



CITY OF DOVER

## CITY OF DOVER – ORDINANCE

Posted: May 22, 2018

Ordinance Number: O – yyyy.mm.dd -  
Ordinance Title: Updating the Dover Zoning Ordinance  
Chapter: 170

The City of Dover Ordains:

### 1. PURPOSE

The purpose of this ordinance is to amend Chapter 170 of the Code of the City of Dover, entitled Zoning, by updating the Code to reflect changes in the community and in land use regulations.

### 2. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-6 “Definitions”, revising section B as follows:

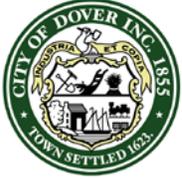
“B. Words and terms appearing in CAPITAL LETTERS throughout this Chapter shall have the meanings indicated: below. Other Land Use/Planning related words and terms not defined in this Chapter shall rely on the definition(s) contained within A Planners Dictionary published and updated by the American Planning Association.”

AND

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-6 “Definitions”, ~~to delete the definition of Building Floor Area~~ as follows:

**BUILD TO LINE** means a line parallel to the STREET RIGHT-OF-WAY LINE representing the distance ~~that which~~ part of the BUILDING is must be located. Front porches, stairs and handicap ramps may extend beyond the BUILD TO LINE up to half their depth. If locating the BUILDING at the BUILD TO LINE is not possible due to SETBACK or buffer requirements of Chapter 170-27 or Chapter 170-27.1, the BUILDING shall be located as close to the BUILD TO LINE as feasible. For parcels with no FRONTAGE, the BUILD TO LINE shall be calculated from the boundary parallel to the nearest STREET RIGHT-OF-WAY LINE. For parcels with FRONTAGE on a tidal waterway, the BUILD TO LINE may be a one hundred foot SETBACK, unless reduced via a Conditional Use Permit feet from the reference line, no matter the distance to the STREET RIGHT-OF-WAY LINE.

**BUILDING** means any STRUCTURE built for the support, shelter or enclosure of persons, animals, chattels or property of any kind and which is constructed and permanently affixed on the land. Such "BUILDING" includes open ~~porches~~ decks, open breezeways and any roofed areas. This in no way is to be construed to include a trailer, MANUFACTURED HOUSE or any other like product. For the purposes of measuring SETBACKS, eaves and uncovered ~~decks~~, porches ~~and~~ accessible ramps or steps may encroach into the side, REAR



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and front SETBACKs for a distance of up to three (3) feet. Improvements made at ground level (patio, pads, deck) are not required to meet SETBACKS.

~~“**BUSINESS FLOOR AREA** means that area, leased or occupied by a business, excluding hallway(s) or shared BUILDING/tenant facilities.”~~

### 3. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-7 “Establishment of Districts” to revise the name of the “Gateway District” in Section A and in Section B as follows:

~~“B-5 Gateway-Highway Business District~~

AND

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-12 “Applicability of Tables of Use and Dimensional Regulations By District”, by revising the Dimensional Regulations Tables in the Gateway District (B-5) to rename it to the Highway Business District.

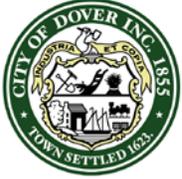
### 4. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-11 “Use Regulations” section D “PLANNING BOARD site Review Approval” as follows:

~~“D. PLANNING BOARD Site Review Approval. Any The following development/redevelopment meeting the criteria laid out in the Applicability section of the Site Review Regulations of the City of Dover shall be subject to the rules and regulations contained in said chapter. the Site Review Regulations of the City of Dover<sup>1</sup>;~~

- ~~(1) All non-residential development or redevelopment.~~
- ~~(2) All multi-family residential uses wherein more than five (5) units are proposed for development.~~
- ~~(3) All MANUFACTURED HOUSING PARKS.~~

<sup>1</sup> See Ch. 149, Site Review.



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~~(4) Any change of use as defined in Chapter 149, Site Review Regulations.~~

## 5. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-12 “Applicability of Tables of Use and Dimensional Regulations By District”, by revising the Dimensional Regulations Tables in the Thoroughfare Business District (B-3), HOTEL/Retail District (B-4), Highway Business District (B-5) District to revise the Principal Building Setbacks as follows:

### B-3

<b>FRONT SETBACK</b>	<b><u>5030</u> FT</b>
<b>ABUT A STREET SETBACK</b>	<b><u>5030</u> FT</b>

### B-4

<b>FRONT SETBACK</b>	<b><u>5030</u> FT</b>
<b>ABUT A STREET SETBACK</b>	<b><u>5030</u> FT</b>

### B-5

<b>FRONT SETBACK</b>	<b><u>5030</u> FT</b>
<b>ABUT A STREET SETBACK</b>	<b><u>5030</u> FT</b>

## 6. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-12 “Applicability of Tables of Use and Dimensional Regulations By District” by revising the Dimensional Regulations Table in the Heritage Residential District (HR) footnote [\*]: “Deviations from these requirements are permitted by Conditional Use Permit, subject to the requirements of Section 170-20.B(1), where applicable.”

## 7. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-14 “Nonconforming LOTS” by revising the reference to former Article X, now Article XI of this ordinance as follows:

B. “Refer to Article **XI** of this chapter for provisions regulating nonconforming LOTS that are adjacent or of continuous FRONTAGE and NONCONFORMING USES and STRUCTURES”



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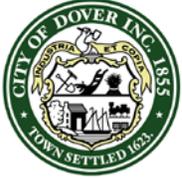
### 8. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-15 “OPEN SPACE Requirements”, by revising the title and adding new subsection D and E and revising the current D to F as follows:

#### **“170-15. OPEN SPACE Recreation Space and Separation between Use**

**Requirements.** [Amended on 08-01-90 by Ord. No. 8-90, Amended on 12-09-2009 by Ord. No. 2009.09.09-15.]

- A. For each bedroom of a multifamily [greater than four (4) DWELLING UNITS] residential STRUCTURE, there shall be provided at least one hundred (100) square feet of usable OPEN SPACE recreation space. Half of this required OPEN SPACE recreation space shall be provided in such a manner so as to afford active recreational opportunities for children, to include such facilities as swings, sandboxes, slides, play areas, etc. The remainder of the required OPEN SPACE recreation space shall be provided in such a manner so as to afford passive recreational opportunities for adults, such as sitting areas, outdoor cooking facilities, walkways, etc. The active and passive recreational facilities may be combined or separated as appropriate to the site and to the anticipated occupancy needs of the development. ~~Efficiency apartments shall be counted on the basis of fifty (50) square feet per unit. Projects which are designed not to contain children (i.e., housing for the elderly) may eliminate the active recreational component of this requirement.~~
1. Efficiency apartments shall be counted on the basis of fifty (50) square feet per unit.
  2. A payment in lieu of providing the recreation space on site, for an identified recreation area, may be agreed to by the Planning Board.
- B. The minimum distance between any main BUILDING and any accessory BUILDING not structurally attached to such main BUILDING shall be not less than the HEIGHT of the REAR wall of the accessory BUILDING.
- C. No part of a yard or other OPEN SPACE recreation space required ~~about~~ for any BUILDING for the purpose of complying with the provisions of this Chapter shall be included as part of a yard or other OPEN SPACE recreation space similarly required for another BUILDING.



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- D. All OPEN SPACE requirements pursuant to this section shall not be binding in the CBD, and CWD Zoning Districts. Non-Residential uses requiring site plan review shall be at least one hundred fifty (150) feet from all existing residential STRUCTURES, located within residential zones.
- E. A continuous and year round visual buffer of either vegetation or fencing shall separate non-residential STRUCTURES and or parking areas from existing residential STRUCTURES located to the rear and side of any proposal, STRUCTURES or parking area.
- F. All screening requirements pursuant to this section shall not be binding in the ETP or any Mixed Use Zoning District.
- G. All recreation space requirements pursuant to this section shall not be binding in the CBD – General, TOD and CWD districts.

## AND

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-12 “Applicability of Tables of Use and Dimensional Regulations By District”, by revising the Dimensional Regulations table in the B-4 District, footnote 4 as follows:

~~“[4] Buildings shall be at least one hundred fifty (150) feet from all residential structures that exist on the date of enactment of the B-4 Zoning District. A continuous visual buffer of either vegetation or fencing shall separate buildings from these existing residential structures. [Added 10-26-88 by Ord. No. 18-88] See Section 170-15”~~

## AND

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-12 “Applicability of Tables of Use and Dimensional Regulations By District”, by revising the Dimensional Regulations table in the B-5 District, footnote 4 as follows:

~~“[4] A continuous visual buffer of either vegetation or fencing shall separate buildings and parking areas from existing residential structures located to the rear and side of any proposal. See Section 170-15”~~

## AND



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~~“[4] Buildings shall be at least one hundred fifty (150) feet from all residential structures that exist on the date of enactment of the I-4 Zoning District. A continuous visual buffer of either vegetation or fencing shall separate buildings from these existing residential structures. [Added 10-26-88 by Ord. No. 18-88] See Section 170-15”~~

### 9. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-17 “Dimensional Regulations for Handicap Accessible Additions” by revising as follows:

~~“170-17 Dimensional Regulations for Handicap Accessible Additions~~ Removal of Barriers to Access

Upon the discretion of the Building Inspector, with consultation of the Zoning Administrator, in all zoning districts a STRUCTURE constructed for the express purpose of improving and/or providing accessibility to an existing BUILDING for physically and/or mentally ~~challenged~~ disabled individuals may be erected within the BUILDING SETBACKS (front, side and/or REAR) as specified in the Table of Dimension Regulations provided:

- A. The STRUCTURE cannot feasibly and practicably be constructed on the LOT in compliance with the Table of Dimensional Regulations;
- ~~B. ABUTTERS to the property on which the proposed STRUCTURE will be erected shall be notified by the Building Inspector prior to the issuance of the building permit; and The STRUCTURE must not create a hazard or detrimental impact to surrounding properties.”~~

### 10. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-20 “Central Business District Regulations”, by revising section D – “Standards and regulations”, to read as follows:

“D. Standards and regulations



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- (1) The standards for use and dimensions to be utilized within the CBD are shown on the tables at the end of the section. Included in each table are the following areas:
  - (a) District Purpose
  - (b) LOT Occupation Regulations
  - (c) Diagram of BUILDING HEIGHT
  - (d) Diagram of BUILD TO LINEs
  - (e) Special Regulations
  - (f) Permitted Uses
  
- ~~(2) Where BUILDINGS exist on LOTS adjacent to a proposed BUILDING, the proposed BUILDING may match the more conforming of the adjacent BUILDINGS' SETBACKS and HEIGHTS rather than match the provisions of this code. Through the issuance of a conditional use permit, BUILDING HEIGHT may be increased by one (1) story, which shall be setback from the allowed height to create a terrace, for either:~~
  - ~~(a) Each subgrade story of parking provided on the site; or.~~
  - ~~(b) Additional units resulting from this CUP are restricted so that the rent of said units conforms to the HUD Fair Market Rent rates, for Dover, published annually by the New Hampshire Housing Finance Authority.~~
  
- (3) General Guiding Principles for BUILDING Placement
  - (a) The goal of the BUILDING HEIGHT and BUILD TO LINE standards is the creation of a healthy and vital public realm through good STREET space.
  - (b) BUILDINGS are aligned and close to the STREET.
  - (c) The STREET is a coherent space, with consistent BUILDING forms on both sides of the STREET, creating a clear PUBLIC SPACE and community identity.
  - (d) BUILDINGS oversee the STREET (and SQUARE) with active fronts contributing to a vital and safe PUBLIC SPACE.



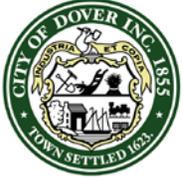
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- (e) Property lines are physically defined by BUILDINGs or STREET WALLs.
- (f) BUILDINGs are designed for an urban feel and situation. Views are directed to the STREET and the garden/courtyard, not toward the neighbors. However within the STREET wall alcoves or small courtyards are permitted to allow for seating and public access
- (g) Vehicle storage, garbage and mechanical equipment are kept away from the STREET.
- (h) Within the General, Mixed Use, and TOD sub-districts, new retail and commercial activities are located on the GROUND FLOOR. Residential activity is not permitted, except as follows:
  - 1. Where a BUILDING does not front directly onto a STREET or municipal parking lot, residential activity may be located on the GROUND FLOOR.
  - 2. Where a BUILDING fronts more than one (1) STREET, residential activity may be located on the GROUND FLOOR, of the portion fronting on the secondary STREET.
    - i. The determination of a secondary STREET shall be made during the Site Plan Review process by vote of the Technical Review Committee.
  - 3. If retail and commercial activities are located on the GROUND FLOOR of BUILDINGs not fronting directly onto a STREET or municipal parking lot or on secondary STREETs, the HEIGHT of the BUILDING may be increased by one (1) story.
    - i. Any additional stories shall be setback to create a terrace, and approved via a Conditional Use Permit.
- (i) In the Downtown Gateway residential may be located on the GROUND FLOOR, however new retail and commercial activities are encouraged to be developed.
- (j) Parking (not including on-street parking) should be away from the STREETs and shared by multiple owners/users.
- (k) Historic character should be preserved and enhanced by context sensitive construction.



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## 11. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-23 “Impact Fees” as follows:

**“170-23. IMPACT FEE Ordinance. [Amended on 01-22-2003 by Ord. No. 35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 11-28-2012 by Ord. No. 2012.11.14-24.]**

A. Purpose: This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to:

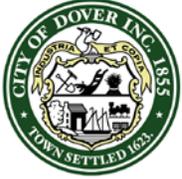
- ~~Promote public health, safety, convenience, welfare, and prosperity;~~
- ~~Insure that adequate and appropriate public facilities are available; and~~
- ~~Provide for the harmonious development of the City and its environs.~~

For consideration in lieu of above:

- (1) Assist in the implementation of the Master Plan and Capital Improvements Program;
- (2) Provide adequate public capital facilities necessitated by NEW DEVELOPMENT;
- (3) Assess an equitable share of the cost of public capital facilities to NEW DEVELOPMENT.

B. Authority

- (1) IMPACT FEES may be assessed to NEW DEVELOPMENT to compensate the City of Dover and the School District for the proportional share of capital facilities generated by NEW DEVELOPMENT in the City of Dover. Any person who seeks approval for NEW DEVELOPMENT may be required to pay an IMPACT FEE in the manner set forth herein.
- (2) The PLANNING BOARD may, as a condition of approval of any subdivision, site plan, or change of use, and when consistent with applicable Board regulations, require an APPLICANT to pay exaction for off site improvements necessitated by the development.
- (3) Nothing in this section shall be construed to limit the existing authority of the PLANNING BOARD to disapprove proposed development which is scattered or premature, or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall be construed to limit the PLANNING BOARD’s authority to require off-site work to be performed by the APPLICANT, in lieu of paying an exaction for OFF-SITE IMPROVEMENTS, or the board’s authority to impose other types of



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conditions of approval. Nothing in this section shall be construed to affect types of fees governed by other statutes, ordinances or regulations.

### C. ASSESSMENT Methodology

- (1) Proportionality: The amount of the IMPACT FEE shall be calculated by the PLANNING BOARD to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. The PLANNING BOARD may prepare, adopt, or amend studies or reports that are consistent with the above standards, and which define a methodology for IMPACT FEE ASSESSMENT for public capital facilities and IMPACT FEE ASSESSMENT schedules therefore.
- (2) Existing Deficiencies: Upgrading of existing facilities and STRUCTURES, the need for which is not created by NEW DEVELOPMENT, shall not be paid for by IMPACT FEES.
- (3) In the case of NEW DEVELOPMENT created by conversion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee assessed for the new use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of this Ordinance.

### D. Administration

- (1) Accounting: In accord with RSA 673:16, II and RSA 674:21, V(c), IMPACT FEES shall be accounted for separately, shall be segregated from the City’s general fund, may be spent upon order of the City Council, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet. In the event that bonds or similar debt instruments have been or will be issued by the City of Dover or the Dover School District for the funding of capital improvements that are the subject of IMPACT FEE ASSESSMENT, IMPACT FEES from the appropriate related capital facility IMPACT FEE accounts may be applied to pay debt service on such bonds or similar debt instruments.
- (2) ASSESSMENT and COLLECTION:
  - (a) Where subdivision or site plan approval is required for NEW DEVELOPMENT, IMPACT FEES shall be assessed at the time of PLANNING BOARD approval of a subdivision PLAT or site plan. The amount of such ASSESSMENT shall be applicable to subsequent BUILDING construction within the approved



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subdivision or site plan for a period of ~~four (4)~~ five (5) years from the date of PLANNING BOARD approval. Once this ~~four (4)~~ five (5) year period has expired, remaining construction for which no BUILDING permit has been obtained shall be subject to the adopted fee schedule in force at the time the BUILDING permit application is made.

- (b) With the exception of those PLATS and site plans meeting the conditions in A) above, and when no other PLANNING BOARD approval is required, or has been made prior to the adoption or amendment of the IMPACT FEE ordinance, IMPACT FEES shall be assessed upon the issuance of a BUILDING permit. In such cases, the IMPACT FEE schedule in force at the time of the BUILDING permit application shall apply.
- (c) IMPACT FEES will be collected prior to or at the time of issuance of a Certificate of Occupancy BUILDING permit, unless the PLANNING BOARD establishes an alternate, mutually acceptable schedule of payment of IMPACT FEES imposed on an ASSESSED PROPERTY. If an alternate schedule of payment is established, the PLANNING BOARD may require security, in the form of a cash bond, letter of credit, or performance bond so as to guarantee future payment of IMPACT FEES. In no case will an IMPACT FEE payment be allowed to be made after the issuance of a CERTIFICATE OF OCCUPANCY.
- (3) Security: In the interim between ASSESSMENT and COLLECTION, the Building Inspector may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed IMPACT FEES.
- (4) Refund of Fees Paid: The current owner of record of property for which an IMPACT FEE has been paid shall be entitled to a refund of that fee, plus accrued interest under the following circumstances:
- (a) When either the full or partial portion of the IMPACT FEE, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
- (b) When the City of Dover, or in the case of school IMPACT FEES, the Dover School District, has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate their proportionate non-IMPACT FEE share of related capital improvement costs.

### E. Appeals



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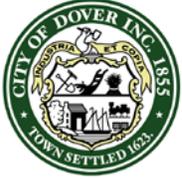
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- (1) A party aggrieved by a decision made by the Building Inspector regarding the ASSESSMENT or COLLECTION of IMPACT FEES authorized by this Section may appeal such decision to the PLANNING BOARD.
- (2) In accord with RSA 676:5, III, appeals of the decision of the PLANNING BOARD in administering this ordinance may be made to Superior Court, as provided in RSA 676:5, III and RSA 677:15.

### F. Waivers

- (1) The PLANNING BOARD may grant full or partial waivers of IMPACT FEES where the PLANNING BOARD finds that one (1) or more of the following criteria are met with respect to the particular public capital facilities for which IMPACT FEES are normally assessed:
  - (a) ~~An APPLICANT may request a full or partial waiver of school IMPACT FEES for those residential units that are lawfully restricted to occupancy by senior citizens age sixty two (62) or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The PLANNING BOARD may waive school IMPACT FEE ASSESSMENTS on such age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age sixty two (62) or over for a period of at least twenty (20) years. The PLANNING BOARD may agree to waive all or part of an IMPACT FEE ASSESSMENT and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of IMPACT FEES under this provision that would involve a contribution of real property or the construction of capital facilities; the PLANNING BOARD shall submit a copy of the waiver request to the City Council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of IMPACT FEE ASSESSMENT. The APPLICANT shall pay all costs incurred by the City for the review of such proposal, including consultant and counsel fees.~~
  - (b) ~~A person may request a full or partial waiver of IMPACT FEES for construction within a subdivision or site plan approved by the PLANNING BOARD prior to the effective date of this ordinance. Prior to granting such a waiver, the PLANNING BOARD must find that the proposed construction is entitled to the four (4) year exemption provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to phases of a phased development project where active and substantial development, BUILDING and construction has not yet occurred in the phase in which construction is proposed."~~



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### 12. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-25 “Floodplain Development”, by revising section D – “Standards and regulations”, to read as follows:

“(c) Certification by a registered engineer or architect that the FLOOD PROOFING methods for any nonresidential STRUCTURE meet the FLOOD PROOFING criteria in subsection ~~KL~~(2).”

### 13. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-27 “Conservation District”, by revising section D – “Procedures for Subdivision”, to read as follows

“D. Procedures for subdivision. No subdivision of land shall be permitted which would create a LOT or parcel or leave as a remainder a LOT or parcel which does not have, outside the Conservation District, an area equal to the minimum LOT size required for the underlying zoning district, or one (1) acre, whichever is less. ~~The ZONING BOARD OF ADJUSTMENT may grant an exception to this rule if unless~~ such a LOT or parcel is to be permanently dedicated to OPEN SPACE or natural uses and is to be dedicated to a public or private agency having as a purpose the holding of such land in a natural state in perpetuity. The lot area outside of the Conservation District may be non-contiguous.”

AND

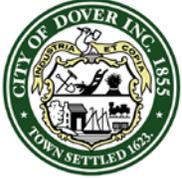
Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-27 “Conservation District”, section E – “Other provisions”, by deleting section (9) as follows and renumbering the subsequent sections:

~~“Land area contained within the Conservation District can be counted in determining the gross land area of a tract, LOT or parcel.”~~

### 14. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-27.2 “Transfer of Development Rights” to read as follows

**“170-27.2. TRANSFER OF DEVELOPMENT RIGHTS.** [Amended on 10-31-90 by Ord. No. 16-90; Amended on 01-22-2003 by Ord.35-02; Amended on 12-09-2009 by Ord. No. 2009.09.09-15; Amended on 02-22-2012 by Ord. No. 2012.01.25.]



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- A. Authority. By the authority granted under RSA 674:21, this section creates overlay district(s) for the purpose of transferring DEVELOPMENT RIGHTS (TDR) within said districts.
- B. Purpose and Intent. Within the City of Dover there are certain lands that possess significant conservation features, including but not limited to wetlands, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic viewsheds, historic landmarks, and linkages to other such areas. Because of their unique assemblages of flora and fauna and their significant contribution to the ecological system and/or the cultural identity of our community, these lands are worthy of special protection. The City of Dover furthermore, has a limited supply of land suitable for development. The purpose of this overriding district is to promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant conservation features that provide unique values in their undisturbed condition.

Additionally, it is recognized that the City of Dover has an Open Lands Committee and Conservation Commission who are active in protecting and preserving OPEN SPACE.

- C. Applicability. Upon request by an APPLICANT for development approval and at the discretion of the PLANNING BOARD, the provisions of this subsection may apply to the district(s) defined in this subsection E below.
- D. Districts Defined.
- (1) The Industrial TDR DISTRICT is hereby determined to be any I-4 or B-4 zoning district as shown on the Zoning Map for the City of Dover, New Hampshire, adopted December 9, 2009. The SENDING AREA is defined to be OPEN SPACE and related SETBACKS as defined by the City of Dover Wetland Protection District, Chapter 170-27.1, which are located in any I-4 or B-4 zoning district. The RECEIVING AREA is defined to be all remaining land in be any I-4 or B-4 zoning district.
  - (2) The Residential TDR DISTRICT is hereby determined to be Residential districts noted or displayed on the Zoning Map for the City of Dover, New Hampshire, adopted December 9, 2009. The SENDING AREA is defined to be any land preserved by the City of Dover through conservation programs in the R-40 or R-20 residential zoning districts. The RECEIVING AREA is defined to be all non-R-40 or R-20 zoning districts east of the Spaulding Turnpike which allow residential development.
    - a. If the units created meet the requirements of Section G 3) (a) below, the receiving area may be any zoning district that allows residential development.



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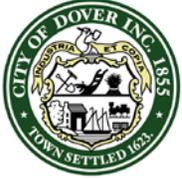
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### E. Procedural Requirements.

- (1) At the discretion of the PLANNING BOARD, an APPLICANT for development approval within the RECEIVING AREA of the defined Industrial TDR DISTRICT may apply the performance standards specified in Subsection F below in return for the acquisition of land or DEVELOPMENT RIGHTS from the SENDING AREA within the same TDR DISTRICT. The performance standards for the Residential TDR DISTRICT are outlined in Subsection G below.
- (2) A certified boundary survey of the associated land in the SENDING AREA shall be submitted as a supplement to the site plan or subdivision plan for development within the RECEIVING AREA. ~~For residential application, proof of previous preservation by the City of Dover is required.~~
- (3) The owner of the subject OPEN SPACE within the SENDING AREA of the TDR DISTRICT shall SIGN all application materials as a co- APPLICANT of the development application. For residential application, proof of an agreement to sell DEVELOPMENT RIGHTS must be provided by the Conservation Commission.
- (4) A sketch plan estimating layout of the development site and identifying the OPEN SPACE associated with the plan shall be submitted to the PLANNING BOARD for review at a regularly scheduled meeting. The PLANNING BOARD, within thirty (30) days of its review of the sketch plan, shall determine if waivers will be granted as allowed in Subsections ~~G~~ F and ~~H~~ G below. Following this decision, a final application is prepared. The final application for development approval shall be reviewed in accordance with the standard plan review process and subjected to all applicable development regulations, except as provided in this section.
- (5) A perpetual easement or restrictive covenant shall be recorded at the Strafford County Registry of Deeds that preserves the designated OPEN SPACE within the SENDING AREA. Said easement or covenant may allow for the continuance of existing residential and agricultural activities, and may allow for utility and access crossings in accordance with subsection I below. The designation of the land protection agency to hold the easement shall be approved by the PLANNING BOARD.

### F. Industrial Performance Standards.

- (1) Land within a SENDING AREA, when surveyed, approved by the PLANNING BOARD and preserved by easement or covenant as specified in Subsection E above, may be counted for the OPEN SPACE requirement for a development site in a RECEIVING AREA. The amount of land preserved in a SENDING AREA shall equal or exceed the OPEN SPACE requirement for the development site, but in no case be less than one (1) acre. Notwithstanding, development sites within the I-4 and



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B-4 zoning districts shall maintain OPEN SPACE or landscaped area on at least ten percent (10%) of the site. The design of the development site shall locate the OPEN SPACE or landscaped area to maximize the aesthetic value of the site.

- (2) The minimum LOT size requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS.
- (3) The minimum FRONTAGE requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS provided that paved access to all developed areas suitable for emergency vehicles is approved by the PLANNING BOARD.
- (4) SETBACKS for parking, paved areas, and BUILDINGS may be waived by the PLANNING BOARD, and be consistent with the intent to promote intensive development of suitable development sites. Notwithstanding, BUILDINGS shall be at least one hundred fifty (150) feet from residential STRUCTURES that exist on the date of enactment of the I-4 and B-4 Zoning districts, and seventy five (75) feet from the LOT LINE of a disagreeing residential ABUTTER.
- (5) The developer shall record covenants that address architectural considerations for STRUCTURES, SIGNAGE and lighting that are designed to promote the highest possible aesthetic quality of the development site.
- (6) A landscaping plan shall be submitted with a development application that depicts landscaping or OPEN SPACE around the perimeter of the site, near the proposed BUILDINGS, and within the parking LOT that promotes the highest possible aesthetic quality of the development.

### G. Residential Performance Standards.

- (1) ~~A residential TRANSFER OF DEVELOPMENT RIGHTS APPLICANT may pursue one of the following methods for TRANSFERING DEVELOPMENT RIGHTS.~~ Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve OPEN SPACE within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development, and coordinated with the Conservation Commission. This cost shall become the value at which DEVELOPMENT RIGHTS may be purchased.
- (2) Proceeds from the purchase of DEVELOPMENT RIGHTS, shall be placed into the Conservation Fund to be used to purchase future property or easements, or monitor easements, and not into the general fund.



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(3) A residential TRANSFER OF DEVELOPMENT RIGHTS APPLICANT may pursue one of the following methods for TRANSFERING DEVELOPMENT RIGHTS.

(a) Private land transfer Single Family Detached method.

i. An applicant shall develop a baseline yield for the lot to be developed, through the following formula

1. The square footage of the parent lot minus environmental constraints (wetlands, conservation areas etc) is the base lot size.
2. The base lot size is then reduced by fifteen (15) percent to account for roadway, this creates the net area.
3. The net area is then multiplied by a factor determined by the amount of wetlands over the parent lot. This is the developable area.

<u>Percentage of Parcel that is wetlands</u>	<u>Factor</u>
<u>0&lt;10%</u>	<u>0.85</u>
<u>10&lt;20%</u>	<u>0.8</u>
<u>20&lt;30%</u>	<u>0.75</u>
<u>30%&lt;</u>	<u>.7</u>

4. The developable area is the divided by the minimum lot size, and the whole number value is the base number, with no rounding.

a. This base number is not required to be restricted by the requirements in subsection iii.

ii. The transfer shall equate to one of the following calculations:

1. For construction of units no larger than one thousand (1,000) square feet, of total living area, two (2) units per DEVELOPMENT RIGHT purchased shall be allowed.
2. For construction of units no larger than fourteen hundred (1,400) square feet, of total living area, one and a half (1.5) units per DEVELOPMENT RIGHT purchased shall be allowed. The unit count shall be the whole number value and not rounded up.

a. If the math to devise the base number ends in more than half a unit but less than a whole, and a transfer is purchased, the result would be two (2) dwelling units.

iii. The units created, through the transfer must be:

1. Sold, and are not for rental purposes
2. Limited to the square footage originally constructed.

iv. A note shall be placed on the approved plan and any Building Permit shall note the adherence to this section of the Code.

v. A note shall be placed in the property/unit deed citing the restrictions listed above.



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- ~~(i) For land in the sending district to be eligible for a TRANSFER OF DEVELOPMENT RIGHTS, it must be a parcel of at least five (5) acres, and developable under the existing land use regulations.~~
- ~~(ii) Land within a SENDING AREA, when surveyed, endorsed by the Conservation Commission/Open Lands Committee, approved by the PLANNING BOARD and preserved by easement or covenant as specified in subsection E above, may be counted for the minimum lot size requirement for a development site in a RECEIVING AREA. The criteria used by Open Lands Committee to rank parcels shall be listed on the application.~~
- (b) Land bank Attached Single Family, Two family, three family and 4 or more method
  - (i) The transfer may be through the purchase of development rights, as described in G) (1) and (2), or through the protection of land via a permanent conservation easement as per section E) (5). For land in the sending district to be eligible for a TRANSFER OF DEVELOPMENT RIGHTS, it must be a parcel or easement purchased by the City through the use of Conservation funds allocated and approved by the City Council.
  - (ii) The transfer shall equate to one (1) unit per acre preserved. If the end result is a village themed residential/commercial project, the transfer shall equate to one (1) unit per tenth (10th) of an acre preserved. Annually, the City shall update a document identifying the cumulative cost per acre spent to preserve OPEN SPACE within the City of Dover. This list shall be kept on file in the Department of Planning and Community Development, and coordinated with the Conservation Commission.
  - ~~(iii) Proceeds from the purchase of DEVELOPMENT RIGHTS, shall be placed into the Conservation Fund to be used to purchase future property or easements, and not into the general fund.~~
- (4) Regardless of the method utilized, the transfer shall equate to one (1) unit per acre preserved. If the end result is a village themed residential/commercial project, the transfer shall equate to one (1) unit per tenth (10th) of an acre preserved. A minimum of three (3) acres shall be purchased. Regardless of the method utilized, the minimum LOT size requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS.
- (5) Regardless of the method utilized, the setbacks shall be:



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<u>MINIMUM DISTANCE AROUND INDIVIDUAL UNITS IN CLUSTERS</u>		<u>MINIMUM BUILDING SETBACKS FOR SUBDIVISION LOTS</u>	
<u>STREET Sides of Units</u>	<u>Between Units</u>	<u>Abutting A STREET</u>	<u>Abutting A LOT LINE</u>
<u>20 feet</u>	<u>20 feet</u>	<u>20 feet</u>	<u>10 feet</u>

- (6) ~~Regardless of the method utilized, the minimum LOT size requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS. FRONTAGE requirement may be waived by the PLANNING BOARD, for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS provided that paved access to all developed areas suitable for emergency vehicles is approved by the PLANNING BOARD.~~

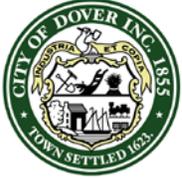
  - a. If lots are proposed, the minimum frontage allowed shall be forty (40) feet per unit

- (7) ~~Regardless of the method utilized, the minimum FRONTAGE requirement may be waived by the PLANNING BOARD for land subjected to the TRANSFER OF DEVELOPMENT RIGHTS provided that paved access to all developed areas suitable for emergency vehicles is approved by the PLANNING BOARD. A continuous visual buffer shall be created along the perimeter of the parent parcel.~~
- (8) Regardless of the method utilized, any other provision in this Chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the TRANSFER OF DEVELOPMENT RIGHTS so long as the increase in density or intensity:
  - (a) Is consistent with the Master Plan
  - (b) Is not incompatible with the land uses on neighboring LOTS (eg a multifamily building in a single family neighborhood)

## H. Conditional Uses:

- (1) ~~The PLANNING BOARD may grant conditional use permits to allow STREETS, roads, utilities, or other infrastructure improvements to cross wetlands within the RECEIVING AREA of the TDR DISTRICT, provided said infrastructure is essential to the productive use of land within the RECEIVING AREA of a TDR DISTRICT, and further provided that no possible location exists for said infrastructure in non-wetland areas.”~~

## 15. AMENDMENT



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Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-41 “Nonconforming STRUCTURES”, by revising section B to read as follows:

“B. A BUILDING or STRUCTURE nonconforming either in terms of use or BULK may be restored to its former BULK if destroyed by fire, ~~or~~ other hazard or if it is determined by the BUILDING OFFICIAL to be a hazard to persons or BUILDINGS abutting it, provided that restoration of the STRUCTURE is begun within twelve (12) months after the act of destruction. All such STRUCTURES in use at the time of destruction for agricultural purposes shall be exempt from the provisions of this subsection, provided that such reconstruction, ALTERATIONS or repairs are in compliance with the provisions of subsection A.”

### 16. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising Chapter 170-42 “Repairs and Maintenance” to read as follows:

“On any nonconforming STRUCTURE or portion of a STRUCTURE containing a NONCONFORMING USE, ordinary repairs may be made, subject to the following provisions: if a nonconforming STRUCTURE or portion of a STRUCTURE containing a NONCONFORMING USE becomes physically unsafe or unlawful due to lack of repairs and maintenance and is so declared by ~~any duly authorized official~~ the Housing Standards Board, to be unsafe or unlawful by reason of physical condition, an owner shall be able to restore, repair or rebuild it within six (6) months of said determination, in its existing location, unless an extension is granted by the Housing Standards Board. Otherwise, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located. Any duly authorized official charged with protecting the public safety may rightfully order a STRUCTURE to be secured to a safe condition.”

### 17. TAKES EFFECT

This ordinance shall take effect upon passage and publication of notice as required by RSA 47:18.

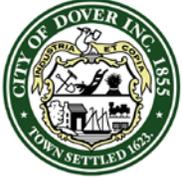
## AUTHORIZATION

Approved as to  
Funding:

Daniel R. Lynch  
Finance Director

Sponsored  
by:

Councilor Dennis Ciotti  
City Council Planning Board  
Representative



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Approved as to Legal Form and Compliance: Anthony Blenkinsop  
City Attorney

Recorded by: Karen Lavertu  
City Clerk

### DOCUMENT HISTORY:

First Reading Date:	Public Hearing Date:
Approved Date:	Effective Date:

### DOCUMENT ACTIONS:

VOTING RECORD		
Date of Vote:	YES	NO
Mayor, Karen Weston		
Deputy Mayor, Robert Carrier		
Councilor Michelle Moffet Lipinski, Ward 1		
Councilor Dennis Ciotti, Ward 2		
Councilor Deborah Thibodeaux, Ward 3		
Councilor Marcia Gasses, Ward 4		
Councilor Dennis Shanahan, Ward 5		
Councilor Matthew Keane, Ward 6		
Councilor Lindsey Williams, At Large		
Total Votes:		
Resolution does   does not pass.		

### ORDINANCE BACKGROUND MATERIAL: