

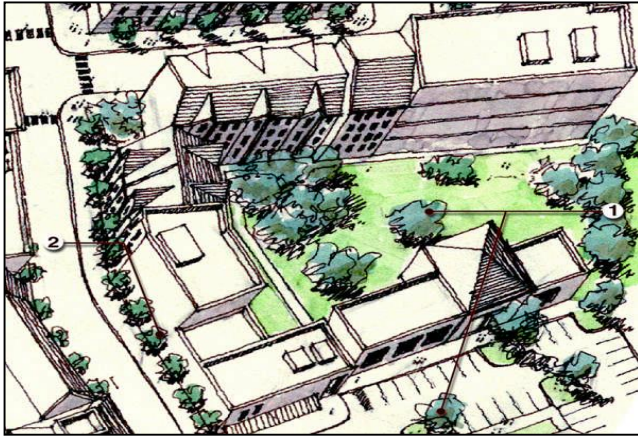


**Division of Local  
Government Services**

# Revising Zoning

A Division of New York Department of State

# Introduction



Neighborhood Centers have a wide mix of uses, building types, and frontage types. They rely on a consistent streetscape and quality civic spaces to enhance the pedestrian character of the center.

City of Saratoga Springs  
Zoning Ordinance

- Zoning purpose
- When to amend
- Contents of regulations
- Amendment procedures

# Zoning regulates

- Use
- Density
- Placement of structures on lot



Health, Safety and Welfare



Division of Local  
Government Services

# Effective zoning ...

- Encourages orderly growth
- Encourages targeted economic development strategies
- Encourages construction of quality affordable housing
- Protects historic sites and structures
- Preserves scenic resources and open spaces
- Protects farmland and sensitive environments
- Improves aesthetics of buildings, signs, etc.



# Planning before zoning

- Regulations must be based on comprehensive planning
  - Provides legal support
  - Periodic review provision
- Prioritize areas for municipal investments in infrastructure
- Identify areas for potential private development



## NYS Municipalities with Comprehensive Plans

<b>Cities</b>	<b>92%</b>
<b>Towns</b>	<b>71%</b>
<b>Villages</b>	<b>89%</b>
<b>All</b>	<b>69%</b>

Source: Legislative Commission on Rural Resources (2008)

# Goals of zoning revision

- Acknowledge comprehensive plan goals
  - State within section of intent
- Clarify and provide detail
  - Less subjectivity left to review board
  - Potentially more efficient and defensible decisions
- Correct errors, omissions & inequities
- Include newly identified uses
- Streamline procedures



# Zoning in rural communities

- Only a few districts may be needed
- Cluster/conservation subdivision
- Agricultural district(s)
  - Farm-worker housing
  - On-site wind energy facilities
- Scenic view shed
- Prime soil protection overlays
- Hamlet zoning
  - Mixed uses at higher densities
  - Provisions for walkability



# When to Amend Zoning



# Amend zoning when...

- Official zoning maps are in conflict
- Trends that need attention are worsening
- Variances are often needed to advance desired development
- Terms and definitions are outdated
- Regulations are difficult to interpret and understand
- Applicants complain of unpredictable reviews and/or results
- Comprehensive plan is updated



# Amend definitions when...

- Existing definitions are vague
- Lack organization; scattered throughout zoning regulations, instead of centrally-located or categorized
  - e.g. general and use definitions
- There are frequent requests for ZBA interpretations
- Terms in zoning vary from their common use
- There are conflicts between definitions
- Opportunities exist to supplement definitions with illustrations



# Amend listed uses when...

- Listed uses are obsolete
- Uses are referred to with names that are no longer in use
  - e.g. Automobile Laundry = Car Wash
- Existing uses lack flexibility
  - Cannot embrace similar activities that are not specifically listed
- Municipality is confronted with multiple emerging uses that do not have a place in the zoning



# Have you seen these emerging uses?





# Amend districts when...

- Purpose of the district is not clearly defined
- District's purpose & intensity of uses do not match each other or comprehensive plan goals
- Inadequate of number of districts: too many or too few
- Minor distinctions between districts



# Amend districts when...

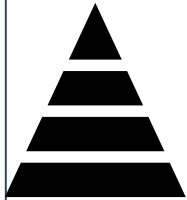
- Overlays need to be expanded, constricted or refined
- Districts have too many layers of standards
- Specific standards are in direct conflict with the district's purpose
  - e.g. minimum lot size diminishes rural character of agricultural districts
- Standards are cookie-cutter or out-of-date
  - e.g. 1960's boilerplate suburban setbacks



# Approaches to organizing uses

## Cumulative Approach

- Pyramid



Zoning starts with the most restrictive, most protected district (SF residential) and ends with the least restrictive district (industrial)

- Each district adds on permitted uses from “lesser” districts, plus new uses
  - Applied within the same use group

**OR**

  - Across the entire zoning code

- Pro:
  - Commonly used
  - Long-standing approach
- Con:
  - Can be complicated to interpret
  - Easy to misapply to any given scenario



# Approaches to organizing uses

## Exclusive Approach

- Specific uses are chosen for each district and are listed individually
  - Sometimes combined with the *cumulative* approach
- Pro:
  - Simple
  - Protects desired uses from the intrusion of other incompatible uses
    - e.g., excluding residential uses from industrial districts
- Con:
  - Inefficient: Requires an exhaustive lists of uses
  - Inflexible: Emerging uses that are similar to existing uses, but not explicitly listed, are excluded

# Approaches to organizing uses

## Exclusive Approach

### Permitted Uses:

Kenmore, NY

- (a) The following uses are permitted as-of-right uses within the general business use district:
- (1) Any use permitted within the restricted business use district.
  - (2) Theater, limited to three hundred (300) seats.
  - (3) Dry cleaning plant and/or pickup station using only non-flammable fluids in self-contained, solvent-reclaiming units when the work performed is directly for the workers. No subcontract work is permitted.
  - (4) Medical clinics
  - (5) Laundromats
  - (6) Family billiard parlor
  - (7) Automobile repair facilities

# Approaches to organizing uses

## Categorical Approach

- Uses are grouped into generic categories, instead of listed individually
  - Instead of naming each use, such as a nail salon, barber, and dry cleaner, these uses would fall into the personal services category
  - Any similar activities are captured by existing categories or a newly created category, as needed
  - Growing trend towards the categorical approach
- Pro:
  - Simple
  - Contemporary
  - Eliminates need for exhaustive lists of uses
  - Intuitive, easier to navigate and interpret
  - Flexible, allows municipality to embrace desirable emerging uses
  - More decisions made at staff level
- Con:
  - Newer approach, slowly growing as communities update old zoning codes

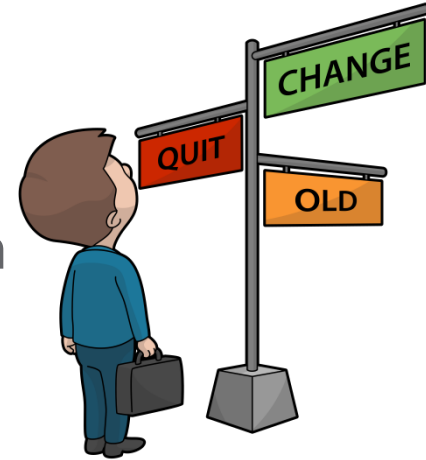
# Case in point: Excess commercially-zoned property

- A long-standing problem due to:
  - Changing tastes (e.g. from single-use office parks to mixed-use office environments)
  - Decline of shopping malls
  - Rising business costs
  - Increase in online shopping
- Worsened by the Covid-19 pandemic
  - Business closures and adaptation lowered demand for office, retail, and restaurant space



# Case in point: Excess commercially-zoned property

- An opportunity for:
  - Adaptive re-use
  - More mixed-use environments
  - A change in zoning philosophy to promote both
    - From Exclusive or Cumulative to Categorical
- Already evident in:
  - Shopping mall evolution from shopping to entertainment destinations
    - movie theaters, bars, clubs, performance venues, laser tag, arcades, bowling alleys, escape rooms



# Cities: Owner-initiated re-zoning

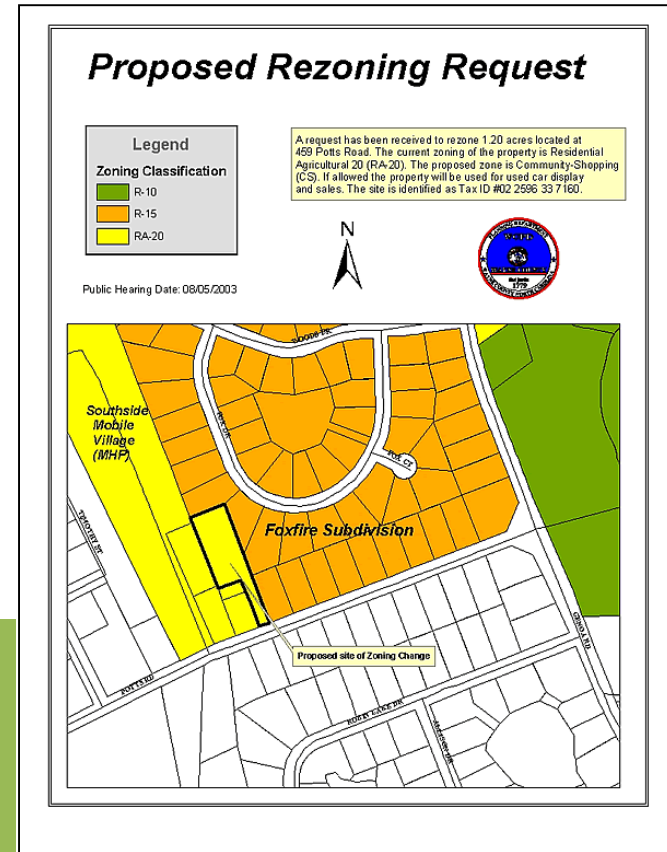
## General City Law §83

City council **must** vote on a petition to amend or repeal (re-zone) regulations of a district or part of district when:

- Owners of 50% or more of the frontage in any district present a petition requesting change

Council must vote on petition within 90 days after filing with council's secretary

**Distinction:** Village & Town governing boards are **not required** to acknowledge re-zoning applications from property owners



# Spot zoning

“the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners...”

[Rogers v. Tarrytown, 302 NY 115, 96 NE2d 731 (1951)]



# It's not spot zoning when...

Zoning changes  
must be  
reasonably  
**related to**  
**legitimate public**  
**purposes**



The zoning change is:

- In the public interest
  - creates benefits to municipality directly or overall, not just to the property owner
- Supported by planning documents
  - e.g., Comprehensive plan

If unsure, check with the municipal attorney



# City of Cohoes

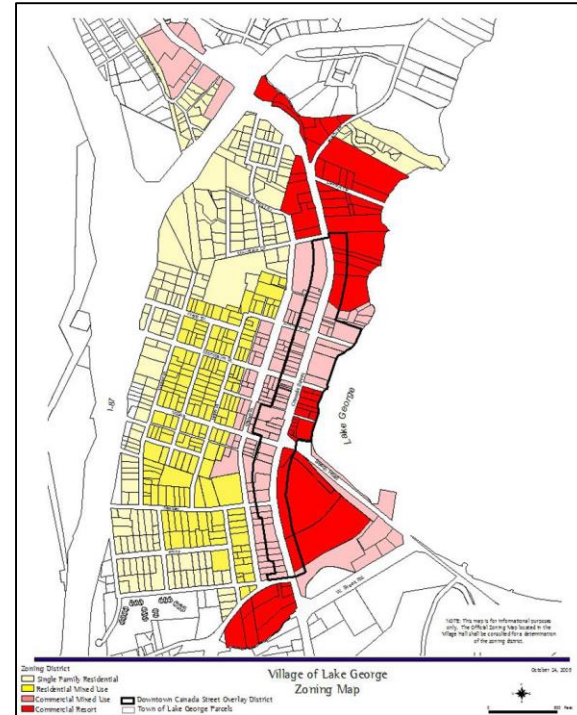
- Converted from a cumulative to exclusive uses approach
- Formerly listed both permitted and prohibited uses
- Downtown commercial district
  - Setback requirements were contrary to desired streetscape
  - Conversion of first floor retail space previously allowed which detracted from the goal of encouraging local retail
- Historic Preservation & Architectural Review Board
  - Given regulatory power
  - Formerly only acted in an advisory capacity
- Planning commission added alternates



# Contents of Regulations

# Common contents

- Text
- Zoning map
- Schedule of uses
- Use standards
- Bulk & area standards
- Illustrations, diagrams, or charts



# Text provisions

- Statutory source of power and intent
- Indication of who administers the zoning code and to what end
- Intended purpose of each district
- Definitions
- Summary of uses permitted in each district
- Any standards for permitted uses (principal and temporary)
- Reference to official zoning map and establishment of district boundaries



# Text provisions

- Rules for non-conforming uses, structures, signs, etc.
- Review procedures
- Relationship to other regulations
  - NYS Uniform Fire Prevention & Building Code
  - Site plan or subdivision review
- Administration and enforcement
- Severability clause (also known as separability)



# Supplemental regulations

- Signs
- Mining
- Shoreline
- Landscaping
- Public Utilities
- Parking and loading
- Wind energy facilities
- Excavation and grading
- Manufactured housing
- Stormwater management

## Overlay Districts

- Architectural
- Historic Preservation
- Floodplain
- Wetland
- Steep slope
- Viewshed/Natural
- Waterfront
- Entertainment



# Enforcement and fines

- Identifies Enforcement Official
  - Zoning Administrator, etc.
- Authorize enforcement officer to issue citations and appearance tickets
- Outline duties
- Enforcement Procedures
- Adequate fines and penalties
- Outlines how fines are applied
- Existing authority, but no enforcement
  - Legislative body may compel
  - Article 78 Proceeding



# Non-conformance provisions

## Considerations

### Applicability

- Authority to exist as-is without significant alteration
- Who bears the burden to prove non-conforming status?
  - Property Owner or ZEO

### Detailed rules for non-conforming:

- Uses
- Structures
- Lots
- Signs
- Site elements (e.g. lighting, landscaping, walls/fencing, etc.)

### Each set of rules include:

- Definitions for each type of non-conformity
- What constitutes expansion, abandonment and intensification of the non-conformity
- Impact of maintenance and repair on non-conforming status, where applicable
- What degree of alteration triggers loss of non-conforming status
  - Expansion (e.g. above 10%)
  - Damage or destruction



# Schedule of district uses

Cumulative &  
Exclusive Zoning

AG	R-1	R-2	C-1	I-1	I-2
S F Family Farm Mobile Home SUP: Home Occupation	S F Family SUP: Religious Institution; Home Occupation	S F Family Two Family SUP: Same as R-1; Bed and Breakfast	Residential (2 <sup>nd</sup> floor and above) General Retail, barber shop; drug store; florist.... Professional Office SUP: Gas Station; car wash; outdoor sales	Every use permitted by right in C-1 plus: Light manufacturin g; bottling plant; printers; machine shop SUP: Adult Use	Every use permitted by right in I-1 plus heavy manufacturin g; distribution plants; trucking terminal; SUP: Same as I-1; scrap processing

# Schedule of district uses

Categorical Zoning  
City of Rome, NY

TABLE 12-1: USE MATRIX	OS	NA	AG	R-1-8	R-1-5	R-2	R-3	R-P	R-R	C-1	C-2	C-3	I-G	I	AA
Adult Entertainment Business See Sec. 12.3(a)											S		S		
Agricultural Implement Sales			S										P		
Agriculture			P						P				S		P
Airport See Sec. 12.3(b)															P
Amusement Facility - Indoor										P	P	P	P		
Amusement Facility - Outdoor											S		P		P
Animal Boarding See Sec. 12.3(c)			P								S		P		S
Animal Hospital See Sec. 12.3(c)			P							P	P	P	P	P	S

# Use standards

Applied to specific uses in tandem with dimensional, design and other supplemental standards, regardless of how uses are organized (e.g., cumulative, categorical or exclusive, etc.)

Use Standards  
City of Rome, NY

## (k) Dwelling, Accessory Dwelling Unit

- i. No more than one accessory dwelling unit is allowed per lot. Where allowed, the accessory dwelling unit does not count toward the maximum number of dwelling units on a lot, including when the accessory dwelling unit is located in a detached structure.
- ii. A detached accessory dwelling unit may not exceed the height of the principal dwelling.
- iii. An accessory dwelling unit may not exceed a gross floor area of 60% of the gross floor area of the principal dwelling or 1,800 square feet, whichever is less.
- iv. Detached accessory dwelling units may only be located in the rear yard. Detached accessory dwelling units must be located 10 feet from any lot line and from any principal building.

# Dimensional requirements

## Lot sizes & dimensions

- Flag lots
- Cul-de-sacs

## Setbacks

- Build-to-line

## Lot coverage as percentage

- Pavement
- Green space

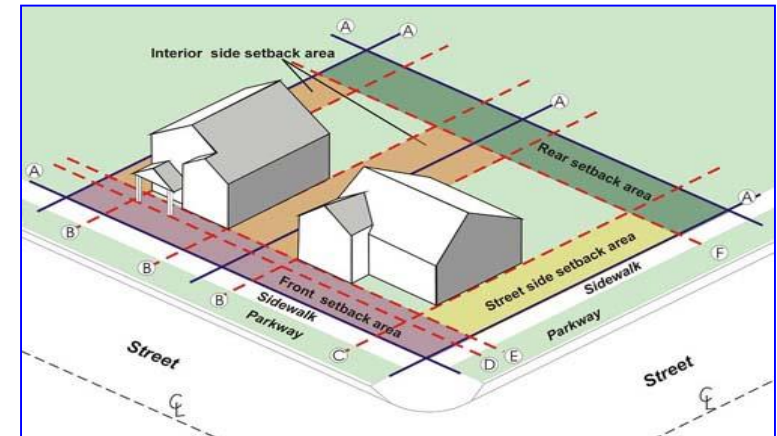
## Height of structures

- Distinct number or range
- Number of stories
- Based on adjacent buildings

Floor-Area-Ratio (FAR) = Total covered area (all floors of all buildings) ÷ Lot area

## Accessory structures

- Garages
- Porches and decks



Text or table: consistency of measurement

# Addressing inequities

- Equity defined:
  - “Just and fair inclusion into a society in which all can participate and reach their full potential...”
  - aka everyone has what they need to participate in society



- Key components of inequity:
  - Disproportionality
  - Institutionalized
- Areas where inequities show up in a community:
  - Housing choice
  - Health
  - Jobs / Access to Opportunity
  - Education
  - Public Infrastructure (roads, sidewalks, R.O.W lighting, water, sewer, etc.)
  - **What are some other areas?**

# An opportunity: Revising zoning to advance environmental justice

## Examples of inequities in Land Use:

- Over-burdening of pollution and hazardous uses on neighborhoods populated primarily by low-income households, multi-family properties, and/or marginalized groups:
  - Landfills, Garbage Incinerators, Industrial Uses
  - Uses with associated activities that contaminate the local environment
    - e.g. Semi-trailers that idle outside of a warehouse or distribution center near housing
- Neglect-induced environmental impacts
  - Hotter neighborhoods due to a lack of tree cover compared to wealthier areas

# Revising zoning to advance environmental justice

- Identify environmental justice as a goal in comprehensive planning documents and explicitly describe objectives
- Survey existing non-conforming uses
- Employ SEQRA
- Specific zoning revisions:
  - Clearly define industrial uses
  - Limit *by right* uses in light and heavy industrial districts near residential areas
  - **Apply specific use standards to individual uses and their byproducts**
  - Use overlay zones and conditional approvals to impose restrictions on noxious uses
  - Phase out non-conforming and other incompatible land uses (plan for amortization)
  - Require buffers between polluting and sensitive land uses

# Case Study: EHC, National City, CA

## Environmental Health Coalition

Place: Westside Neighborhood

Contains a mix of residential and industrial uses

In early 2000's, a vision for the neighborhood was created that included:

- Prioritization of compatible land uses between residential and industrial areas

EHC and Univ. of San Diego's Environmental Law Clinic drafted an amortization ordinance:

- Planning Commission authorized to identify and prioritize non-conforming uses to phase out over time
- Adopted by the city in 2006

Westside Specific Plan adopted - 2010

Implementation has been slow:

- 2 polluters targeted
- City has been cautious w/ powers



# Amendment Procedures


# Is a moratorium appropriate?

A temporary restriction on development

- Used to:
  - Prevent unplanned growth or development inconsistent with current plans
  - Take the time to address new or unforeseen uses through zoning code or policy changes
- Enacted by local law or ordinance:
  - Finite; termination date must be specified
  - Only long enough to plan and amend regulations
  - May be extended by subsequent enactments



# Drafting revisions

- Who writes the draft?
    - Governing Board or designee:
      - Planning Board
      - Appointed Advisory Board
        - Must include at least one Planning Board member
      - Planning staff, if applicable
  - Assistance may be available from:
    - Municipal Attorney
    - County Planners
    - Consultant
- 
- Language
    - Tailor any borrowed language from other communities to your own municipality's specific:
      - Needs
      - Preferences
      - Concerns
  - Ensure legality
    - Make sure revisions comply with or do not contradict State or Federal laws

# Engage the community

Consider community engagement a priority:

- **Prior to, during, and after revising**
- Design events or activities to seek input from a variety of stakeholders
  - Especially those directly impacted by the changes
  - Consider a listening tour, walking tour with community members, forum or fireside chat format in more neutral spaces than a town or village hall
    - e.g., libraries, rec centers, hosted venues (chamber of commerce, etc.), other community institutions
  - Mindfully schedule meeting times and consider serving refreshments

# Reviewing the draft

- Conduct multiple reviews by different stakeholders
  - Staff, where applicable
  - Planning Board
  - Zoning Board of Appeals
  - County Planning Agency
  - Governing Bodies
  - Business community, local architects, developers, etc.
  - General public, marginalized groups
- Solicit comments regarding:
  - Overall draft
  - Specific provisions
- Summarize changes following each review and revision session

**Remember to notice  
any meetings or  
work sessions,  
especially when  
there will be a  
quorum!**

# Presentation to the public

- Post proposed regulations online
  - increases accessibility
- Make hard copies available for public access at government offices and in neutral spaces
  - e.g., Library
- Present a summary of changes
- Include regulatory intent
- Graphics with captions

Once adopted, the zoning codes of many municipalities are posted online by their publisher:

- General Code (ecode360)
- Municipal Code (municode)
- American Legal Publishing



# Citizen protest of zoning amendments

## Protest eligibility:

- Property owners that own 20% or more of impacted land area:
  - Property owners must be included in the proposed change, or
  - Adjacent to land included in change (extending 100 feet out), or
  - Opposite land included in change (extending 100 feet out from street frontage of opposite land)

## To Override:

A  $\frac{3}{4}$  majority vote by the local governing board is needed to overcome citizen protest of zoning amendments

(Two-thirds majority in villages with only three trustees)



# State Environmental Quality Review

## Generic Environmental Impact Statement

§617.10 6 NYCRR

- More general review than project specific EIS
- Focus on potential effects of several actions or policies, such as adoption or amendment to zoning

## Apply SEQR to the Final Draft

- Classify the action:
  - Type I Action
    - Adoption of zoning regulations
    - Zoning amendment affecting 25 or more acres in district
- Local governing board acts as lead agency
  - Makes determination of significance
  - More likely to require an EIS (positive declaration)



# Referral to the county planning agency

Revised zoning must be referred when it applies to real property within 500' of a:

- Village, town or city boundary
- Building or institution on county or state-owned land (existing or proposed)
- County, state park or other recreation area (existing/proposed)
- R.O.W. of any county, state, parkway, thruway, road or highway (existing or proposed)
- Stream or drainage channel
- Farm operation in an Ag district

## General Municipal Law §239-m

Referral to county planning agency is required for:

- Adoption or amendment of a zoning ordinance or local law

**New zoning code cannot be adopted until County provides a recommendation or report**

# Governing Board's review of the final draft

## Public Hearing Required:

- Publish **prior** notice of public hearing in paper of general circulation at least:
  - 5 days for towns & cities
  - 10 days for villages
- OML requirements
- SEQRA hearing should not occur until either
  - DEIS is filed for positive declaration
  - Notice of negative declaration is filed

At least 10 days prior to hearing, written notice must be served to the following entities if within 500':

- Housing Authority
- Clerk of neighboring Town, City, Village, County
- State park commission

Town Law §264 Village Law §7-706

# Conducting the public hearing

## Remember to:

- Ensure accessibility by the public
- Conduct a general review of the proposed revisions
- Determine and execute a method of public comment
- Create and maintain a detailed record of the proceedings

## Record-keeping is KEY:

- Record may be useful for future ZBA interpretations
- Shorthand is ideal
- A verbatim written record is not required
- Accompany any recording with notes

# Procedural compliance

- Amendments and new laws require a majority vote of the full governing board
- Record in minutes of legislative board
- Ensure new zoning map is filed
- **SEQR:** If FEIS, board must make written findings prior to adopting zoning regulations



Supermajority vote needed to act contrary to county's recommendation

# Effective date

## The exact day and time that:

- the existing regulations will become obsolete and replaced by the new or updated version
- all development application submissions will need to comply with new regulations and/or procedures
- all prior application documents become invalid (if necessary)

## Take into consideration the time needed to:

- train staff and boards on how to apply the new regulations
- create or revise appropriate procedures, development applications, deadlines or guidance documents for the public

# Effective date

- If adopted by ordinance, changes generally effective ten days after publication
- Local laws effective upon filing with Secretary of State (best practice)
- Personal service of law or amendment may make immediately effective as applied to individual involved



# Plan for successful execution

Establish a **training plan** to educate board members and staff on how to interpret and apply the revised zoning regulations **before the effective date**:

- **Highlight:** New terms, requirements, standards, procedures, philosophical approaches
  - e.g. Cumulative to Categorical, etc.
- **Provide resources:** Cheat sheets and checklists
- **Practice:** interpretation and application, where needed
  - e.g. How to apply use standards to new uses



## Include:

- ZEO
- Planning staff
- ZBA
- Planning board

# Expect revisions!

Once the new zoning is adopted and effective, expect to revise it again as the new regulations are applied in practice:

- **Common, don't be surprised or discouraged**
- May need to be tweaked to address an unexpected scenario or offer a more or less stringent standard for a specific use or category
- For efficiency, collect revisions and amend and adopt as a group, not individually





# New York Department of State

## Division of Local Government Services

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