

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF
ALDERMEN'S REASONS FOR ADOPTING
AN AMENDMENT TO THE TEXT OF THE CARRBORO LAND USE ORDINANCE
Resolution No. 209/2006-07

WHEREAS, an amendment to the text of the Carrboro Land Use ordinance has been proposed, which amendment is described or identified as follows: An Ordinance Amending the Carrboro Land Use Ordinance to replace requirements for open space in residential developments in the downtown with requirements for downtown livability space and urban amenities for residential, mixed use, and nonresidential developments.

NOW THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is consistent with Carrboro Vision 2020: Policies through the year 2020, the Carrboro Land Use Ordinance, and the Facilitated Small Area Plan for Carrboro's Northern Study Area.

Section 2. The Board concludes that its adoption of the above-described amendment is reasonable and in the public interest because the Town of Carrboro seeks provision of outdoor space in the downtown that is conducive to social gathering, artistic expression, sustenance of wildlife, management of stormwater, promotion of walking and biking, and/or relief from the high-density built environment.

Section 3. This resolution becomes effective upon adoption.

**A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF
ALDERMEN'S REASONS FOR REJECTING
AN AMENDMENT TO THE TEXT OF THE CARRBORO LAND USE ORDINANCE
Resolution No. 210/2006-07**

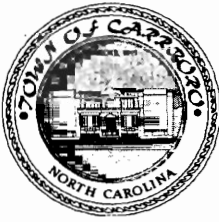
WHEREAS, an amendment to the text of the Carrboro Land Use ordinance has been proposed, which amendment is described or identified as follows: An Ordinance Amending the Carrboro Land Use Ordinance to replace requirements for downtown open space in residential developments with requirements for downtown livability space and urban amenities for residential, mixed use, and nonresidential developments.

NOW THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above-described amendment is not consistent with Carrboro Vision 2020: Policies through the year 2020, the Land Use Ordinance, and/or the Facilitated Small Area Plan for Carrboro's Northern Study Area.

Section 2. The Board concludes that its rejection of the above described amendment is reasonable and in the public interest because existing practices, policies, and procedures are sufficient; or because an accompanying alternative text amendment would better fulfill town policies.

Section 3. This resolution becomes effective upon adoption.



TOWN OF CARRBORO

NORTH CAROLINA

TRANSMITTAL

PLANNING DEPARTMENT

DELIVERED VIA: ☒ HAND ☐ MAIL ☐ FAX ☐ EMAIL

**To: Steve Stewart, Town Manager
Mayor and Board of Aldermen**

From: Kendal Brown, Planner, Zoning/Development Specialist

Date: June 1, 2007

**Subject: Land Use Ordinance Text Amendments Pertaining to Downtown
Livability Area and Urban Amenities Requirements**

On May 22, 2007, the Board of Aldermen held a public hearing to consider two text amendment proposals pertaining to downtown livability area and urban amenities.

After receiving public comment and discussing the ordinances, the Board asked to discuss this further at its June 5, 2007 meeting.

Below is a list of citizen comments heard at the public hearing, followed by a list of issues and questions raised by Board of Aldermen. These questions and comments were based on the proposals presented that evening.

Since that time, the applicant and staff have met and found more areas of agreement. The staff-proposed draft ordinance (*Attachment E*) has been revised, shown in bold text, to reflect public hearing comments and the meeting with the applicant. The applicant has since withdrawn his application.

Issues Raised by citizens at the May 22, 2007 Public Hearing

1. Sammy Slade:

- Prefer green, "truly public" spaces within ¼ - 1/3 mile.

2. James Carnahan (Planning Board):

- clarification of Planning Board recommendation
- apply requirements to all downtown development
- balance public interest with private interest
- need for a required minimum
- correct balance for this issue would likely be a compromise between applicant's and staff's proposals

- in the broader context of development downtown over the next decades, the town needs structured parking to accomplish goals in Vision 2020

3. Tom Kors (Environmental Advisory Board, based on meeting discussion comments, no vote taken yet):

- proposed numbers seem arbitrary; need more examples to properly assess
- like the simplicity of applicant's formula
- need compromise between the staff proposal and applicant's proposal

4. Bob Kirschner:

- staff proposal may be too complex
- questioned the appropriateness of single- and two-family dwellings downtown
- public access may create liability problems

5. Daniel Amoni (speaking as a downtown neighbor; serves on the Transportation Advisory Board):

- downtown character will change with increased density, necessitating public green spaces to temper the effects of more cars, heat, and pavement
- suggest obliterating open space
- establish public gathering spaces, parks
- cannot depend on private gathering spaces where can be rules too restrictive
- public spaces need to be more appealing than the Town Commons

6. Garry Kramling:

- emphasized the need for simplicity in either proposal
- "unknowns" create risk and cost for developers, may inhibit potential development
- keep all incentives for affordable housing, including in downtown

7. Sherman Richardson:

- need more green downtown
- asked that requirements for urban livability and urban amenities not apply to commercial development, as they would be too burdensome and may increase rents for smaller businesses
- the town's CUP review process is already rigorous, already costs \$30.00/hour as the clock ticks
- suggested contacting the new owner of 50-acre tract near downtown

Several issues were raised by the Board of Aldermen at the public hearing. Each concern is listed below, followed by a staff response.

Issues Raised by Board of Aldermen

Pertaining to both proposals presented at the May 22, 2007 meeting. Please note that the staff proposal has been revised, and the applicant's proposal has been withdrawn):

1. (RHO) Provide additional examples of calculations and graphics to illustrate the impact of the two ordinances on development sites and regarding costs to developers. In explaining the staff proposal, break down the calculations for the DLA and for the amenities.

We will provide these at the June 5, 2007 meeting.

2. (RHO) Identify areas where green spaces could be preserved or provided.

Publicly owned land in or within ½ mile of the downtown include Town Commons, Wilson Park, Baldwin Park, Carrboro Elementary School, and Brewer Lane Park. Further out are the Adams Tract (2/3 mile); Martin Luther King, Jr., Park (1 mile), and Hank Anderson Park (1.6 mile). The town also has two cemeteries adjacent to downtown which are green spaces, but activities are within the cemeteries are restricted.

Privately owned land in or near the downtown with sizeable areas of green space include the Old Sparrow property on Old Pittsboro Road and the Carr Mill lawn.

3. (DC) If outdoor space and amenities are provided offsite, restrict locations to downtown zoning districts rather than within a particular radius.

Attached is a map showing the downtown (as defined by zoning districts B-2, B1-(G), B1-(C), and CT) shaded in gray (*Attachment F*). Other than the Town Commons, there is no publicly owned "open space" in the downtown. Outdoor space for urban amenities could be provided on private property. Clarification would be needed as to whether proposed offsite outdoor space on private property is proposed to be publicly accessible.

Staff continues to be concerned about the administration responsibilities associated with improvements to be installed and maintained on public property.

4. (DC) Looking ahead at the town's future efforts at green building initiatives, green building features should not double-count as urban amenities.

At the present time, green building features cannot be required of developers. To encourage green building efforts by the private sector, we recommend providing incentives. The draft ordinance allows green roofs and special environmental architectural features to be counted as urban amenities. It also includes incentives for landscaping and shading. We recommend that green building features proposed by developers which could function as urban amenities be credited as such.

5. (DC) Implications of restricting DLA and amenities to ground level only (implications of excluding balconies and rooftops).

Ground level only DLA and urban amenities are possible on many existing developments, as illustrated in examples previously provided. However, most redevelopment of lots downtown will be subject to current regulations, resulting in competition for space for sufficient parking and emergency and dumpster access, in addition to the building footprint. Given the expense of land downtown, the spatial constraints especially on some of the smaller lots, and the competing needs for ground level space, we felt it prudent to build in some flexibility as to where DLA and

amenities could be provided. We anticipate that many new buildings will be two or more stories. Including balconies and rooftops as locations for DLA and amenities offers developers a degree of flexibility where ground level space is tight.

We believe that outdoor dining on balconies such as that at Top of the Hill in Chapel Hill (accessible to customers), and outdoor patios such as at the Franklin Hotel in Chapel Hill (not publicly accessible), add to the liveliness of the downtown. Balconies or rooftops that are visually, if not physically, accessible to the general public also add to the downtown livability, by encouraging interactions and by increasing safety through observation of activities below.

We do not believe rooftops will be chosen routinely as DLA/amenities options. There are added expenses associated with rooftop access: extending elevator(s), designing around or consolidating service equipment, mitigating equipment noise, etc. Under the staff ordinance, some but not all of these associated costs could be applied toward the required amenities value. Given the added costs, we believe the rooftop option would be used for some multistory projects and/or projects with severe ground level constraints such as a narrow lot.

6. (JG) Would it be possible to have no ground level outdoor area and/or amenities?

It would hypothetically be possible to have no ground level outdoor area and/or amenities, but we believe it would be rare for this to be the case.

Almost all amenities listed in the previous and current proposals would require some amount of outdoor space. In an extreme example, a developer could propose that all amenities be incorporated within vertical walls (such as climbing walls, murals, sculptures embedded in a building façade), on balconies, and/or on rooftops, such that no amenities are provided within a horizontal ground floor space, but we do not believe this would occur routinely.

In the staff proposal, a certain amount of area (on the ground level, on balconies, and/or on roofs) would be required. A developer would not be able to propose amenities embedded in a building wall without providing outdoor space as well, but could provide all DLA on rooftops and/or balconies. Again, we would not anticipate that this would be the norm. Most of the listed amenities would require space on the ground level.

In the amenities list are ground level features that some developers would include regardless of ordinance requirements, such as outdoor dining areas, street furniture, picnic areas, and special landscape or art features to enhance the business site and attract customers.

7. (DC) Implications of removing residential square footage from amenities and/or DLA calculations for affordable housing component.

In the applicant's earlier proposal (since withdrawn), this scheme would directly affect the valuation of the required amenities for the development, since the valuation is tied to the number of residential square feet proposed. For example, if one quarter of the square feet of proposed residential development was proposed as affordable housing, the amenities value for the project would drop by one-fourth.

In the staff proposal, there would be no change to the calculations for required amenities or DLA, as neither calculation is tied to the proposed residential floor area. However, incentives could be added for affordable housing, for example a reduction in the DLA and/or amenities.

On one hand, such cost-reducing schemes would provide the developer with monetary incentive for providing more affordable housing. On the other, it would mean that developments with affordable housing component would receive fewer amenity benefits.

Pertaining to applicant's proposal (since withdrawn):

8. (JHB) Identify on a map the ½ mile radius referred to in the applicant's proposal and where the open space would be.

Attached is a map showing a one-half mile radius around the edge of the downtown zoning districts (shown in gray, B-2, B1-(G), B1-(C), and CT). The radius extends north to Wilson Park, east past the Chapel Hill/Carrboro boundary, south to the intersection of Greensboro Street and NC Highway 54, and west to the Jones Ferry Road/Highway 54 intersection. Existing public open space within this radius include Town Commons (1.7 acres), Wilson Park (8.5 acres), Baldwin Park (2.5 acres), and Brewer Lane Park (1 acre).

These parks are relatively small and could receive only a limited amount of improvements.

Pertaining to staff proposal:

9. (AZ) Would like to see the 25% residential threshold raised and the base point raised.

In the revised proposal, we have raised the residential threshold to 50% of the floor area.

10. (DC) Allow proposed recreation area improvements to double-count as urban amenities only if they are publicly accessible.

The current ordinance provisions do not require recreation improvements to be publicly accessible, nor does the staff proposed ordinance require the DLA with urban amenities to be publicly accessible, and the town cannot require public access. However, the staff proposed ordinance includes incentives for making the DLA with amenities publicly accessible. Allowing double-counting of half the recreation improvements as urban amenities only if they are publicly accessible would provide a further incentive for making the recreation improvements/urban amenities publicly accessible.

12. (AZ) The draft ordinance is too complex:

The proposed ordinance was initially simpler. In addressing comments from advisory boards and in addressing several downtown-related policies simultaneously, several incentive pieces were added. Recognizing each site and each development proposal would have unique needs according to lot size, proposed uses, building types, and design constraints, we attempted to build in some flexibility and to address equity issues. Thus, the ordinance evolved to have a commercial/residential threshold, credits, exemptions, and two parallel incentive "sliding scales" (one for amenities values and one for the outdoor space (DLA) requirement).

It was our impression that the incentive sections were the most difficult for people to understand. Not hearing support for amenity upgrading as a trade-off for decreasing the DLA, we have removed this section, which simplifies the draft ordinance. In addition, in the revised proposal, we have simplified the language in the remaining incentives sections regarding landscaping and public accessibility.

Next Steps

After the June 5, 2007 work session, possible next steps for the Board are:

- Adopt the revised staff proposal;
- Adopt the draft ordinance previously proposed by the applicant (*withdrawn?*);
- Adopt the draft ordinance previously proposed by staff;
- Make no changes to the current ordinance provisions; or
- Give the staff specific direction regarding revising the staff's draft ordinance.

PUBLIC HEARING ON A LAND USE ORDINANCE TEXT AMENDMENT PERTAINING TO OPEN SPACE/LIVABILITY REQUIREMENTS

The Town has received a request to amend the text of the Land Use Ordinance to revise the requirements regarding open space for all residential developments in the downtown. Draft ordinances regarding this request have been prepared. It was necessary for the Board of Aldermen to receive public comment before acting on this item.

Kendal Brown, one of the town's planners, made the presentation.

Alderman Gist asked that recommendation from the Economic Sustainability Commission be rewritten to include who was present at the meeting and the vote taken. She stated that all advisory board recommendations should be submitted in this same format.

Jack Haggerty, speaking on behalf of the applicant, stated that the main differences in the applicant's proposal and staff proposal are: the requirement for land area, and the staff proposal has land area requirements and amenity requirements for commercial development. The applicant's proposal only deals with residential development in the downtown and is in direct ancestor of the work of the B-1(f) Committee. He stated that he feels the staff proposal will increase development costs that could result in less development. For commercial-only developments, more land would have to be set aside, resulting in less intense use of the lot and a consequent reduction in the lot's potential to generate income.

Sammy Slade asked that public spaces be provided for and suggested that there be a 1/3 to 1/4 mile walking range in the downtown for public green spaces.

James Carnahan, Chair of the Planning Board, discussed the Planning Board's recommendation and stated that the Planning Board believes the lack of structured public parking is an impediment to full utilization of downtown space for residential or commercial use as envisioned by Vision 2020. He also pointed out that open space requirements in addition to parking requirements impose quite a burden.

Tom Cors, Chair of the Environmental Advisory Board liked the applicant's proposal but feels more work is needed on the proposal

Bob Kirschner stated that he feels the staff's proposal is overly complicated. He also stated that he was confused about the proposal amendment to build single family or two-family homes in downtown when town wants higher density commercial growth in the downtown.

Gary Kraming requested that the Board keep the proposal as simple as possible and stated his desire to see affordable housing downtown.

Daniel Amoni, a resident of 502 S. Greensboro St., stated that he feels the character of the downtown will change with increased density and that he would like see more public open space.

Sherman Richardson with Main Street Partners spoke against the staff proposal stating that they do not want the Board to implement the requirements for all commercial development. The spoke about the cost already incurred in the East Main Street project and asked that additional requirements not be placed on them.

Mayor Chilton suggested that the Board focus on projects with a residential component.

Board members raised the following issues:

- Provide additional examples of calculations and graphics to illustrate the impact of the two ordinance options on development sites and regarding costs to developers. (In explaining the staff proposal, breakdown the calculations for the DLA and for the amenities.)
- Identify areas where green spaces could be preserved or provided
- Applicant's proposal: Identify on a map the ½ mile radius referred to in the applicant's proposal and where the open space would be
- For either proposal: If outdoor space and amenities are provided offsite, restrict locations to downtown zoning districts rather than within a particular radius
- Staff proposal: Allow proposed recreation area improvements to double-count as urban amenities only if they are publicly accessible.
- For either proposal: Green building features should not double-count as urban amenities:
- For either proposal: Implications of restricting DLA and amenities to ground level only; exclude balconies and rooftops:
- Staff proposal: Would like to see the 25% residential threshold raised and the base point raised
- Either proposal: Would it be possible to have no ground level outdoor area and/or amenities?
- Either proposal: Implications of removing residential s.f. from amenities and/or DLA calculations for affordable housing component.

MOTION WAS MADE BY DAN COLEMAN AND SECONDED BY JOAL HALL BROUN TO CLOSE THE PUBLIC HEARING. VOTE: AFFIRMATIVE ALL

It was the consensus of the Board to continue discussing this matter at its June 5th meeting.

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE
AS IT PERTAINS TO DOWNTOWN LIVABILITY AREA AND URBAN AMENITIES
REQUIREMENTS

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Article XIII, subsection 15-196(i) of the Carrboro Land Use Ordinance is repealed.

Section 2. Article XIII, subsection 15-198(c) of the Carrboro Land Use Ordinance is amended to read as follows:

(c) Except as otherwise provided in subsection (j) and Section 15-203, every residential development in zoning districts other than the R-2, ORMU, B-1(c), B-1(G), B-2, and CT zoning districts shall be developed so that at least forty percent (40 percent) of the total area of the development remains permanently in open space. Every residential development in the R-2 and ORMU district shall be developed so that at least twenty percent (20 percent) of the total area of the development remains permanently as open space.

Section 3. Article XIII of the Carrboro Land Use Ordinance is amended by adding thereto new sections 15-204, 15-205, and 15-206, as follows:

Section 15-204 Downtown Livability Area and Urban Amenities Provisions

(a) The Board concludes that when land is developed in the downtown, defined for purposes of this section as those areas zoned B-1(G), B-1(c), B-2, or CT, the public health, safety, and welfare are best served when portions of such properties are developed as “downtown livability areas” and improved with “urban amenities” as those terms are used in this section. The development of such properties in this way may serve some or all of the following important objectives, to the benefit of downtown business owners, shoppers, workers, pedestrians, and residents, as well as the general public:

- (1) provide relief from the high-density built environment (for example by mitigating urban temperature, pollution, glare);
- (2) enhance the pedestrian experience;
- (3) promote walking and biking in the downtown area;
- (4) decrease stormwater runoff;
- (5) provide food or habitat for wildlife;
- (6) provide opportunities for artistic expression or the enjoyment of the same;
- (7) provide opportunities for social gathering.

(b) For purposes of this section, “downtown livability area” (DLA) refers to an outdoor area that (i) is not devoted to use as a roadway, parking area, required sidewalk, **or required shade tree islands in parking lots**; (ii) is legally and practically accessible to all of the residents, occupants, tenants, and owners of the property to which the DLA appertains (except that **balconies and** roof areas developed as **DLA with or without urban amenities** need not be so accessible); (iii) is not encumbered with any substantial structure other than an urban amenity; and (iv) with or without the improvement of an urban amenity, achieves one or more of the objectives set forth in subsection (a) of this section. An “outdoor area” means an area that is either not under roof or, if under roof, is permanently open to the outdoors on at least 50 percent of the circumference of such area. A “green roof” means a roof of a building or structure (or portion thereof) that is covered with vegetation and soil, or a growing medium, planted over a waterproofing membrane.

(c) For purposes of this section, “urban amenities” refers to improvements that (i) are located or constructed within downtown livability areas, and (ii) are designed, installed, and maintained to achieve one or more of the objectives set forth in subsection (a) of this section, together with any improvements necessary to support the function or safety of or provide access to such amenities. Urban amenities include but shall not be limited to the following: water features (reflecting pools, fountains); **special visual or environmental exterior features incorporated into building architecture**, public art; historic markers, features, or places; shade-producing street trees; outdoor furniture for seating, playing games, or picnicking; arbors, trellises, or pergolas with live plants; **balcony plantings**; birdfeeders, birdhouses, and birdbaths; widened sidewalks; covered bike racks; garden perimeter walls low and wide enough to accommodate sitting and lounging; green roofs.

(d) For downtown developments in which **50-100** percent of the floor space is for residential use only, the downtown livability area and urban amenities requirements are as follows:

- (1) The site shall be developed so that an area (measured in square feet) equal to at least **12** percent of the total land area remains permanently as downtown livability area, provided that:
 - a. ~~The square footage of DLA otherwise required by this subsection as provided above may be reduced by a percentage amount (subject to a maximum reduction of 50%) equal to the percentage amount by which the dollar value of the urban amenities installed within the DLA exceeds the minimum dollar amount of such amenities required by subsection (d)(2). Thus, a 20% increase in the dollar value of urban amenities installed within the DLA over the minimum amount required by subsection (d)(2) entitles the developer to provide 20% less downtown livability area.~~
 - a. b. **DLA can be reduced to 10 percent of the land area if the DLA is substantially landscaped with grass, vegetative ground cover, plants, shrubs, bushes, or other vegetative landscaping and that is shaded to the**

extent of at least 35 percent of such area at noon on June 21st by building, awnings, pergolas, other structures, or shade trees, constructed or planted within or adjacent to such DLA.

For purposes of this subsection a “shade tree” means a tree whose height at maturity can be expected to exceed 20 feet, and of a species, according to its shape, size, and leaf size, that can be expected to provide shade during the growing season. (Please refer to LUO Appendix E, page E-13, “Trees for Shading” for examples of appropriate tree species for provision of shade.)

b. e. DLA can be reduced to 10 percent of the land area if it is that is legally, practically, and visually accessible to the general public shall be credited at the rate of 1.25 square feet for every square foot of such area;

c. d. The DLA can be reduced to 7 percent of the land area if it that meets both the criteria set forth in (d)(1)b and (d)(1)c shall be credited at the rate of 1.5 square feet for every square foot of such area.

- (2) The dollar value of the urban amenities to be installed within the downtown livability area shall an amount equal to ~~25~~ ~~12.5~~ 7 percent of the assessed value of the land that constitutes the development site, determined as of the date the development permit is approved.

When a development that is subject to this requirement contains a residential component, and the developer either provides recreation facilities or makes a payment in lieu to satisfy the requirements of this article, then such developer shall receive a credit toward the fulfillment of such developer’s urban amenities obligation, **if the amenities are publicly accessible**, in the amount of 50 percent of the dollar value of the recreational facilities installed (determined by multiplying the recreational points associated with the facilities installed by the dollar value of such points as set forth in the town’s miscellaneous fees and charges schedule) or the dollars paid in lieu of installing facilities.

(e) For downtown developments with less than ~~25~~ 50 percent floor space designated for residential use, as well as downtown developments that contain no residential component, the downtown livability area and urban amenities requirements are as follows:

- (1) The site shall be developed so that an area (measured in square feet) equal to at least ~~20~~ 10 percent of the total land area remains permanently as downtown livability area, provided that:

a. ~~The square footage of DLA otherwise required by this subsection as provided above may be reduced by a percentage amount (subject to a maximum reduction of 50%) equal to the percentage amount by which the dollar value of the urban amenities installed within the DLA exceeds the~~

~~minimum dollar amount of such amenities required by subsection (e)(2). Thus, a 20% increase in the dollar value of urban amenities installed within the DLA over the minimum amount required by subsection (e)(2) entitles the developer to provide 20% less downtown livability area.~~

- a. ~~b.~~ **The DLA may be reduced to 7 percent of the land area if the DLA is substantially landscaped with grass, vegetative ground cover, plants, shrubs, bushes, or other vegetative landscaping and that is shaded to the extent of at least 35 percent of such area at noon on June 21st by building, awnings, pergolas, other structures, or shade trees constructed or planted within or adjacent to such DLA ~~shall be credited at the rate of 1.25 square feet for every square foot of such area.~~**

For purposes of this subsection a “shade tree” means a tree whose height at maturity can be expected to exceed 20 feet, and of a species, according to its shape, size, and leaf size, that can be expected to provide shade during the growing season. (Please refer to LUO Appendix E, page E-13, “Trees for Shading” for examples of appropriate tree species for provision of shade.)

- b. ~~e.~~ **DLA can be reduced to 7 percent of the land area if it is that is legally, practically, and visually accessible to the general public ~~shall be credited at the rate of 1.25 square feet for every square foot of such area;~~**
- c. ~~d.~~ **The DLA can be reduced to 5 percent of the land area if it that meets both the criteria set forth in (d)(1)b and (d)(1)c ~~shall be credited at the rate of 1.5 square feet for every square foot of such area.~~**

- (2) The dollar value of the urban amenities to be installed within the downtown livability area shall an amount equal to ~~25~~ **12.5** 5 percent of the assessed value of the land that constitutes the development site, determined as of the date the development permit is approved.

When a development that is subject to this requirement contains a residential component, and the developer either provides recreation facilities or makes a payment in lieu to satisfy the requirements of this article, then such developer shall receive a credit toward the fulfillment of such developer’s urban amenities obligation, **if the amenities are publicly accessible**, in the amount of 50 percent of the dollar value of the recreational facilities installed (determined by multiplying the recreational points associated with the facilities installed by the dollar value of such points as set forth in the town’s miscellaneous fees and charges schedule) or the dollars paid in lieu of installing facilities.

- (f) The dollar value of the urban amenities shall be determined in the permit review process. The developer shall submit sufficiently detailed information as to the particular

amenities to be installed and the cost of such amenities to allow the permit issuing authority to determine whether the requirements of this section will be satisfied.

(g) The requirements of this section shall not apply to permits issued for single-family or two-family dwellings or to those developments described in Section 15-197 of this article.

(h) The requirements of this section shall not apply to previously developed lots if the developer demonstrates to the reasonable satisfaction of the permit issuing authority that the cost of the work proposed under the new permit is less than 50 percent of the assessed value of the improvements already on the lot when the applications for the new permit is filed.

(i) For the purposes of this section, the term “development site” shall mean the lot where the development occurs, except that if less than fifty percent of such lot is proposed to be the subject of improvements authorized under the requested permit (including the construction of buildings, parking, landscaping, and/or significant improvements), then the term “development site” shall refer just to the portion of such lot where the improvements authorized by the permit are to be constructed.

Section 15-205 Fees in Lieu of Downtown Livability Area and Urban Amenities

(a) When the permit-issuing authority determines that it is physically impossible or impracticable for a development to satisfy the downtown livability area and urban amenities requirements of Section 15-204, then the permit-issuing authority may authorize the developer to pay a fee to the town’s downtown livability area and urban amenities fund in lieu of complying with such requirements. The permit authority may allow such a payment in lieu only if it concludes that the objectives set forth in Subsection 15-204(a) could also be adequately met by having the town construct urban amenities on town property that is located within the downtown area. For purposes of this subsection, “town property” means property that is owned by the town or that the town has made plans to acquire within a reasonable time.

(b) The amount of the fee paid under this section in lieu of downtown livability area shall be equal to the product of the number of normally required square footage of DLA that is not being provided times the per square foot assessed value of the lot on which such development is proposed. The amount of the fee paid under this section in lieu of urban amenities shall be determined as follows: the dollar amount of urban amenities that would otherwise be required to be constructed on the development site in accordance with the provisions of Section 15-204 shall be calculated, and from this amount shall be subtracted the dollar amount of urban amenities (if any) that are placed on the development site within any downtown livability areas that are provided.

(c) With respect to any development that is authorized to pay a fee in lieu of providing downtown livability area or urban amenities, no use may be commenced, lot sold, or building occupied unless the fee has been paid. If a development is intended to be sold or occupied on a phase-by-phase basis, payment of the fee relating to each phase must first be made.

Section 15-206 Ownership and Maintenance of Downtown Livability Areas and Urban Amenities

(a) Downtown livability areas and urban amenities provided in accordance with Section 15-204 shall remain under the ownership and control of the developer (or his successor) or a property owners' association or similar organization that satisfies the criteria established in Section 15-201. Such downtown livability areas and urban amenities shall be made available to all owners, residents, occupants, and tenants of the development under reasonable rules and regulations established to encourage and govern the use of such downtown livability areas and urban amenities by the users without payment of separate optional fees or charges other than membership fees in a property owners' association.

(b) The person or entity identified in subsection (a) as having the right of ownership and control over such downtown livability areas and urban amenities shall be responsible for the continuing upkeep and proper maintenance of the same.

Section 4. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 5. This ordinance shall become effective upon adoption.

