

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. Jean-Francois

Sec'd by Ald. Ramkisson

Date of Adoption 07-03-17

Index No: 198-17

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon	X			
Ald. Johnson				X
Ald. Jean-Francois	X			
Ald. Cid	X			
Ald. Witt	X			
Ald. Kleiner	X			
Ald. Burr	X			
Ald. Masi				X
Pres. Rodrigues	X			
TOTAL	7			2

Whereas, the Common Council of the City of Middletown adopted Local Law #1 of 2017 to place a moratorium on land use development in the downtown Middletown area pending receipt and implementation of recommendations from planners assisting the City through the New York State-sponsored Downtown Revitalization Initiative (“DRI”), and

Whereas, prior to the moratorium, the downtown area of the City encompassed three separate zoning districts (C-3, I-1 and I-2), and it also was the sense of the Common Council and the City’s planners that it would be useful and appropriate to create a zone tailored specifically to the downtown area and which would cover the geographic area presently encompassed in the City’s Business Improvement District, and

Whereas, the City’s planners have prepared and the New York Department of State has approved the DRI plan, which included a recommendation that the City revise existing zoning to create a new Downtown Mixed Use (“DMU”) district geared specifically to the downtown area, and

Whereas, the Corporation Counsel, together with the Director of Economic and Community Development, have prepared this resolution to create a new DMU district, and

Whereas, the Common Council held a public hearing on July 03, 2017 regarding the proposed DMU district and any environmental aspects of the proposed DMU district, and

Whereas, all persons who wanted to speak about the proposed DMU district were able to do so, and

Whereas, after comments were presented at the public hearing, the public hearing was closed, and

Whereas, the Common Council has reviewed the proposed DMU district under the SEQRA law and regulations and issued a negative declaration of environmental impact with respect to the approval of the new DMU district, and

Whereas, this action does not have to be referred to the Orange County Planning Department pursuant to GML Section 239-m (3) (b).

Now, therefore, be it resolved by the Common Council of the City of Middletown that Section 475-21A, DMU Downtown Mixed Use District, is added to Code of the City of Middletown (Zoning), to read in its entirety as follows:

Section 475-21A, DMU Downtown Mixed Use District

A. Legislative Intent

In 2016, the City of Middletown was chosen as one of ten communities statewide to receive a \$10 million grant under the New York State Downtown Revitalization Initiative, an effort to improve the vitality of urban centers across New York. Middletown was chosen as one of the ten communities because its downtown was identified as being ripe for development into a vibrant area in which people could “live, work and play.” As part of the DRI process, planners assisted the City’s Local Planning Committee (established as a component part of the DRI) and the general public in identifying needs of the downtown area and developing key ingredients needed for successful downtown revitalization, including a vision for the downtown, goals and strategies to accomplish the vision, an action plan and a strategic investment plan that identified specific catalytic projects that align with the City’s unique vision of its downtown area.

As a result of the planning process, the Local Planning Committee developed five goals projected to have the greatest benefit in revitalizing the downtown area and recommended projects to accomplish those goals. The five goals are: (1) make downtown a more attractive, walkable and functional place for residents, employees and visitors; (2) bring residents and workers to downtown Middletown through improved housing and employment opportunities and amenities; (3) support redevelopment of underutilized properties and the preservation and adaptive reuse of historic buildings with technical and financial resources; (4) support outreach and marketing efforts that promote Downtown Middletown as a destination of choice for students, small business owners, shoppers, and young professionals; and (5) build connections to local institutions and regional and neighborhood resources to engage students, faculty and staff as a part of the Downtown’s success. The goals were included in a Strategic Investment Plan (“SIP”) submitted by the City to the State, and the State approved the City’s SIP.

As the SIP noted, the majority of the projects suggested in the SIP were capital improvement projects that would be selected as most appropriate for the achievement of the five goals. The State thereafter approved certain of the proposed capital improvement projects as an initial step in revitalizing the downtown. A non-capital improvement project included as part of the third goal in the SIP was the creation of a Downtown Mixed Use zoning district encompassing the geographic boundaries of the City's Business Improvement District "to permit a wide range of uses appropriate for a central business district, facilitate a 24/7 mixed-use environment with residents as well as workers, and promote strong design elements that complement Middletown's historic downtown fabric," with the further stated purpose of removing potential barriers to redevelopment.

The purpose of this enactment is to create a new Downtown Mixed Use ("DMU") zoning district consistent with the recommendations contained in the SIP in order to assist the City in revitalizing the downtown area in a manner consistent with the goals and recommendations contained in the SIP.

B. The geographic boundaries of the DMU district are the same as the boundaries of the Downtown Middletown Business Improvement District as described in Chapter 203 of the Code of the City of Middletown. Specifically, the DMU district contains only the properties located on or abutting the following streets:

Fulton Street between Academy Avenue and Mill Street; Mill Street between Fulton Street and West Main Street; West Main Street between Franklin Square and Union Street; Union Street between West Main Street and Franklin Street; Franklin Street between Union Street and Linden Avenue; Linden Avenue between Franklin Street and Wickham Avenue; Wickham Avenue between Linden Avenue and Grove Street; Grove Street between Wickham Avenue and Railroad Avenue; Railroad Avenue between North Street and Montgomery Street; Montgomery Street between Railroad Avenue and East Main Street; East Main Street from Montgomery Street to Franklin Square; East Avenue from East Main Street to Fulton Street; South Street from Fulton Street to Franklin Square; Canal Street from Fulton Street to West Main Street; Mulberry Street from Fulton Street to West Main Street; North Street from Franklin Square to Wickham Avenue; Cottage Street between Roberts Street and Railroad Avenue; John Street from Linden Avenue to North Street; Courtland Street from Linden Avenue to North Street; Washington Street from South Street to East Avenue; and William Street, Orchard Street, Roberts Street, King Street, James Street, Depot Street, Center Street and Henry Street in their entirety.

C. Design and other standards applicable throughout the DMU district

The following design and other standards shall apply to all uses and all buildings and structures within the DMU district:

1. All uses and all work performed on the exterior of buildings and structures within the DMU district, including all work on facades, all signage and all work on buildings or

structures in existence as of and after the effective date of this Section 475-21A, must comply with the Design Review Guidelines (as the same may be amended from time to time) as described in Section 166-4 (h) of the Code of the City of Middletown and must comply in all respects with the requirements set forth in Chapter 166 (Architectural Review) of the Code of the City of Middletown, including approval by the Architectural Board of Review as set forth in the aforesaid Chapter 166 (as the same may be amended from time to time).

2. The first floor (street level) of any building located in the DMU zone must be a commercial use as allowed in this Section 475-21A (as the same may be amended from time to time). Residential uses of the first floor of any building or structure located in the DMU district are prohibited.
3. For any independent use allowed in this Section 475-21A requiring less than 1,500 square feet of floor area, there will be no specific off-street parking requirements. For all other uses, off-street parking will be required as set forth in Section 475-33 of the Code of the City of Middletown (as the same may be amended from time to time), unless the parking requirements are waived or modified by the Planning Board as set forth in Section 475-33 (D) and (E).
4. No billboards or murals will be allowed anywhere within the DMU district.
5. No food trucks or temporary food purveyors will be allowed anywhere within the DMU district unless associated with a municipal or municipally-sponsored event and specifically authorized by the Common Council of the City.

D. Permitted uses.

1. Retail stores, provided that all goods prepared on the premises are sold at retail, and provided that the floor area of the store does not exceed 3,000 square feet.
2. Telephone and similar communication facilities stores or offices.
3. Banks and similar financial institutions.
4. Municipal uses.
5. One-family dwellings and two-family dwellings, second floor or higher floors only.
6. Offices for the following, but provided the floor area of the office(s) (including incidental rooms such as restrooms and lunch rooms) does not exceed 1,500 square feet in total: accountants, architects, engineers, surveyors, insurance, lawyers, real

estate, stock brokerage companies, or investment advisers.

E. Accessory uses

1. Bicycle racks, placed and constructed in accordance with Design Review Guidelines (as the same may be amended from time to time) as described in Section 166-4 (h) of the Code of the City of Middletown.
2. Sidewalk and outdoor cafes for approved restaurants, eating and drinking establishments only, subject to the provisions of Section 475-28 of the Code of the City of Middletown (as the same may be amended from time to time).
3. Home occupations as follows: professional office of an author or composer; internet-based business (with in-person customers limited to a single customer at a time); art teacher and/or music teacher (with instruction limited to a single pupil at a time), photographer and artist (with customers limited to a single customer at a time). Home occupations use does not include live performances and/or galleries. All residential use associated with a home occupation must be on the second floor or higher floors only in the building in which the home occupation is carried out.

F. Uses requiring issuance of both a special use permit and site plan approval by the Planning Board.

1. Personal service store such as barbershop, beauty shop, shoe repair, tailor or dry-cleaning service (excluding dry cleaning on the premises).
2. Funeral homes and undertaking establishments.
3. Billiard parlors, bowling alleys and similar recreation facilities, and personal fitness centers such as health clubs.
4. Off-street parking facilities (non-municipal)
5. Eating and drinking places (non-drive up window).
6. Eating and drinking places with a beer and wine license (non-drive up window), hours of operation limited to 12:00 midnight on weeknights and 2:00 a.m. on Friday and Saturday nights (Saturday and Sunday morning).
7. Eating and drinking places with a full liquor license (non-drive up window), hours of operation limited to 12:00 midnight on weeknights and 2:00 a.m. on Friday and Saturday nights (Saturday and Sunday morning).
8. Theaters and similar places of assembly such as performing arts centers, conference

centers, art galleries and antique centers.

9. Bakery whose primary business is retail on the premises but which may also sell and deliver its products wholesale to stores, hotels, restaurants or similar businesses.
10. Bus terminals and taxi stands.
11. Light manufacturing, such as plastic assembly (but not molding or 3-D printing) and the assembly of pre-made materials into another product. (The Planning Board retains the discretion to determine whether the particular proposed use constitutes light manufacturing or not.)
12. Artisan manufacturing of goods, such as jewelry or ceramics, which are produced using hand-tools only.
13. Printing shop, provided the floor area of the printing shop does not exceed 2,000 square feet.
14. Artist studios, including art classes.
15. Offices for the following:
 - a. Accountants, architects, engineers, surveyors, insurance, lawyers, real estate, stock brokerage companies, or investment advisers where the floor area of the office(s) (including incidental rooms such as restrooms and lunch rooms) exceeds 1,500 square feet in total
 - b. Medical/dental practitioners.
 - c. Other business offices, or offices for non-profit entities, and necessary business activities related thereto, such activities to be limited by the terms of the authorization granted.
16. Multiple dwellings, row houses or attached housing subject to the requirements of the UR-3 Zone, specifically Section 475-12 (C) (8) and (9) of the Code of the City of Middletown (as the same may be amended from time to time), second floor or higher floors only.
17. Educational facilities for adults.
18. Hotel. For purposes of this Section 475-21A, “hotel” is defined as follows: a hotel is a building offering short-term lodging of no more than thirty (30) days to the general public, with all rooms offered on a per-night fee basis. Ingress and egress to and from all rooms are made through an inside lobby designed to receive guests of the hotel,

supervised by a person in charge at all hours. Hotel rooms shall not be used as apartments or dwelling units for nontransient occupants, shall not constitute an individual's or family's primary residence, and shall not be construed to be a multiple dwelling. Hotel rooms shall not contain kitchen facilities and shall not be connected by interior doors. Each hotel room shall have its own bath/shower, toilet facility and sink. Each hotel must have an office for hotel management and is expected to have typical hotel amenities such as an exercise room, meeting rooms and conference rooms, and hotels may have a restaurant on premises to serve hotel guests and/or members of the general public.

19. Retail stores whose floor area exceeds 3,000 square feet.
 20. Rectifying of spirits and wines, bottling of beverages, distillery or brewery operations, including onsite tasting rooms, sales and tours.
 21. Wireless telecommunications services facilities, as permitted and regulated in Section 475-43 of the Code of the City of Middletown (as the same may be amended from time to time).
 22. Student housing used in the operation of a university, college or high school authorized to confer degrees in New York by the New York Board of Regents and/or the New York State Education Department (subject to the requirements set forth in the bulk and parking regulations for the UR-3 district as set forth at the end of this Chapter 475, provided that the Planning Board in its sole discretion may waive any of such requirements), second floor or higher floors only.
 23. Child day-care facility, provided that such facility:
 - a. Is licensed by the State of New York;
 - b. Contains at least 3,000 square feet of usable floor space;
 - c. Provides an outside play area of at least 600 square feet; and
 - d. Provides an off-street drop-off area for such children to avoid impacting street traffic in the area.
 - e. The Planning Board, in granting special use permit and site plan approval to a child day-care facility, can require additional conditions as may be necessary or appropriate based on the presence of other existing or prospective business and residential uses in the area of the proposed child day-care facility.
- G. Building height limit. No building or structure shall exceed six stories or 90 feet in height.

- H. Required lot area. There shall be a minimum lot area of 7,500 square feet.
- I. Required lot width. There shall be a minimum lot width of 75 feet.
- J. Yards required. No side, front or rear yard shall be required. No building shall extend less than 11 feet from the curbline except where the present sidewalks are narrower, under which circumstances the sidewalks shall conform to existing building lines.
- K. Notwithstanding anything contained in this Section 47-21A, any site plan or other approvals required to implement projects contained in the Strategic Investment Plan submitted by the City to the State, and approved by the State, in connection with the Downtown Revitalization Initiative will be reviewed and approved by the Common Council of the City of Middletown, not the Planning Board of the City of Middletown.

Be it further resolved that all applications for an appeal or waiver of the requirements of Local Law #1 of 2017 before the Common Council of the City of Middletown at the time of the approval of this resolution shall continue to be heard and resolved by the Common Council and shall not be required to be placed before the Planning Board for consideration.

Be it further resolved that this resolution shall take effect immediately.