

Amended 2005-32
No. 332
Amended 2005-63
No. 604
Amended 2006-2
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IN CIL. COMMITTEE ON
LAW-MAKING

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2004-41

No. 544 **AN ORDINANCE** IN AMENDMENT OF CHAPTER 27 OF THE ORDINANCES OF THE CITY OF PROVIDENCE ENTITLED "THE CITY OF PROVIDENCE ZONING ORDINANCE" APPROVED JUNE 27, 1994, AS AMENDED. .

Approved November 8, 2004

Be it ordained by the City of Providence:

Section 1: Chapter 27 of the Ordinances of the City of Providence, entitled "The City of Providence Zoning Ordinance" approved June 27, 1994, as amended, is hereby amended as follows (the text to be removed is crossed out; the new text is underlined):

A. Amend the third paragraph in Section 101.7 to read as follows:

DD Downcity District - This overlay zone is intended to ~~direct the development of the Downtown (D-1 Zone) by regulating~~ the design of buildings and open spaces and by fostering preservation of historic structures to insure that: new development is compatible with the existing historic building fabric and the historic character of downtown; historic structures are preserved, and design alterations are in keeping with historic character; development relates to the pedestrian; ~~retail is developed along certain street frontages; development promotes the arts, entertainment and housing; and, the goals of the Downcity Plan of the Comprehensive Plan are achieved. This overlay zones boundary shall be the same as the D-1 District boundary as described in Section 101.3, generally encompassing the area bounded by Smith Street, North Main Street, South Water Street, Ship Street, Bassett Street, and Interstate 95. The D-1 zone north of Smith Street (bounded by Smith Street, Interstate 95, Orms Street, Charles Street and Mill Street) shall not be included in the DD Downcity District.~~

B. Amend Section 103 to read as follows:

Section 103 - Official Zoning Map: The official zoning map of the City shall consist of ~~two~~ three series of maps as follows:

- A) The boundaries of the R, C, D, M, W, OS and PS Zones are hereby established as shown on a series of maps in the office of the City Clerk entitled "City of Providence Official Zoning District Maps", dated April 26, 1991, adopted on October 24, 1991, and amended from time to time in accordance with Rhode Island General Laws (RIGL) Title 45 Chapter 24, consisting of 129 separate maps numbered 1 to 129.
- B) The boundaries and regulating information where applicable, of the HD, MSCOD, CCOD, and WSOD overlay zoning districts and 1-1, 1-2 and 1-3 floating districts, as defined, are hereby established as shown on a series of maps on file in the office of the City Clerk entitled "City of Providence Official Overlay-Zoning District Maps- Overlay Zoning Districts", dated April 26, 1991, adopted on October 24, 1991, and amended from time to time in accordance with Rhode Island General Laws (RIGL) Title 45 Chapter 24.

JUL 1 2004
FIRST READING
REFERRED TO COMMITTEE ON
ORDINANCES
Michael P. Clements
CLERK

Councilman Allen By Request

THE COMMITTEE ON

Ordinances

Recommends

Ann M. Stiles

CLERK

7-19-04. Con 4
8-26-04. Schedule P. Hrg
9-20-04. P. Hrg held - Con 4 to 9/27
9-27-04. P. Hrg held
9-27-04. Reg 104 - Con 4

THE COMMITTEE ON
ORDINANCES

Approves Passage of
The Within Ordinance

Ann M. Stiles

Clerk

10-7-04

C) The boundary and regulating information where applicable, of the DD overlay zoning district, as defined, is hereby established as shown on a map on file in the office of the City Clerk entitled "City of Providence Official Overlay Zoning District Maps- DD Downcity District", adopted in accordance with Rhode Island General Laws (RIGL) Title 45 Chapter 24.

The "City of Providence Official Zoning District Maps", and the "City of Providence Official Overlay Zoning District Maps- Overlay Zoning Districts", and the "City of Providence Official Overlay Zoning District Maps- DD Downcity District" constitute the official zoning map of the City and are hereby adopted and made part of this ordinance.

C. Amend Section 502 to read as follows:

Section 502 - Downcity District: The purpose of the Downcity District is to encourage and direct development in the downtown to ensure that: new development is compatible with the existing historic building fabric and the historic character of downtown; historic structures are preserved, and design alterations are in keeping with historic character; development encourages day and night time activities that relate to the pedestrian and promote the arts, entertainment and housing; and that the goals of the Comprehensive Plan are achieved. The design of the exterior of all buildings, open spaces and all exterior physical improvements in the Downcity District shall be regulated and approved in accordance with the provisions of this Section.

502.1 - Downcity Design Review Committee (DRC): The Downcity Design Review Committee (DRC) is established to carry out the purpose of the Downcity District. All development in the District shall be reviewed and approved by the DRC in conformance with this section.

A) Powers and Duties of the DRC: The DRC shall have the following powers and duties:

1. Regulate Development in the Downcity District: The DRC shall be authorized to regulate all improvements on public and private land in the district including the construction, reconstruction, alteration, repair, demolition, removal, rehabilitation of the exterior of new and existing buildings and appurtenances except as otherwise provided in this ordinance.
 - a. Capital Center Special Development District: Any property located in the District that is also located in the Capital Center Special Development District established in accordance with 2-361 through 365 of the City Code of Ordinances, shall comply with the regulations herein pertaining to uses, height, signs, landscaping and parking. Properties in the Capital Center Special Development District shall be governed by the rules and regulations of the Capital Center Commission which it establishes from time to time pursuant to state law as well as the provisions of Section 504 of this Ordinance. Until such time as the Capital Center Special Development District ceases to exist, properties in that district shall otherwise be exempt from the review process of the DRC established under this Section 502.
2. Waivers: Where specifically authorized by this Section, and in accordance with all requirements herein, the DRC may grant waivers that carry out the purpose of the Downcity District; are in harmony with the general purposes and intent of these regulations; and, are in accordance with the requirements of this Section. Waivers may be granted to those regulations governing parking garage uses, signs, parking lot landscaping, interior off-street loading, new construction, and demolition. In granting a waiver, the DRC may impose such conditions deemed necessary to carry out the purpose of this Section.
3. Adoption of Rules: The DRC shall adopt and publish all rules necessary to carry out its functions under the provisions of this section.
4. Incentives: The DRC is authorized to grant development incentives in the form of density bonuses, height bonuses, or transfers of development rights, in accordance with the provisions of this Section.

B) Membership:

1. Members: The members of the DRC should consist of people who have demonstrated interest and commitment to the vision and historic character of Downtown and to its economic development. The DRC shall consist of five (5) members. Four (4) members shall be appointed by the Mayor as follows: one (1) registered Rhode Island architect, ~~one (1) two (2)~~ property owners in the District, and one (1) developer, real estate agent or builder, ~~and one (1) general member who is a resident of the city.~~ The chair of the HDC or a member of the HDC appointed by the chair shall be the fifth member of the DRC. When the DRC is first established, the Mayor shall appoint two (2) members for one (1) year and two (2) members for two (2) years. The appointee of the HDC chair shall serve for three (3) years. Members shall afterward be appointed for three year terms. A list of five (5) nominees shall be accepted from the Providence Foundation for each property owner representative.
2. Alternate Members: The Mayor shall appoint the ~~first two~~ alternate members as follows: one (1) ~~who shall be a registered Rhode Island architect or landscape architect and one (1) property owner in the District.~~ ~~The chair of the HDC shall appoint the second alternate member who shall be a resident of the city.~~ Each shall be appointed for a one (1) year term and shall sit and may actively participate in hearings. The first alternate shall vote if one member is unable to serve at a hearing and the second alternate shall vote if two members of the board are unable to serve at a hearing.
3. Vacancy: In the event of a vacancy, the vacancy shall be filled in accordance with the original appointments to fill the unexpired term(s). Vacancies shall be filled within ninety (90) days.
4. Organization: The Mayor shall appoint a chair. The DRC shall elect from its members a vice chair. The Department of Planning and Development shall assign staff to support and work with the DRC.

C) Conduct of Business: The Chair shall preside over all DRC meetings and shall have the right to vote. The Vice Chair shall, in the case of absence or disability of the Chair, perform the duties of the Chair. All meetings of the DRC shall be open to the public.

1. Quorum: Three (3) members shall constitute a quorum for reviewing applications for Certificates of Design Approval. Five (5) members shall constitute a quorum for reviewing requests for waivers or for development incentives.
2. Required Vote: The concurring vote of three (3) members of the DRC shall be necessary to approve an application. The concurring vote of four (4) members shall be necessary to grant a waiver or development incentive.
3. Public Hearing: The DRC shall hold a public hearing on any request for a waiver or a development incentive in accordance with Article IX of this ordinance.
4. Record: The DRC shall keep a record of all proceedings, findings, decisions and actions and such record shall be open to the public. All decisions evidencing the granting of a waiver shall be recorded by the applicant in the Land Evidence Records of the City. No permit shall be issued until the waiver or development incentive is properly recorded in said Land Evidence Records. Failure by the applicant to file the decision within thirty (30) days after its issuance shall cause said decision automatically to become null and void.

D) Procedures for Design Approval:

1. Application: Before any property owner commences any improvements on public or private land including the construction, reconstruction, alteration, repair, demolition, removal and rehabilitation of the exterior of new and existing buildings and appurtenances within the District, a written application for such work and bonus, if applicable, shall be submitted to

the Director. Said application shall be developed by the DRC and shall include all information which is reasonably necessary to evaluate the proposed work.

The Director shall forward the application to the DRC. No building permit shall be issued before the project receives design approval from the DRC or its staff. For those projects where no building permit is required, the Director shall refer such projects to the DRC for approval.

No DRC approval shall be necessary for the following:

- i. work meant to remedy damage or deterioration of a structure or its appurtenances, which involves no change in type of materials, dimensions, design, configuration, texture or visual appearance;
 - ii. the painting of previously painted surfaces;
 - iii. the installation of traffic signage, or;
 - iv. street improvements such as plant material, street paving, curbing, drainage.
2. Review: The DRC shall review all applications for new construction, major additions, moving of structures and demolition. Such review shall be held during a regular meeting of the DRC open to the public, for which at least seven (7) days advance written notice has been given by first class mail to the applicant, property owner, abutting property owners, and all others requesting notice of the DRC's meetings. The DRC may authorize staff to make determinations for repairs (except for replacements in kind as noted above), alterations and minor additions; staff reviews may be conducted without public notice. A determination shall be made within thirty (30) business days of receipt of a complete application. Staff determinations shall be completed within fifteen (15) business days of receipt of a complete application. These time periods may be extended by mutual agreement between the Applicant and the DRC or staff. In the event that the DRC shall make a written determination within the thirty (30) day period that a particular application requires further time for additional study and information, then the DRC shall have a period of up to ninety (90) business days from the date of acceptance of a complete application within which to act on such application. Nothing in this section shall be construed to prevent the applicant and the DRC from mutually agreeing on an extension beyond the ninety (90) days.
3. Failure to Act: The failure of the DRC or its staff to act within thirty (30) business days from the date of filing a complete application shall be deemed to constitute approval unless an extension is agreed upon mutually by the applicant and the DRC or its staff.
4. Determination: The DRC shall be authorized to approve, approve with conditions, or deny an application for Design Approval. Approval shall be based upon conformance with the regulations of this section. The DRC shall place on the record its reasons and conditions for approval or reasons for denial of the application, consistent with the provisions of this Ordinance. All determinations shall be made in writing. A copy of DRC determination shall be filed with the applicable building permit.
5. Waivers and Development Incentives: Whenever an application requests a waiver to the regulations of this Section, or a development incentive in accordance with the regulations of this Section, a public hearing shall be held in conformance with Section 903 of this Ordinance.
6. Accept Advice from Other Agencies: In order to assist in its review of plans, the DRC may request the HDC or other agencies to review and comment on proposals.
7. Appeals: A person or persons jointly or severally aggrieved by a decision of the DRC shall have the right to appeal the decision to the Board in accordance with the procedures of Article IX and Title 45, Chapter 24 of the General Laws of Rhode Island. ~~and a further right of appeal from the Board to the Supreme Court by writ of certiorari. The concurrent vote of four (4) members of the Board shall be required for any decision upon said~~

~~appeal. Said appeal shall be claimed within twenty (20) days following the issuance of a written determination by the DRC on any plan or petition submitted to it or any revisions thereof. When hearing appeals from DRC decisions, the Board shall not substitute its own judgment for that of the DRC, but must consider the issue upon the findings and record of the DRC. The Board shall not reverse a DRC decision except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence on the record. The Board shall file a written decision explaining the basis of each decision for the record, and the Board shall send a copy of the decision to the applicant and to the DRC. The filing fee and the filing procedure for an appeal of the decision of the DRC shall be the same as that for an appeal of the decision of the Director.~~

8. Enforcement: This section shall be enforced in accordance with Article VIII of this Ordinance.
9. Filing Fees: Any application for DRC approval shall be accompanied by a filing fee as set by the Council which shall be deposited with the City Collector. No part of said fee shall be refunded to the applicant.

502.2 - Downcity District - General Regulations:

- A) Uses: The following Table is a generalized listing of use categories that are permitted in the District. The intent of this Section is to regulate some general uses more strictly in the Downcity District than may otherwise be provided by Section 303. The DRC may grant waivers only for uses as indicated in Table 502.2; other uses are governed by Section 303, with special use permits and variances to be granted by the Board. To determine if a specific use is permitted in the district, first determine if the general use category is permitted in Table 502.2 below and then check Section 303 to determine if the specific use is permitted. Permitted uses are denoted with a "Y"; uses not permitted are designated with an "N"; and uses permitted only upon approval of the DRC are denoted with a "W" for waiver.

TABLE 502.2

USES	A-STREETS		B-STREETS	
	FIRST FLOOR	UPPER FLOORS	FIRST FLOOR	UPPER FLOORS
1.0 Residential	N ¹	Y	N ¹	Y
2.0 Institutions	Y	Y	Y	Y
3.0 Cultural	Y	Y	Y	Y
4.0 General Services	Y	Y	Y	Y
5.0 Trade	Y	Y	Y	Y
64a Parking Garage	W²Y²	W³Y³	Y⁴&5	Y
64.1b Parking Lot	N ²	N.A.	Y⁴&6	N.A.

FOOTNOTES:

1. Lobbies and associated residential common spaces are permitted on the first floor.
2. ~~A waiver may be granted, when parking on the first floor is shall be separated from the street line by a permitted use (Use Codes 2.0, 3.0, 4.0 and 5.0) having a minimum depth of fifteen (15) feet. Vehicular ingress/egress shall not be permitted on an A Street. The DRC shall have the discretion to determine the location of vehicular ingress and egress.~~
3. ~~A waiver may be granted to permit parking on the upper floors at the street line shall be permitted when the building design demonstrates compatibility is compatible with the existing streetscape.~~
4. ~~Permitted along B Streets which do not require retail frontage. Reserved~~
5. ~~On B Streets which require retail frontage, a garage shall be separated from the street line by a permitted use (Use Codes 2.0, 3.0, 4.0 and 5.0) for a minimum depth of fifteen (15) feet. A waiver is required to allow a parking garage on the first floor with no separation. Ingress/egress is permitted on B streets. Reserved~~
6. ~~Where a parking lot is permitted along a B Street, a streetwall shall be built along the property line where deemed necessary by the DRC. Reserved~~
7. ~~A parking lot is permitted on an A Street only as a transitional use pursuant to Section 502.5 F. and G.~~

B) Retail Building Frontages: The purpose of these regulations is to preserve and enhance the commercial character of downtown, ~~by maintaining continuous storefronts along specific retail frontages.~~ These regulations apply to both existing and new construction. ~~Streets designated as retail frontages on the Overlay Zoning Maps~~ Buildings are required to have ~~buildings~~ building facades designed for retail uses with multiple entrances on the first floor and transparency as outlined in 502.4 regardless of the uses that occupy the first floor. The DRC shall determine the number and size of storefronts necessary for each building. ~~However, it is not the purpose of these regulations to require that alter the historic character of buildings, be altered to create retail frontage in locations where historically no storefront existed.~~

C) Signs [as defined in Article VI]: The maximum total area of all signs on a facade shall not exceed three (3) square feet per one (1) lineal foot of building frontage. Window signs shall not be included in the above calculation. Such signs may be externally illuminated and shall be made of metal, painted wood or other painted similar material (no plastic). Signs shall be placed on the building so as not to obscure architectural features and detail.

1. Freestanding signs, permanent or temporary, shall not be permitted in D-1 Zones, except for parking uses. Such signs shall only identify parking locations and rates, and shall not associate the parking use with an individual business name other than the name of the parking use operator.

2. The maximum area of any individual sign shall be limited as follows:

Sign type	Area Sq. Ft.	Height Feet	Setback Feet	Projection Over Public ROW - Feet
Canopy	2'/1' of building frontage			
Freestanding ¹	48 sq. ft.	18 feet	-	unrestricted
Projecting	48 sq. ft.	30 feet	0	6 [Ord. 1995-8]
Roof	128 sq. ft.	12' above roof	0	0
Wall	2'/1' of building frontage	-	-	1.25 feet

(1) Only one freestanding sign is permitted per frontage.

The DRC may grant waivers from these requirements in a D-1 zone.

D) Landscaping - Lot Frontage: Landscaping shall be provided between parking lots and any adjacent public street, walk or right of way, ~~shall be approved by the DRC~~ and shall be maintained in accordance with Section 425.4. A landscaped area of at least three (3) feet in width shall be provided. The landscaped area shall contain:

1. One (1) shade tree for every thirty (30) feet or fraction thereof in planting areas of the size approved by the city forester. The tree shall be a minimum of fifteen (15) feet in height and have at least a three and one-half (3-1/2) inch caliper.

2. A streetwall of a maximum total height of eight (8) feet, or hedge maintained at least thirty (30) inches in height above grade, to form a visual screen.

a. When a streetwall is used, it shall be of masonry or similar material up to three (3) feet in height, set in the middle of the landscape strip, and shall have openings along said streetwall which shall be not less than thirty (30) inches wide and not more than thirty (30) feet apart. The streetwall shall be topped with a decorative metal

fence of at least three (3) feet in height. In order to break the visual monotony of a streetwall, at least one shrub or vine shall be planted abutting the wall approximately every ten (10) feet. The DRC may grant a waiver to the shrub and vine requirement if the streetwall has significant design variation.

- b. Evergreen shrubs, a minimum of twenty four (24) inches in height above grade at the time of planting, shall be used to form hedges and shall be spaced not more than thirty six (36) inches apart and maintained so as to form a continuous screen thirty (30) inches in height above grade, under normal growing conditions, within one (1) year after planting.
3. The remainder of the landscape area shall be planted with ground cover, low shrubs or flowering plants.

E) Landscaping - Contiguous Properties: Landscaping shall be provided between parking lots and contiguous properties ~~and shall be approved by the DRC and~~ shall be maintained in accordance with Section 705-6 ~~425.4~~. A landscaped area between the common property line and the parking lot shall contain either:

1. A masonry streetwall or opaque fence of at least five (5) feet in height located in a three (3) foot wide landscape area. Shade trees shall be planted every thirty five (35) feet or fraction thereof in planting areas. The tree shall be a minimum of fifteen (15) feet in height and have at least a three and one-half (3-1/2) inch caliper. In order to break the visual monotony of a streetwall, at least one shrub or vine shall be planted abutting the wall approximately every ten (10) feet.
2. A durable evergreen landscape screen not less than four (4) feet in height above grade when planted, in a landscape area not less than five (5) feet wide. The evergreens shall grow at least to five (5) feet within one (1) year.

F) Parking: Parking in the District shall conform to the requirements of Article VII Parking and Loading of this ordinance. However, parking is not required for newly constructed buildings on an individual lot with a gross floor area of less than five thousand (5,000) square feet.

- (1) Access to parking lots and structures from A Streets shall only be permitted when the lot has no frontage on a B Street. A waiver to this requirement shall be granted when the B Street is determined to be sub-standard for maintaining adequate traffic flow by the City Traffic Engineer.
- (2) The maximum width of the driveway access shall be 24 feet.

G) Loading: Off street loading docks and areas shall be provided in accordance with Section 708 and the following provisions:

1. Access to loading docks and areas from A Streets shall only be permitted when the lot has no frontage on a B Street. A waiver to this requirement shall be granted when the B Street is determined to be sub-standard for loading access by the City Traffic Engineer.
2. Exterior loading docks are prohibited.
3. Interior loading shall be screened from view by solid, non-transparent doors which shall remain closed when the loading dock is not in use. The doors used to screen the docks shall be designed to be consistent with similar building elements such as windows and doors to reduce the industrial appearance of the loading area and shall be constructed of materials found elsewhere on the building.
4. The maximum width of the driveway access to the loading dock/area shall be 24 feet.

Loading: Interior off street loading, in accordance with Section 708, shall be provided but shall not be permitted on an A Street. The DRC may grant a waiver to this requirement provided that provision is made for the delivery of goods that will not interfere with the daily vehicular or pedestrian flow of the district.

Section 502.3 - Downcity District: Design Regulations for Existing Buildings: All exterior work on existing buildings in the district is subject to approval by the DRC and

shall be regulated by these standards and the guidelines of the DRC. The purpose of these regulations is to establish design standards to preserve the urban fabric of the District and in particular the historic character of the District.

A) A--Streets: These standards are intended to preserve and restore the architectural integrity and historic character of buildings in the district. The existing scale and proportions of buildings and streetscapes shall be preserved. The DRC shall review:

1. The preservation, repair or replacement of building features using the Secretary of Interior Standards for Rehabilitation as guidelines.
2. Storefronts - Existing structures which have been designed for retail use on the first floor shall retain this design. Where such design no longer exists but would be compatible with the character of the building, ~~rehabilitation shall be designed to permit retail uses on the first floor.~~ Applicants are encouraged to recreate the storefront design on the first floor.
3. The restoration or reconstruction of a building which has been altered through the years. The DRC should consider pictorial, documentary or physical evidence of the original configuration when reviewing applications.
4. New additions, exterior alterations, or related new construction using the Secretary of Interior Standards as guidelines.
5. ~~The transparency of existing buildings along retail frontages building facades. Transparency shall be 70% of the building facade. along retail frontages shall continue and shall not be decreased.~~ Renovations of the first floor of existing buildings shall not decrease the area of transparency and if the transparency area is less than 70% of the wall area, shall increase the amount of transparency in accordance with requirements for new construction. All buildings shall meet this requirement unless the original historic character of the building facade ~~requires less has less than~~ 70% transparency area.
6. The design of all awnings to insure that the design is in character with the building.
7. The lighting of building facades to insure that the fixtures are small, shielded and directed toward the building. Electrical conduit and junction boxes shall be located so as to minimize, or if possible, eliminate their visibility from the public way.
8. The installation of security devices to insure that they are designed so as not to impact the historic quality of the building.

B) B--Streets: In the rehabilitation of buildings on B--Streets every effort shall be made to maintain the urban fabric and the historic character of buildings. There shall be no development standards and no DRC review for existing buildings on B--Streets; refer to Section 502.5 for demolition provisions. ~~However, the significant historic buildings designated on the Overlay Zoning Maps shall be subject to all the requirements for buildings located on A Streets.~~

502.4 - Downcity District: Design Regulations for New Construction: All new construction in the district shall be approved by the DRC and shall be regulated by these standards and the guidelines of the DRC. The purpose of these standards is to establish design regulations to preserve the urban fabric of Downtown and to insure that new construction complements the historic character and the architectural integrity of existing structures.

A) A--Streets - Minimum Standards: The following are minimum standards for all new construction:

1. Building Height:
 - a. Buildings shall be at least three (3) stories in height. The DRC may grant a waiver to allow a building of two (2) stories (24 feet). Building height and massing shall relate to adjacent structures and

the existing vertical proportions of downtown buildings. First floors shall be a minimum 12 feet floor to ceiling to enhance the pedestrian streetscape, regardless of the overall building height.

- b. Buildings over six (6) stories shall have a recess line of at least ten (10) feet. The DRC may grant a waiver to allow a building in excess of six (6) stories (within the height limit) without a recess line if it is determined that the building can exist compatibly with neighboring buildings. In such cases, a transition line may be required.

2. Building Facades:

- a. Building facades shall be built on the street line.
 - i. Where the lot frontage is curved, the facade shall follow. The DRC may grant a waiver to permit the building to be built on the chord or the tangent.
 - ii. Buildings shall have their main entrance from a sidewalk on the A Street.
 - iii. A waiver may be granted by the DRC to allow 20% of the lot frontage to be set back from the street line or left open to form a court yard.
 - iv. Where nonconforming setbacks exist on adjacent buildings, a waiver to building setback may be granted by the DRC.
- b. A building facade shall have a transition line. Transition lines shall be designed in proportion to the overall height and mass of the proposed building, creating a distinction between upper and lower (i.e. first, or first and second) stories. Transition lines shall relate to existing adjoining buildings.
- c. A building shall have a roof line. Roof lines shall be designed in proportion to the overall height and mass of the proposed building, creating a distinction between the top of the building and the lower floors. Roof lines shall relate to existing adjoining buildings.

- 3. Transparency - ~~All new construction along A Streets~~ building facades shall provide areas of transparency equal to 70% of the wall area, between the height of 2 and 8 feet from the ground, of each exterior wall. Blank walls shall be separated by areas of transparency of at least 3 feet in width.
- 4. Windows shall only be of clear or lightly tinted glass. The percentage of glazed area and all other openings of a facade shall be calculated from above the transition line, but as a maximum shall be fifty (50) percent of the facade area. ~~No curtain walls will be permitted on A Street frontages.~~ Window proportions shall be square or vertical and shall be recessed at least four (4) inches from the plane of the facade.
- 5. The primary building materials on the facade shall be brick, lime stone, sandstone, granite, terra cotta, cast stone or other similar material. The DRC shall review the proposed material for compatibility with the existing streetscape.
- 6. Building facades shall be designed to have multiple entrances approximately every 35 feet along the street frontage. Fewer entrances may be approved by waiver.
- 7. If a building is located on the corner of an A Street and a B Street, A Street regulations shall apply for a depth of 15 ft. along the B street building facade.

B) B--Streets - Minimum Standards: The DRC shall only consider massing, siting and proportions of new construction and its impact on an adjacent historic structure when performing a review. The following standards shall apply:

1. Where new construction abuts one or more shorter historic buildings, recess lines shall be provided to a depth of at least ten (10) feet, so that the new, taller building can exist without dwarfing adjacent historic buildings. If new construction does not abut historic buildings, no recess lines are required.
2. All buildings shall align with adjacent buildings. In the event an adjacent building is setback from the street line, the DRC may allow the new building to setback so as to align with the adjacent building(s).
3. ~~Along retail frontages, a~~ All new construction shall provide areas of transparency equal to 70% of the wall area, between the height of 2 and 8 feet from the ground, of each exterior wall. Blank walls shall be separated by areas of transparency of at least 3 feet in width. Loading areas are permitted.
4. Buildings on B--Streets shall have their main entrance from a sidewalk on the street.

502.5 - Demolition: In order to preserve the urban fabric of the Downcity District, no building shall be demolished, in whole or in part, until the DRC has granted a ~~waiver~~ final approval to demolish the building and has approved plans for new construction. The following procedures apply to all proposals for demolition:

A. Application and Determination of Applicability: A proposal to demolish a building shall be set forth in an application to the DRC that includes information about eligibility for demolition and a schematic plan, including elevations, of proposed new construction for the site.

B. Eligibility for Demolition: A building shall be eligible for demolition if it meets the following criteria:

1. The proposed reuse of the site is a permitted use for the D Zone and is in conformance with Section 502.2.
2. The DRC finds that at least one of the criteria listed in Section 501.8 B) 1 through 4 exists. With regard to the criterion of Section 501.8 B) 3, the following shall be presumed to constitute undue or unreasonable financial hardship:
 - a. The entire building has been continuously vacant for five years prior to the application being filed; or
 - b. The building is structurally unsound as determined by a structural engineer and such condition would be prohibitively expensive to remedy.

C. Review Process and Timelines: The DRC shall review the evidence and documentation of eligibility and shall hold a public hearing in accordance with Article IX within 45 days of filing of a complete application. By the next regularly scheduled meeting of the DRC following the public hearing, the DRC shall render a decision and notify the applicant. If the DRC finds that the building is eligible for demolition, the DRC shall give preliminary approval for the demolition of the structure. Preliminary approval for demolition shall expire after one year unless extended by the Director of the Department of Planning and Development.

D. Submission of Plans for New Construction: Subsequent to the DRC granting preliminary approval for demolition, the applicant shall present plans for new construction to the DRC. The DRC shall review the plans pursuant to the guidelines and procedures of this Section. Concurrent with the issuance of a Certificate of Design Approval, the DRC shall issue final approval for demolition.

- E. Filing of Permits: Subsequent to receiving a Certificate of Design Approval and a final approval for demolition, the applicant shall apply to the Director for building and demolition permits. Such applications shall be made concurrently. The Director shall not issue a demolition permit until the application for the building permit is certified as complete.
- F. Transitional Uses: The intent of this Ordinance is that new construction shall immediately follow demolition. Therefore, unless the applicant can demonstrate that through no fault of its own, construction cannot immediately follow demolition, no transitional uses shall be permitted. Should the Director find that there has been a delay in starting new construction, due to no fault of the applicant, the Director shall permit a transitional use for up to two years, or until a building permit is issued, whichever comes first. Notwithstanding the other provisions of this ordinance, a transitional use may include a surface parking lot, but the parking lot must be landscaped in conformance with Section 502.2 D) and E). If the Director finds that the applicant is not acting in good faith in pursuing a building permit, permission for the transitional use shall be revoked.
- G. Emergency Demolition: If a building presents a threat to safety, including a building that is destroyed due to an act of God, the Director may order its demolition without DRC approval. However, the Director shall record a lien on the land evidence records against the property limiting its use to that which is permitted by Section 502.2 of this Ordinance and has been approved by the DRC. A transitional use is permitted on the site pursuant to Section 502.5 F.
- ~~A. Review of Application In reviewing the application for demolition, the DRC shall consider the architectural quality of the existing building, regardless of condition; the historic value of the building; the feasibility of renovating and reusing the existing building; and, the quality of the new building to be constructed, if demolition is approved. It shall be the burden of the property owner to prove that there are no prudent nor feasible alternatives to demolition. In addition, the DRC shall find that the following conditions are met:~~
- ~~1. The proposed reuse of the site is a permitted use for the D Zone and in accordance with Section 502.2.~~
 - ~~2. Plans for the new building to be constructed, once the original building is demolished, have been approved by the DRC, fire marshal, Director and all other approvals are received. The DRC shall review proposed new construction using standards herein for A Streets or B Streets, as applicable. [Ord. 1995-8]~~
 - ~~3. No interim use(s) shall be permitted on the parcel and construction of the new facility shall begin within ninety (90) days of demolition.~~
- ~~B. Referral to HDC: All applications for demolition shall be forwarded to the HDC for review and recommendation. The DRC shall consider, but is not bound by the recommendation.~~
- ~~C. Grant of Demolition: If the DRC grants the waiver authorizing the demolition of the building, the Director shall not issue a demolition permit until the applicant demonstrates to the DRC adequate financial ability to demolish the existing structure and construct the new approved building. Prior to issuing the demolition permit, the Director shall record a lien on the land evidence records against the property limiting its use to the building which has been approved by the DRC. Any change in plans will require a new application to the DRC for approval.~~
- ~~D. Emergency Demolition: If a building presents a threat to safety, the Director may order its demolition without DRC approval. However, the Director shall record a lien on the land evidence records against the property limiting its use to that which is permitted by Section 502.2 of this ordinance and has been approved by the DRC.~~

502.6 - Higher Educational Institutions: When a higher educational institution is located in the D-1 Zone, the Institutional Master Plan, in addition to meeting the requirements of Section 503, shall identify A-Street properties and ~~Retail Frontages designated~~ in the Downcity District.

- A) Institutional Master Plan - Additional Requirements: An Institutional Master Plan for an higher educational institution located in a D-1 District may identify in narrative form and with illustrations:
1. proposed major alterations to existing buildings on A--Streets, describing how such proposals will address A-Street and ~~Retail Frontage~~ regulations;
 2. proposed new construction on A- or B--Streets, describing the height, massing, setbacks, siting, and exterior materials.
- B) Institutional Master Plan Approval: An institutional master plan which addresses the Additional Requirements identified in (A) above shall be referred to the DRC for review once the plan is determined by the staff of the Commission to be complete in accordance with Section 503.4. The DRC shall review the plan to determine if the information provided is sufficient and adequate to meet the requirements of Sections 502.2 through 502.4, inclusive. The DRC shall have forty-five (45) days, from the date of the Commission's written confirmation that the Master Plan is complete, to review the Master Plan. Failure to act within this 45 days shall be equivalent to a recommendation for approval. After 45 days, the Master Plan and DRC recommendation shall be submitted to the Commission in accordance with Section 503.4 for review of conformance with the comprehensive plan. The Commission, in approving the Master Plan and the Additional Requirements, may take into consideration the DRC recommendations and may approve in whole or may approve portions of the plan. An approved copy of the Master Plan with Additional Requirements shall be submitted to the Director.
- C) Application for Building Permit: The Director shall issue no building permit for a higher educational institution in the D-1 zone until the DRC has approved the plans in accordance with this Section. However, if an approved Master Plan addresses the Additional Requirements noted in (A) above and meets other applicable requirements of this Ordinance, the Director shall issue a building permit without further review by the DRC as follows:
1. Existing Buildings: A building permit shall be issued if the Director determines that the proposed alteration is in accordance with the approved Master Plan.
 2. New Construction: A building permit shall be issued for foundations and structural steel if the Director determines that the items listed in (A)(2) above are in accordance with the approved Master Plan. However, no building permit shall be issued for the remainder of the building until the DRC has approved the plans in accordance with this Section.

502.7 - Downcity Incentives - Purpose: The purpose of these incentives is to encourage development that will be compatible with the character of Downcity and carry out the goals of the comprehensive plan. These regulations are designed to foster and promote in the Downcity preservation of historic properties, first floor retail activity, pedestrian access and convenience, the arts and housing.

- A) Basic Requirements: All development in the D Zones shall conform to the use, density, bulk, parking, design review and other applicable requirements of the Providence Zoning Ordinance and in particular the requirements of the Downcity District.
- B) Incentives - General: Two types of incentives are permitted to encourage development that is compatible with the goals of the comprehensive plan: bonuses and transfer of development rights. These incentives are permitted only in the Downcity District as identified on the Providence Overlay Zoning Maps and in accordance with the requirements of this section.
1. All requests for development incentives must be reviewed at a public hearing in accordance with Section 903 of the Ordinance.
 2. The DRC may consider the physical changes required to the building or site if the incentive is granted, including interior alterations that affect the exterior appearance and character of the property, and may impose any

conditions necessary to mitigate the visual impact of such changes, in accordance with the design regulations of this Section.

- C) Bonus Eligibility: A project shall be eligible for a bonus of either increased building height or dwelling unit density if space is provided within the project for the uses, improvements or facilities set forth below. Only one bonus may be applied per project. Before granting the bonuses for uses described in (1) and (2) below, a lien shall be filed against the property with the Recorder of Deeds providing that such uses shall remain in effect for five (5) years from the date of recording.

1. Retail Uses: Uses permitted by Use Codes 42, 56 and 57 and permitted in the Downcity District ~~and located within Retail Frontage areas as designated on the Overlay Zoning District Maps~~. A minimum of one half of the lot area shall be dedicated on the first floor to retail use to qualify for a bonus.
2. Cultural or Entertainment Facility: These facilities shall be open to the public on a regular basis and shall be limited to visual art space and performing art space.
 - a. Visual Art Space: Facilities that provide space for the visual arts, including but not limited to exhibition halls and galleries which are visible from and directly accessible to pedestrian circulation.
 - b. Performing Art Space: Facilities that provide space for the performing arts, including but not limited to concert halls and theaters, which are visible and accessible to pedestrian circulation. This bonus can only be received if: provisions are made to have the space available for use by arts groups at affordable rates; the space is open for public view of performances for a number of days equal to at least a quarter of the year; and the space shall be large enough to seat at least 50 people.
3. Cultural/Entertainment Fund: A payment in lieu of improvements may be made to a fund which shall be available to small visual and performing arts organizations to establish permanent performance and office space in the downtown. Funds derived from such payments shall be deposited by the City in a special revolving fund and shall be used exclusively for the purpose of purchasing and renovating performance and office space for arts organizations. The DRC shall develop regulations governing the distribution of funds and shall submit same to the Council for adoption as an ordinance.

- D) Schedule of Bonuses: If a proposed use, improvement or facility complies with the standards set forth in this section, it shall be eligible for a density bonus or height bonus. The density bonus is the minimum lot area per dwelling unit. The height bonus is the percentage of increase in building height over the permitted zoning height. The schedule of bonuses is as follows:

1. Retail Uses: The bonus is based on the amount of first floor space dedicated to retail use.

% of Lot Area	Density Bonus	Height Bonus
Min. 50	175 sq. ft.	10%
51 to 75 %	150 sq. ft.	20%
76 to 100%	125 sq. ft.	30%

2. Visual Art Space: The bonus is based on the amount of first floor space dedicated to visual art space.

% of Floor Area	Density Bonus	Height Bonus
Min. 25%	200 sq. ft.	7.50%
26 to 50%	175 sq. ft.	15.00%
51 to 75%	150 sq. ft.	22.50%
76 to 100%	125 sq. ft.	30.00%

3. Performing Art Space: The bonus is based on the amount of first floor space dedicated to performing art space.

% of Floor Area	Density Bonus	Height Bonus
Min. 25%	200 sq. ft.	7.50%
26 to 50%	175 sq. ft.	15.00%
51 to 75%	150 sq. ft.	22.50%
76 to 100%	125 sq. ft.	30.00%

4. Cultural/Entertainment Fund: The bonus is based on percentage of the total cost (design, site preparation, construction, acquisition) of the project that is donated to the fund.

% of Cost	Density Bonus	Height Bonus
1.0%	200 sq. ft.	7.50%
1.5%	175 sq. ft.	15.00%
2.0%	150 sq. ft.	22.50%
2.5%	125 sq. ft.	30.00%

- E) Incentives - Transfer of Development Rights: Development rights may be transferred from a building listed in the National Register of Historic Places for which the applicant donates a preservation restriction whose purpose is the preservation of the exterior of the building as of the date of the conveyance of such restriction to the Rhode Island Historical Preservation Commission. Structures on sending lots shall be restored and maintained as required by the DRC.
1. Standards: The gross building height that may be transferred from any sending lot to a receiving lot shall be the difference between the permitted zoning height as detailed on the Official Zoning Map of the city and the height of the existing building on the date of the transfer but in no case shall the receiving lot building height exceed the lesser of three hundred (300) feet or 1.6 times the permitted zoning height.
 2. Transfer of Development Rights Agreement: The fee owners of sending and receiving lots shall execute a deed or other agreement which shall be recorded with the title to both lots. This agreement or deed shall be for a term which equals or exceeds the life of the project on the receiving lot for which the rights were transferred. The agreement or deed shall state that the development rights transferred from the sending lot to the receiving lot may not be reclaimed unless the project on the receiving lot or that portion of the project for which the rights were transferred is demolished. The deed or agreement shall also provide that its covenants and conditions shall run with the land and shall be specifically enforceable by any party or by the city.
- F) Bonuses, Continuing Character of Obligations: Where a bonus is granted, the applicant shall covenant to ensure the continued use of the use, facility or improvement for the purposes for which the bonus was granted. The covenant shall be for a term of twenty (20) years, unless the DRC specifically finds that another period of time would be in accordance with the purposes of this section. Such covenant shall be recorded on the land evidence records and shall run with the land.
- G) Changes: Any changes to the plan approved in accordance with the provisions of this section shall be considered a new application.

I. Amend Sections 1000.1, 1000.20, and 1000.118 to read as follows:

1000.1 - A—Streets: Streets designated on the Official Overlay Zoning District Maps for the Downcity District. Buildings that front on these streets which are subject to more stringent design and development regulations as detailed in this Ordinance. Where a building is located on a corner lot, and only one street is designated as an A Street, the building shall be governed by the A Street requirements.

1000.20 - B—Streets: A lot Streets in the Downcity District (DD) Overlay Zone not designated as an A Street lot on the Overlay Zoning Maps. [Ord. 1995-8] designated on the Official Overlay Zoning District Map for the Downcity District. Buildings that front on these streets are that is subject to certain design and development regulations as detailed in this Ordinance. Regulations for B-Streets are less stringent than those for A-Streets.

1000.118 - Retail Frontage: Building frontages designated retail on the Overlay Zoning Maps for the Downcity District which are subject to additional code provisions at sidewalk level. Reserved.

Section 2: All text stating “Lots subject to ‘A’ Street Regulations” and “Retail Frontages”, and references to such text on the City of Providence Official Zoning Map- Overlay Zoning Districts, maps 4, 10, 12, 19, 20, 21, 24, 25, and 26 are hereby deleted.

Section 3: The attached map entitled “City of Providence Official Overlay Zoning District Maps- DD Downcity District” is hereby adopted as part of the official zoning map.

Section 4: If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance.

Section 5: This Ordinance shall take effect upon passage.

Section 6: This Ordinance shall expire on June 30, 2005.

IN CITY COUNCIL
OCT 21 2004
FIRST READING
READ AND PASSED

APPROVED

MAYOR

IN CITY COUNCIL
NOV 4 2004
FINAL READING
READ AND PASSED

ACTING PRESIDENT
CLERK



Department of Law

October 19, 2004

The Hon. Michael R. Clement
City Clerk
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Re: Revisions to an Ordinance in Amendment of Chapter 27 of the
Ordinances of the City of Providence Entitled: "The City of Providence
Zoning Ordinance" approved June 27, 1994, as amended (Downcity
District)

Dear Mr. Clement:

During a meeting of the Ordinances Committee on October 7, 2004, Councilwoman Balbina Young requested a written opinion from the Law Department as to whether the revisions presented to the Ordinances Committee on October 7, previously discussed during the two public hearings on September 20 and September 27, 2004 regarding changes to the Downcity District, could legitimately be received and approved by the Committee or by the full Council.

The leading case on public notice in this context is DeLucia v. Town of Jamestown, 107 R.I. 179, 265 A.2d 636 (1970). It may be useful to detail briefly the facts of that case, because it is within that context that the Rhode Island Supreme Court reached its conclusion that "substantial alteration" in an ordinance, which has gone to public hearing in a certain format, must generate a new notice and a new public hearing.

In DeLucia, the Town of Jamestown had adopted a 1962 zoning ordinance which did not provide minimum lot-size regulations. In 1966, the Jamestown Planning Commission held public hearings to propose a townwide amendment to the 1962 ordinance. The amendment ultimately submitted to the Jamestown Town Council contained numerous alterations to the ordinance then in effect, including creation of a residential district calling for a minimum lot size of 40,000 square feet.

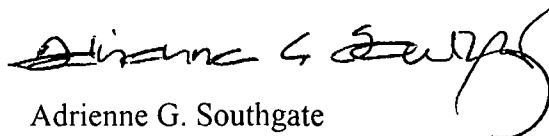
The Hon. Michael R. Clement
October 19, 2004
Page 2

The Council made several additional changes, and noticed an additional public hearing. Following that hearing, the Council again altered the zoning ordinance in several particulars, including doubling the required minimum area for a single lot. The zoning ordinance was thereafter adopted by the Town with no further public notice or hearings. The Supreme Court held that the Council's changes amounted to "substantial alterations" that required new notice and public hearings, and concluded that the Jamestown Town Council acted improperly in adopting such amendments to the zoning ordinance.

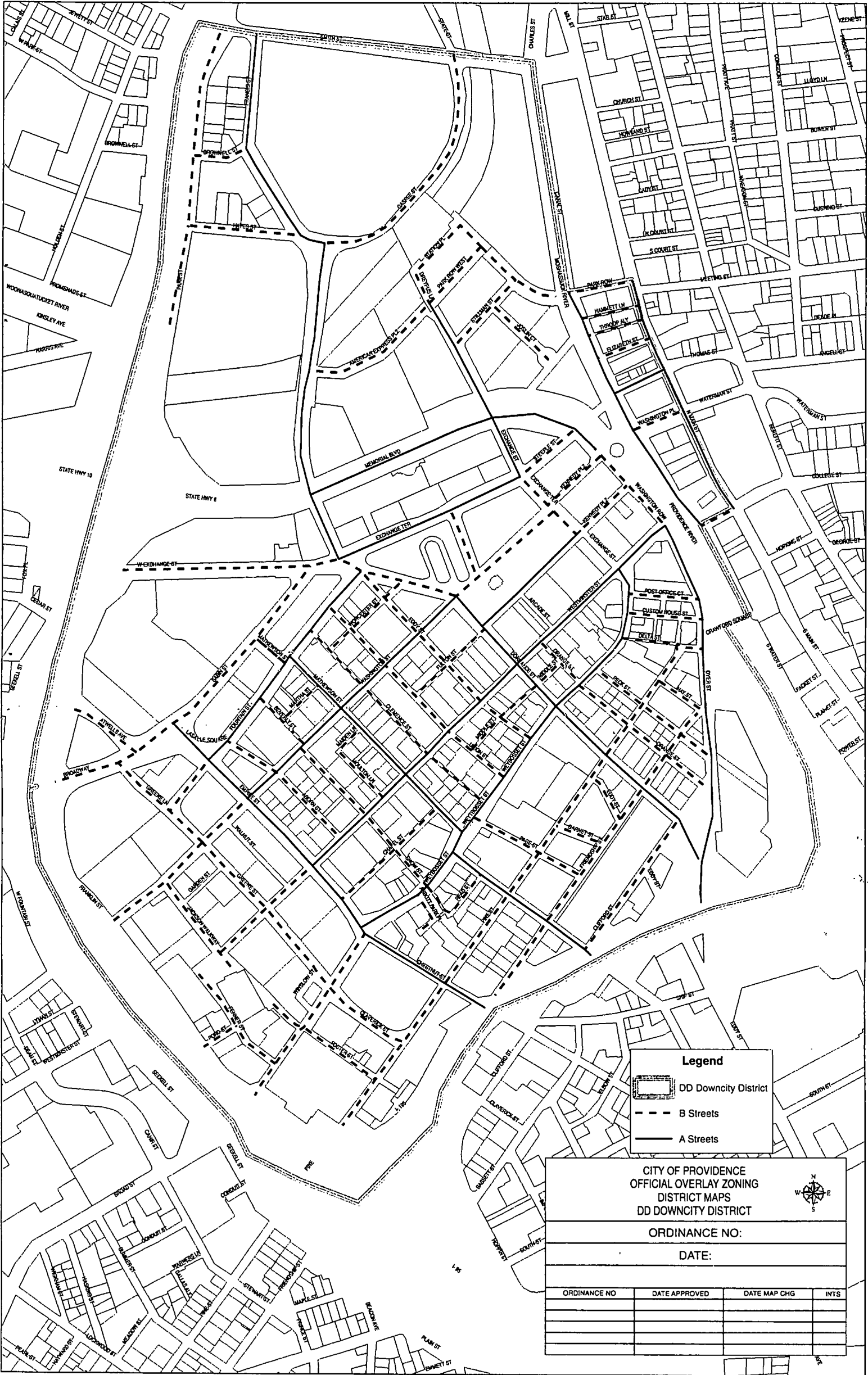
State law requires that alterations or amendments to zoning ordinances "must be presented for comment in the course of the [public] hearing." R.I.G.L. § 45-24-53. During the course of the two public hearings on the Downcity District ordinance, a series of alterations and amendments were presented. Some of these were read into the record. Others, which were the subject of extensive discussions between the Department of Planning and Development and various business owners and developers in the Downcity District, were discussed, and the framework for further refinements was articulated by the Planning Director. There was abundant opportunity for comment in the course of the public hearing. Moreover, subsequent to the final public hearing on September 27, 2004, lengthy meetings with the business owners and developers – the group directly affected by the proposed changes – and the Planning Department bore fruit, in the form of the specific provisions introduced at the October 7, 2004 Ordinances Committee. In my opinion, the amendments proposed before the Ordinances Committee were essentially clarifications of matters contained within the publicly-noticed version of the Downcity ordinance.

Whether a post-hearing revision is a "substantial alteration" is a mixed question of fact and law, not one which can be resolved merely by reference to case law or statute. However, it is my legal opinion that the draft ordinance substituted by the Ordinances Committee on October 7, and to be presented to the full Council on October 21, does not constitute a "substantial alteration" of the version previously published and subsequently amended in numerous particulars during the course of the public hearings on September 20 and September 27, 2004.

Very truly yours,

A handwritten signature in black ink, appearing to read "Adrienne G. Southgate", with a large, stylized flourish at the end.

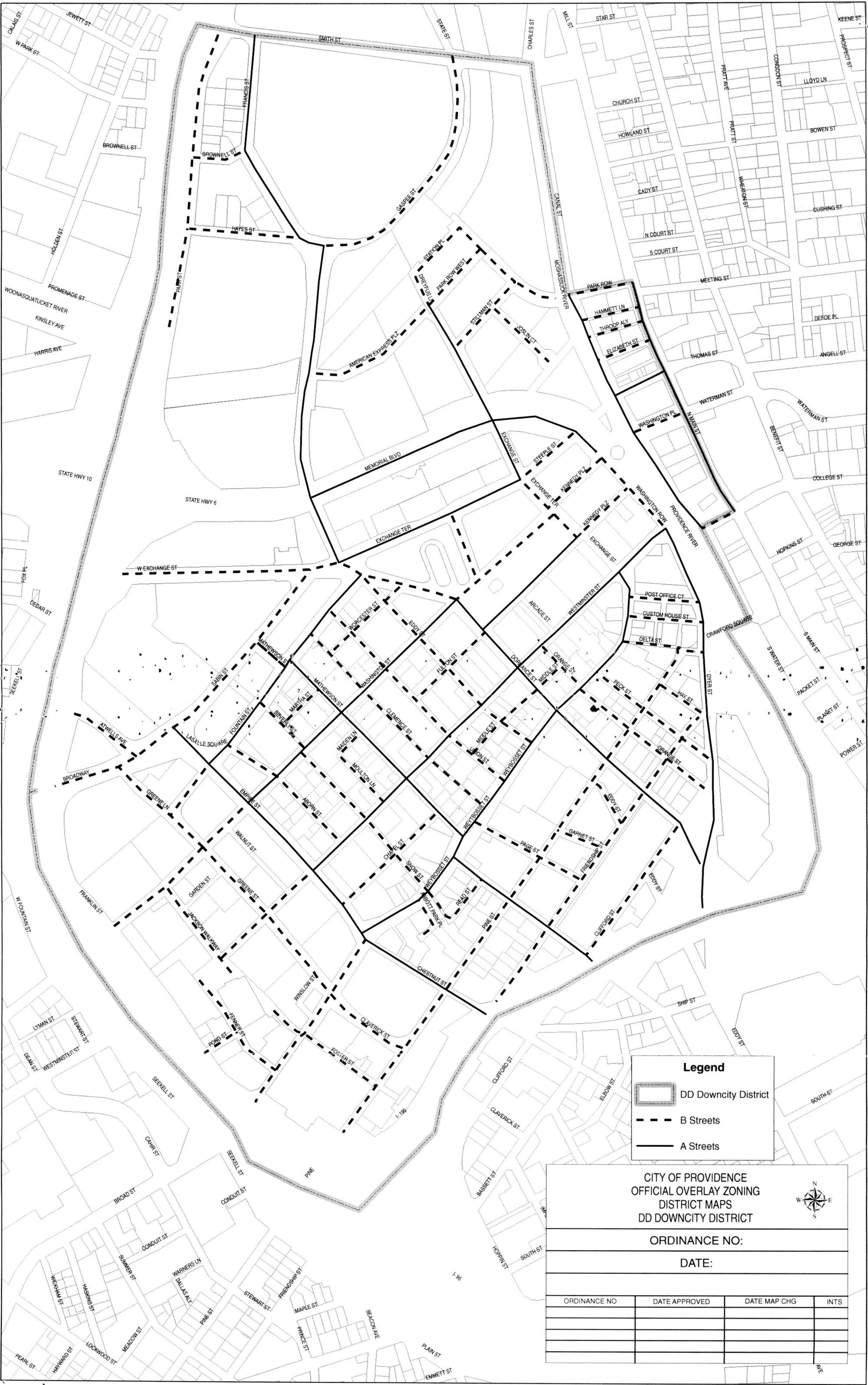
Adrienne G. Southgate
Deputy City Solicitor



Legend

- DD Downcity District
- B Streets
- A Streets

CITY OF PROVIDENCE OFFICIAL OVERLAY ZONING DISTRICT MAPS DD DOWNCITY DISTRICT			
ORDINANCE NO:			
DATE:			
ORDINANCE NO	DATE APPROVED	DATE MAP CHG	INTS



Legend

- DD Downcity District
- B Streets
- A Streets

CITY OF PROVIDENCE
OFFICIAL OVERLAY ZONING
DISTRICT MAPS
DD DOWNCITY DISTRICT

ORDINANCE NO:

DATE:

ORDINANCE NO	DATE APPROVED	DATE MAP CHG	INTS





Department of Law

City of Providence

275 Westminster Street, Suite 200

Providence, Rhode Island 02903-1845

The Hon. Michael R. Clement
City Clerk
Providence City Hall
25 Dorrance Street
Providence, RI 02903