what content is removed or replaced within the new current code. Those decisions and changes will be made during the next phase of the project.

Following is a description of code revision strategies in increasing order of complexity. Each of the described strategies would include the lower numbered strategies that precede it. Also discussed are advantages and disadvantages of each strategy in terms of expense, time required to complete the work prior to consideration by the Planning Board and City Council, extent of potential disruption of the development approval process, implementation challenge, and learning curve. Each strategy is also reviewed by its potential to address the issues identified in Chapter 3, "Evaluation of Existing Regulatory Context", including technical corrections, basic organization, readability, understandability and usability, procedural enhancements, substantive improvements, and enabling the City to achieve the development-related Comprehensive Plan objectives. See Chapter 3, "Evaluation of Existing Regulatory Context".

### STRATEGY #1. SPECIFIC REVISIONS TO CORRECT IDENTIFIED ERRORS

As noted the Chapter 3, "Evaluation of Existing Regulatory Context", there are a number of provisions among and within the various development codes, regulations and standards that are internally inconsistent or inconsistent with other provisions. The language of other provisions does not accurately express what was intended.

The least extensive revision strategy would be to make specific technical correction revisions to the existing documents to address those inconsistent and inaccurate provisions. See Chapter 3, "Evaluation of Existing Regulatory Context." An example of such revisions would be the removal of references to planned unit developments, which were left behind when planned unit developments were intended to be eliminated from the code and regulations.

This strategy would not specifically address issues identified in Chapter 3, "Evaluation of Regulatory Context" regarding readability, usability, organization, procedural improvements, organizational issues, or consistency with the City's Comprehensive Master Plan, although some of those concerns may be improved to some

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limited extent by Strategy #1. It also would not include any change to one of the alternative regulatory approaches discussed in Chapter 4, “Alternative Regulatory Strategies”.

Because under Strategy #1 revisions would be minimized and the existing code and regulations and their basic regulatory approach would remain unchanged except for correction of errors, it would be the least expensive and time intensive. Strategy #1 also would also involve little to no learning curve and be the least disruptive and challenging to implement among the strategies described in this Chapter, as the resulting documents would be still familiar to everyone involved in the development review process. On the other hand, as noted above, this strategy would not address a number of the issues identified in this Report. See Table 6.1 “Summary of Code Revision Strategies”, below.

### STRATEGY #2. BASIC RE-ORGANIZATION + STRATEGY #1

In addition to making the technical corrections covered by Strategy #1, this second strategy would include minimal reorganization of the codes and regulations to address the most significant organizational issues, such as location of definitions and consolidation of Historic District Regulations into the Zoning Code. See Chapter 3, “Evaluation of Existing Regulatory Context”.

Strategy #2 would be incrementally more expensive than Strategy # 1 and would take slightly longer than the previous option. Strategy #2, however, should not create any significant challenge to users who are familiar with the existing documents. As with Strategy # 1, it would not address several of the issues discussed in Chapter 3, “Evaluation of Existing Regulatory Context, such as readability, usability, organization, procedural improvements, consistency with Comprehensive Plan objectives, or changes in regulatory approach. Strategy #2 would have a very short learning curve and be only minimally disruptive and challenging to implement, as it would involve only technical corrections and minimal reorganization of the existing documents. See Table 6.1 “Summary of Code Revision Strategies”, below.

### STRATEGY #3. READABILITY, UNDERSTANDABILITY, AND USABILITY REVISIONS + STRATEGIES #1 & 2

Under the third Strategy, in addition to the first two, revisions would be made to make the documents more readable, understandable, and usable. Revisions addressing readability would include formatting and layout improvements. Provisions would be made more understandable by simplifying language where appropriate and providing explanatory material where useful. Usability would be enhanced by providing illustrations and graphical content and presenting standards in a more graphical or tabular manner and by additional reorganization of the material to make it more easily navigated. See Chapter 3 “Evaluation of Existing Regulatory Context - Introduction”, and Table 4.1, “Evaluation of Existing Regulations Against General Code Criteria”, Table 4.2, “Ranking of Existing Regulations Against Development-Related Comprehensive Plan Objectives”, and Table 6.1, “Summary of Code Revision Strategies, below”.

Strategy #3 would be significantly more expensive, and time-consuming than Strategy #2. Because it would significantly affect the look, feel and possibly the location of various provisions, it could require some time for those familiar with the existing documents to become comfortable with the revised code. Again, this Strategy, while addressing readability, understandability and usability issues, would not include revisions to

address procedural issues, consistency with the Comprehensive Master Plan, substantive improvements or changes in regulatory approach.

#### **STRATEGY #4. PROCEDURAL ENHANCEMENTS + STRATEGIES #1-3**

In addition to the revisions noted for Strategies 1, 2, and 3, Strategy # 4 would provide revisions to address identified procedural issues and improvements. This would include revisions to simplify the procedural and administrative provisions of the existing documents. Additionally, Strategy #4 could include shifting responsibility for certain procedures and approvals from the Planning Board to Staff, such as more responsibility in reviewing and approving conforming applications. Much of the success of this Strategy would depend on the City's moving to more objective standards and relying less on Site Plan Review, so it could also include clarification of the standard of review and extent of discretion exercised in that process.

The additional time and expense of Strategy #4 over Strategy #3 may range from slightly- to moderately-more expensive and time-consuming. The extent of disruption to daily administration, learning curve, and implementation challenge also would depend on the extent of the revisions, as those considerations vary based on familiarity with the resulting procedures. It should be noted that in the absence of substantive revisions to standards as described in Strategy #5, it may be difficult to gain support for moving more responsibility to Staff or for changing to a less discretionary approval process.

While this Strategy will address many of the issues identified under Chapter 3, "Evaluation of Existing Regulatory Context", it would not include revisions necessary for any change of regulatory approach, or to reach the development goals of the Comprehensive Master Plan. See Chapter 3, "Evaluation of Existing Regulatory Context - Introduction", and Table 4.1, "Evaluation of Existing Regulations Against General Code Criteria", Table 4.2, "Ranking of Existing Regulations Against Development-Related Comprehensive Plan Objectives", and Table 6.1, "Summary of Code Revision Strategies".

#### **STRATEGY #5. SUBSTANTIVE IMPROVEMENTS TO STANDARDS AND REGULATORY APPROACH + STRATEGIES #1-4**

Strategy #5 would include revisions to incorporate changes necessary to achieve consistency between the City's development regulatory documents and the goals of the Comprehensive Master Plan and to move to another alternative regulatory approach. This could be accomplished largely by addition of a new chapter to the existing documents which would be applicable to all or specific parts of the City. It may either retain existing Euclidean provisions for most of the City and add Form-Based regulation for certain parts of the City, such as the Downtown and activity centers, or replace all of the existing Euclidean provisions with Form-Based regulations.

This Strategy would be significantly more expensive and take much longer to complete than the previous ones.

This Strategy, due to the introduction of new standards and an alternative regulatory approach, would require users to become familiar with the new concepts, would entail significantly more disruption, a greater implementation challenge, and a steeper learning curve than Strategy #4. The extent of this difference would vary depending on whether the alternative regulatory approach used is a single-approach code or is a Hybrid

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Code that includes the existing Euclidean provisions as well as one or more other regulatory approaches. For example, a Hybrid Code which retains the existing Euclidean provisions for parts of the City and adds a new Form-Based chapter for activity centers would be less disruptive and easier to implement than a solely Form-Based Code because the Euclidean parts of the existing code with which users are familiar would be largely retained (other than revisions noted above) and rezoning would be limited to those areas for which the City desires Form-Based regulation to be applicable. See Chapter 4, “Alternative Regulatory Approaches”.

Strategy #5 is the minimum strategy necessary to address consistency between the City’s development codes and regulations and the development-related components of the Comprehensive Master Plan identified in Chapter 3, “Evaluation of Existing Regulatory Context-Audit of Existing Codes & Regulations Against Development-Related Comprehensive Plan Objectives”. See Table 4.1, “Ranking of Existing Regulations Against Development-Related Comprehensive Plan Objectives and Table 4.2, “Ranking of Code Revision Strategies Against Development-Related Comprehensive Plan Objectives”.

### **STRATEGY #6. CONSOLIDATION OF DEVELOPMENT REGULATIONS INTO A SINGLE DOCUMENT INCORPORATING STRATEGIES #1-5**

The last Strategy would consolidate most or all of the City’s development codes and regulations into a single development regulatory code (sometimes called a Unified Development Code or a “UDC”.) This would be the most comprehensive change because it would include all of the improvements of Strategies #1-5 and would require a significant reorganization of some parts of the included code and regulations.

Strategy #6 would be much more expensive and time consuming than any of the other Strategies. Due to the extent of revisions, it would be the most disruptive in terms of ongoing development regulation administration, would be the most challenging to implement, and would have the longest learning curve. See Table 4.2, “Ranking of Code Revision Strategies Against Development-Related Comprehensive Plan Objectives”.

The principal advantage of Strategy #6 would be that it would result in a single development regulatory document rather than requiring users to search through a number of separate documents. This Strategy may or may not consolidate all codes that have a less direct impact on development. For example, the Building Code and Fire Code, which impact development but are concerned principally with safety, may be referred to in, but remain outside of, a consolidated code. In any event, a Unified Development Code would include all zoning, subdivision, site plan, and development standards.

The following Table, “Summary of Code Revision Strategies”, summarizes each of the above-discussed Code Revision Strategies:



	STRATEGY 1: Specific Revisions to Correct Identified Inconsistencies and Unclear Provisions Errors	STRATEGY 2: Basic Reorganization + Strategy 1	STRATEGY 3: Readability, Understandability & Usability Revisions + Strategies 1 & 2	STRATEGY 4: Procedural Enhancements + Strategies 1-3	STRATEGY 5: Substantive Improvements to Standards & Regulatory Approach + Strategies 1-4	STRATEGY 6: Consolidation of Development Regulations into Single Document incorporating Strategies 1-5	Explanation
<b>CONSIDERATIONS</b>							
OUT-OF-POCKET EXPENSE	\$	\$\$	\$\$\$	\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$\$	Strategies 1-6 are in order by reference to the extent of revision and work required. The expense increases accordingly. Strategy 1 is the least work-intensive, and is the least expensive. Strategy 2 is incrementally more involved, so the expense is slightly more. Strategy 3 will be significantly more involved than Strategy 2, so it will cost significantly more. The expense of Strategy 4 will depend on the extent of the revisions, and would range from moderately more to significantly more expensive. Strategy 5 would require much more work than the preceding Strategies and would be much more expensive to complete. Strategy 6 would require significantly more work than Strategy 5 and would be much more expensive.
PREPARATION TIME BEFORE SUBMISSION TO PLANNING BOARD & CITY COUNCIL	3 MONTHS	4 MONTHS	5 MONTHS	6 MONTHS	12-18 MONTHS	18-24 MONTHS	Strategies 1-6 are in order by reference to the extent of revision required. Strategies 1 and 2 would be less work intensive. Strategy 3 would take additional time to revise layout, further reorganize, and create graphic content. Strategy 4's addition of procedural enhancements could add significant additional work, depending on the extent of the revisions. Strategy 5, because it would add both substantive improvements and one of the Alternative Approaches, would be considerably more involved than the preceding Strategies. Strategy 6 would be a much more involved project than even Strategy 5, as it would entail a reorganization and revision of much of the existing codes and regulations.
DISRUPTION OF STAFF / APPROVAL PROCESS, LEARNING CURVE / IMPLEMENTATION CHALLENGE	None	None to Insignificant	Insignificant	Moderate	Significant	More Significant	The lower numbered Strategies involve less work and their revisions would not alter the basis of the existing regulatory scheme, so they would not result in any significant disruption. Strategy 4 would involve changing development approval procedures, so it has potential to be moderately disruptive. Strategy 5 would be introducing a new regulatory approach, so it could be significantly disruptive. Strategy 6 could be very disruptive, as it would involve all of Strategies 1-5, a consolidation of regulations, and potentially an extensive reorganization.
IDENTIFIED INCONSISTENCY & CLARIFICATION ISSUES ADDRESSED	●	●	●	●	●	●	Even the minimum strategy, Strategy #1, would include revisions to correct identified inconsistencies and unclear provisions.
IDENTIFIED ORGANIZATIONAL ISSUES ADDRESSED	○	◐	◑	◒	◓	●	Strategy 1 does not include a reorganization component. Strategies 2-4 have a minimal organizational component. Strategy 5 would include more reorganization as noted in Chapter 4, "Analysis of Existing Regulatory Context". Strategy 6 would reorganize where necessary a significant part of the City's development codes and regulations in connection with the consolidation of those provisions.
UNDERSTANDABILITY, READABILITY, AND EASE OF USE ISSUES ADDRESSED	○	○	◐	◑	●	●	Neither of Strategies 1 or 2 addresses these issues. Strategies 3 and 4 would result in significant enhancement of readability, understandability, and usability improvements. Strategies 5 and 6 would improve these factors even more to the extent that the Form-Based alternative regulatory approach is selected.
IDENTIFIED PROCEDURAL ISSUES ADDRESSED	○	○	○	●	●	●	None of Strategies 1-3 focuses on procedural enhancement. Strategies 4-6 would address simplification of procedures and any adjustment of administrative responsibilities deemed appropriate by the City.
IDENTIFIED COMPREHENSIVE PLAN GOALS & OBJECTIVES ADDRESSED INCLUDING ALTERNATIVE REGULATORY APPROACH	○	○	○	○	●	●	The ability to address many of the goals of the Comprehensive Plan depends on substantive improvements and adoption of an alternative regulatory approach which contains a Form-Based component. Only Strategies 5 and 6 would include those revisions.

Excellent ●      Good ◐      Fair ◑      Poor ○

## CHAPTER 6 – REPORT SUMMARY & RECOMMENDATIONS

### REPORT SUMMARY

As noted in the preceding Chapters, there are a number of issues within the City’s Zoning Code, Site Plan and Subdivision Regulations, and Development Standards that require revision in order to address them. Those issues range from certain identified errors and ambiguities, to a few misplaced provisions, to the documents being not optimally readable, understandable or usable, to an unpredictable discretionary application process, to subjective standards and a regulatory approach not intended to achieve the City’s vision, to the City’s development regulatory documents being spread among several separate documents.

Chapter 5, “Code Revision Strategies”, presents several code revision strategies to address either some or all of these issues, depending on the Strategy. Designated as Strategies 1-6, those include technical correction, basic reorganization, improvement of readability, understandability and usability, procedural enhancement, substantive improvements including an alternative regulatory approach, and consolidation of the primary regulatory documents into a single document. Moving from one Strategy to the next higher numbered Strategy contemplates an increasing level of revision to address the issues identified in this Report. Strategy 5’s substantive improvements and alternative regulatory approach is the minimal strategy that can implement certain aspects of the Comprehensive Plan vision. Each different Strategy also involves a different level of expense, time, possible temporary disruption, learning curve and implementation challenge.

Chapter 4, “Alternative Regulatory Approaches”, discusses various types of development regulatory approaches and their ability to address the various issues identified with the City’s existing code, regulations, and development standards. Some of those approaches are better equipped to handle certain regulatory issues than others. Code revision Strategy #5 includes substantive revisions that may or may not include another regulatory approach that either substitutes another regulatory approach for the City’s existing approach, or a Hybrid Code that retains the existing approach and adds another approach for certain areas of the City.

The manner in which the code revision project should proceed depends on what the City wants to accomplish with it, as well as what it is able to commit to the project in terms of financials, time, staff and City official effort, and other resources. Chapter 5, “Code Revision Strategies”, describes each code revision strategy in those terms.

Following is a summary of the categories of issues identified in the existing regulatory context, and which Code Revision Strategy(ies) would address each of them:

Technical corrections to correct errors and ambiguities are part of all Strategies, including the least inclusive, Strategy #1.

Strategy #2 and all higher-numbered Strategies would cover both technical corrections and shifting misplaced provisions to their appropriate locations.

Readability, understandability, and usability improvements would be included in Strategy #s 3-6; however, Strategy #s 5 and 6 would result in an even higher degree of readability, understandability, and usability to the extent that the selected regulatory approach included in those Strategies is a Form-Based Code or a

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Hybrid Code with a Form-Based component. This is because Form-Based Codes are focused on these characteristics, while other approaches are not.

Strategy #s 4-6 would all include procedural enhancements. This may be more easily provided in Strategy #s 5 and 6, as those also would provide substantive improvements, including objective standards and an alternative regulatory approach, which would better support an effort to streamline the application process.

Strategy #s 5 and 6 would address to all of the issues identified in this Report discusses a number of issues that would require substantive improvement revisions to address them. Those Strategies also would be necessary to revise the code and regulations to address the issues identified in this Report as requiring, or being better addressed by, introduction of an alternative regulatory approach.

Finally, Strategy #6 would provide the additional benefit of consolidating the City's primary development regulations into a single document.

## RECOMMENDATIONS

Each of the code revision strategies discussed in this Report is valuable and should be seriously considered by the City in determining how to proceed with its code revision project. The improvements to be made within certain of those strategies are more important than others. Each Strategy also differs from the others in terms of expense, time, disruption, learning curve, and implementation challenge. As noted before, each Strategy also includes the lower number Strategies.

The following recommendations are based on our review and understanding from our issue exploration, evaluation of existing regulatory context, and the City's Comprehensive Plan, as well as our experience and professional judgment:

### ***Strategy #1 – Technical Corrections***

It is clear that Phase II of the development code revision project should include revisions to make the identified technical corrections (Strategy #1). It goes nearly without saying that it is important for the City's development codes and regulations to be correct. Making these technical corrections would be inexpensive, would not take long to complete, and would not disrupt daily operations, involve any learning curve, or be challenging to implement.

### ***Strategy #2 – Basic Reorganization of Misplaced Provisions***

While not critical, the identified basic reorganization items should be addressed (Strategy #2). This would minimally improve usability by placing several identified provisions together where they could be more easily found, rather than having them in several places. This would be marginally more expensive than Strategy #1 and should not involve any significant disruption, learning, or implementation challenge.

***Strategy #3 – Readability, Understandability, and Usability Enhancements***

Readability, understandability, and usability are basic, but important, code characteristics. Failure of the existing code, regulations, and standards to rank highly in regard to these characteristics does not make them any less binding, enforceable, or capable of regulating development within the City. To that extent, it cannot be said that improvements for purposes of readability, understandability, and usability are critical. However, these characteristics of the City's development code and regulations should be improved. Strategy #3 would accomplish this by changing their layout and formatting, as well as by introducing graphical content (Strategy #3). While this would moderately increase the expense of the project, any disruption, learning curve, or implementation challenge should be minimal, and those considerations would be outweighed by the benefit of making these improvements. As noted above, these aspects of the City's development codes, regulations, and standards could be improved further by other Strategies.

***Strategy #4 – Procedural Enhancements***

Some have the perception that the City is not developer friendly. This probably is a result of the existing application process, which is largely discretionary, and the subjective development standards that are applied in the process. The City's Comprehensive Plan calls for the development approval process to be streamlined. To a large extent, the City's development application procedures are established by State law. To the extent that any steps of those procedures could be shortened within the constraints of State law, however, the City would be well served to do that.

The application process could be streamlined and made more predictable by adding a clear standard of review for decisions that is less discretionary than presently is used. The approval process could be further streamlined by providing for by-right approval of all objective requirements and standards with which an application complies. This would be further improved by adopting more objective standards (see the following recommendation regarding Strategy #5. Any subjective standards, policy decisions, or other matters requiring interpretation or discretion could still be handled in the present manner.

The procedural enhancements of Strategy #4 could significantly increase the cost of the code revision project and would add to the time for project completion. Any revised procedures could be initially disruptive until users gain familiarity with them. In addition, it will require adjustments within the Planning Staff and Planning Board to gain confidence in any by-right approval process when they have been accustomed to a discretionary process. The learning curve encountered for Strategy #4 would not be difficult conceptually as most existing procedures would remain in place, although it may require an educational effort for decision-makers to accept and gain confidence in revised procedures. The same could be said for the challenge in implementing Strategy #4. Taken together, these considerations lead us to recommend that the City should revise its development application procedures only if it is prepared to move to a less discretionary process based on less subjective standards are presently in use.

***Strategy #5 – Substantive Improvements and Alternative Regulatory Approach***

Throughout the preceding Chapters, opportunities for substantive improvements to the existing development code, regulations, and standards are noted. A number of the issues requiring substantive improvements could be addressed by revisions to the existing documents and without adopting a new or additional

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regulatory approach. Others could be addressed without introducing an alternative regulatory approach, but could be revised more effectively using with an alternative regulatory approach that focuses more on them. Finally, because the existing regulatory approach was not intended to result in any particular development outcome, there are several development-related strategies and objectives of the Comprehensive Plan which require use of another regulatory approach for areas in which the City desires for them to be implemented.

Substantive improvements, therefore, are critical to address many of the important issues identified in this Report. As Strategy #5 and #6 are the only Strategies which include that element, a key recommendation of this Report is that the code revision project should include either Strategy #5 or #6.

Because Strategy #5 and #6 likely would include the introduction of an alternative regulatory approach, the recommendation to proceed with one of those Strategies also must recommend the alternative approach to take.

The Comprehensive Plan calls for infill compatible with existing development, mixed-uses, diverse housing types, and walkable and bikeable human-scaled activity centers, as well as urban design standards. As these Comprehensive Plan strategies focus on form and character rather than separating uses or managing external impacts, they are foreign to predominantly Euclidean Codes and Performance-Based regulation. As noted in Chapter 4, "Alternative Regulatory Approaches", the alternative best suited for preserving, transforming, or creating places having these characteristics is a Form-Based Code or a Hybrid Code which has a significant Form-Based component to regulate areas in which those development characteristics are desired.

Therefore, we further recommend that an alternative regulatory approach be used as part of Strategy #5 or #6 and that the approach either be a predominantly Form-Based Code to replace the existing regulatory approach or a Hybrid Code which adds a Form-Based component for Downtown and activity centers. It would be anticipated that either approach would include Performance-Based provisions to some extent, and may include Incentive-Based provisions for certain matters.

As to whether the City should move to a predominantly Form-Based approach for the entire City or to add to its existing predominantly Euclidean approach a significant Form-Based component for Downtown and other activity centers, several considerations need to be taken into account.

Considerations that would weigh in favor of adopting a predominantly Form-Based Code for the entire City would be the efficiency of having a single regulatory approach and the effectiveness of a Form-Based Code to address most of the issues identified in this Report. Specifically, (a) Form-Based regulation could better assure that infill in existing neighborhoods is in keeping with their character; (b) Form-Based regulation focuses on walkable and bikeable human-scaled mixed-use communities; (c) Form-Based regulation is better able to provide for development that can change areas to have an intended resulting character, where the City desires such transformation; (d) Form-Based Codes contain context-based standards to protect the character of existing areas or to create areas with an intended development outcome; (e) Form-Based Codes are inherently more readable, understandable, and usable due to their focus on those aspects of best coding practices, including minimization of text and presentation of standards and explanatory material in graphical form, and (f) Form-Based Code standards are primarily objective and easier to administer and comply with than those requiring interpretation.

Factors that would weigh in favor of a Hybrid Code that retains the existing regulatory approach for much of the City and adds a Form-Based approach for the Downtown and other activity centers are: (a) because

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single family residential areas (i) are predominantly single-use areas featuring houses as their only building type, (ii) already have the dimensional standards may be sufficient to maintain their character with little or no substantive revision, (iii) are already walkable, (iv) may not be subject to significant development pressure, they may not need Form-Based regulation as much as other areas; (b) a Hybrid Code would not require rezoning areas that remain subject to the existing regulatory approach; (c) the City is familiar with the existing approach, so retaining it in parts of the City would not be as disruptive and less of an implementation challenge; and (e) all of the advantages of Form-Based regulation would be available to areas in which it is most needed.

On balance, and although it is a close question, we would recommend that Strategy #5 or #6 be implemented with a Hybrid Code as its alternative regulatory approach. The decisive factor would be that although a predominantly Form-Based Code would be better able to address some of the City-wide development regulation issues and a Hybrid Code may be somewhat more difficult to administer than a code that is based on a single regulatory approach, a Hybrid Code will result in less disruption and will be easier to implement because it would leave the existing approach in place in much of the City. Moreover, if the City decides later that it wants other parts of the City to have Form-Based regulation, that step could still be taken in the future.

***Strategy #6 – Consolidation of Development Code, Regulations, and Standards***

The City's primary development regulations are in several separate documents, which can introduce overlapping and conflicting provisions, as well as make it more difficult for a user to navigate them. Some cities have found it useful to have their development regulations in a single unified development code that includes all of the primary zoning, site plan, subdivision, development standards, and procedural provisions. A unified code would be created by consolidating provisions from the various existing regulating documents, revised as described in Strategy #s 1-5.

Creation of a unified development code is very challenging and time-consuming, particularly as related to the effort required to properly integrate and organize provisions, their definitions, and regulatory approaches of the various components. It would be significantly more expensive and take much longer to complete than would Strategy #5. The revision process would be more disruptive and take a good bit more Staff and City Official time and attention than Strategy #5. The learning curve and implementation challenge should be no worse than those of Strategy #5 once users become familiar with the locations of various provisions in the unified document.

The resulting code would be the best overall code that could come from the City's code revision efforts. It should be noted, however, that the sole benefits of a unified development code over the revised code, regulations and standards that would result from Strategy 5 would be additional ease of use and efficiency. It would not otherwise enhance the City's development regulations in terms of the issues identified in this Report beyond the improvements already included in Strategy #s 1-5.

Our recommendation would be for the City would be to proceed with Strategy #6 only if it believes the value to the City in terms of the heightened ease of use and efficiency that would come from a unified development code is greater than the additional cost, time, City Staff and Official involvement, and disruption that would be incurred in creating a unified development ordinance.