ORDINANCE #

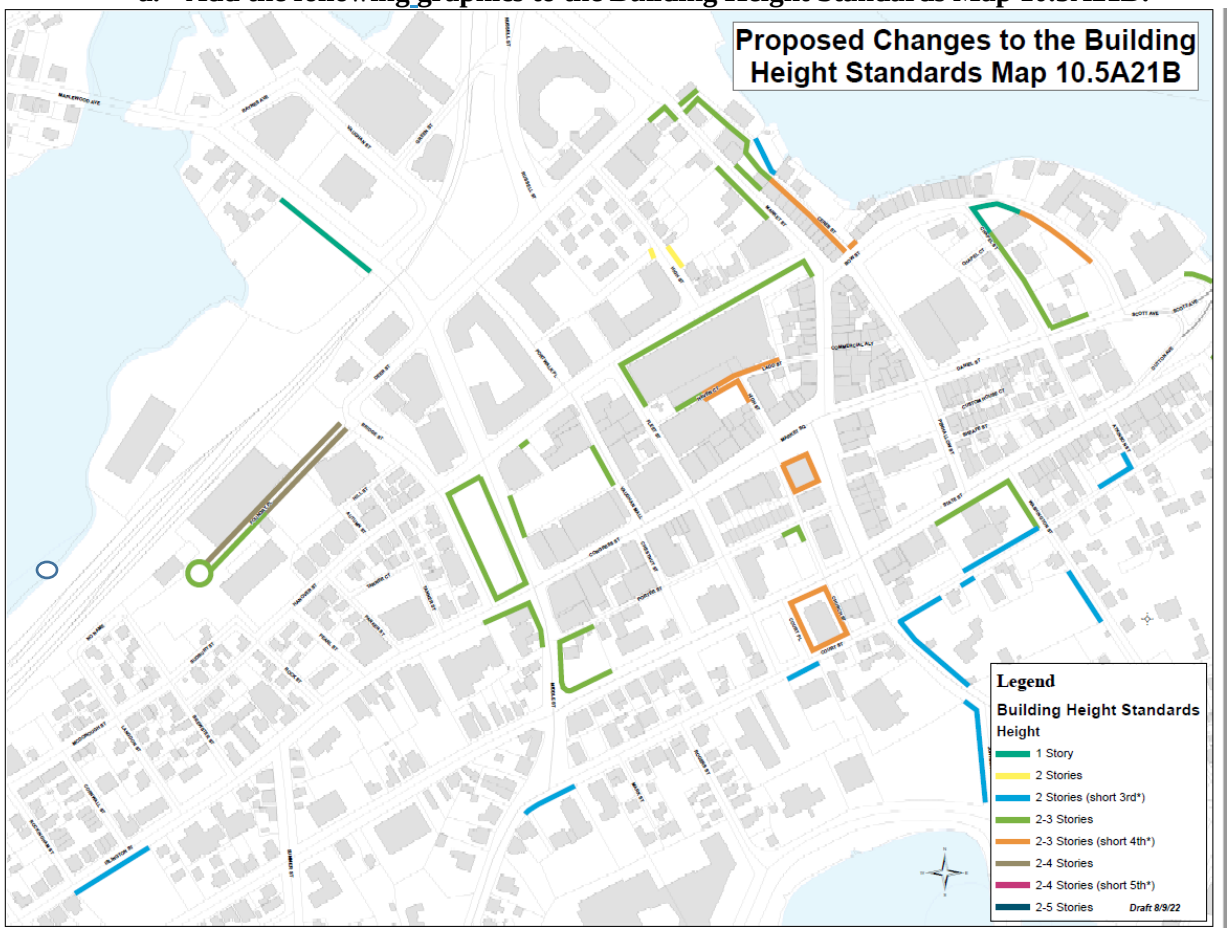
THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 – Zoning Ordinance, be amended as follows:

Amend Article 5A Character Based Zoning: Section 10.5A21.10: Contents of Regulating Plan – Map 10.5A21B; Section 10.5A21.20 -Building Height Standards; Section 10.5A20.50 – Civic Districts; and, Article 15, Section 10.1530 - Definitions as follows:

Deletions from existing language ~~stricken~~; additions or changes to Building Height Map shown in color, modifications to existing language colored and underlined; remaining language unchanged from existing:

5) **Amend Section 10.5A21B - Building Height Standards Map as follows:**
   a. **Add the following graphics to the Building Height Standards Map 10.5A21B:**



STAFF COMMENTS - BUILDING HEIGHT MAP:

Purpose:

1. *To add building height standards for civic and municipal properties that are consistent with the abutting building height standards and existing conditions.*

2. *To add building height standards for Foundry Place in order to provide a building height standard for 66 Rock Street.*

3. *To modify the building height standard for a small portion of High Street and Haven Court to match the surrounding buildings and their associated building height standard.*

***Background** – These changes will help ensure that new buildings, additions or alterations to existing buildings within the municipal and civic properties would be better aligned within their surrounding context. The Existing Building Height Map (shown in Exhibit 1), shows that there are no building height standards for Civic or Municipal properties within the Character District zoning area. As a new public street, Foundry Place would be added to the Building Height Map and be consistent with the building heights supported by the North End Vision Plan and the recently approved projects along Foundry Place. The building height standard on High Street and Haven Court will be more consistent with the building height standard of the existing abutting properties. Exhibit 2 shows the proposed changes to the Building Height Map while Exhibit 3 shows both the existing and proposed changes as a revised Building Height Map.*

***Updates**– As discussed briefly at the 6-23-22 meeting, in order to retain the existing building height standards along the Hill and Hanover Street properties, the proposed building height standard along Foundry Place along the rear yard of the Heinemann property is recommended to be lowered to 2-3 stories or 40 to match the existing height standard for this property. Additionally, the building height standard for the South Church is recommended to be increased to 2-3 stories (short 4th) or 45' to match the existing height of the church. Note that all other civic buildings would be in conformance with the proposed building height standards.*

THE FOLLOWING REVISION IS A RESPONSE TO THE FEEDBACK RECEIVED IN THE PLANNING BOARD MEETING HELD ON AUGUST 8, 2022.

***Cemeteries** – To better align with the existing use of the properties, the proposed changes to the building height standards map have been updated to lower the building height standards along the cemeteries to 1 story or 20'; the lowest building height standard.*

b. Amended the following note on Map 10.5A21B as follows:

Incentive Overlay Districts

Within the Incentive Overlay Districts, certain specified development standards, including height, density and parking, may be modified pursuant to Section 10.5A4~~7~~6.

STAFF COMMENTS - OVERLAY DISTRICT REFERENCE:

***Purpose** – To correct an incorrect reference.*

***Background –** 10.5A47 does not exist in the code and was intended to be listed as 10.5A46.*

6) Amend Article 5 - Section 10.5A21.20 - Building Height Standards (deletions from existing language ~~stricken~~; additions to existing language colored and underlined; remaining language unchanged from existing):

a. Amend Section 10.5A21.21 as follows:

10.5A21.21 Assignments for specific **building height** require a building to have no more than the designated maximum number of **stories** or the maximum height in feet (whichever is lower) and no less than the designated minimum number of **stories**. Subject to Section 10.635.70 – Review Criteria, within the Historic District, the approved **building height** may be lower than the maximum designated number of **stories** or the maximum height in feet provided in Section 10.5A43.30 but shall be not lower than the minimum designated number of **stories** or the minimum height in feet provided.

STAFF COMMENTS - HISTORIC DISTRICT COMMISSION:

Purpose *– To make it explicit that within the Historic District the HDC has jurisdiction over height, scale, and massing of any new construction and can require, as part of its approval process, a building height less than the maximum permitted.*

Background *- Like building placement or design, the height of the building must be determined to be appropriate by the HDC so the building height standard(s) for the property set the range of permitted building heights subject to HDC approval.*

b. Amend Section 10.5A21.21 as follows:

10.5A21.22 When a **lot** is assigned to more than one **building height** standard the **lot** shall be apportioned as follows:

(a) A **building height** standard designated along ~~the~~ a **front lot line** ~~or~~ on a ~~**street**~~ **public place** shall apply to the portion of the **lot** that is 50 feet or less from such **lot line** ~~or **street**~~along a **public place**.
(b) A **building height** standard designated along a water body shall apply to the portion of the **lot** that is 100 feet or less from the mean high water line.
(c) More than 50 feet from a **front lot line** ~~or~~ along a ~~**street**~~ **public place** and more than 100 feet from a water body, the **building height** may increase to the highest **building height** standard designated for the **lot**.
(d) Where a **lot** has less depth from ~~the~~ a **front lot line**, ~~**street,**~~ along a **public place** or water body than the required minimum distances stated above, the lowest **building height** standard for the **lot** shall be applied to the required linear distance from the **lot line**, ~~**street,**~~ **public place**, or water body.

STAFF COMMENTS - BUILDING HEIGHT ON CORMER, THROUGH OR WATERFRONT LOTS:

Purpose *– To remove any ambiguity that the maximum building height is assigned to all lot lines fronting on a public place and that corner, through or waterfront lots allow for limited encroachment of a higher building height provided the taller sections of the building are located at least 50 feet from a lot line along a public place with a lower building height standard.*

Background *– This change will remove any ambiguity as to how building heights are apportioned on corner, through or waterfront lots.*

7) Amend Article 5 – Section 10.5A50: Civic Districts (deletions from existing language stricken; additions to existing language colored and underlined; remaining language unchanged from existing):

a. Amend Section 10.5A52.40 as follows:

10.5A52.40. Provided all **uses** remain civic, n~~N~~ew structures, alterations and expansions of existing structures in the Civic district ~~are exempt from the requirements of 10.5A42 and 10.5A43 provided all **uses** remain civic~~shall only conform to the Building Placement, Building and Lot Occupation, and Building Form Standards for Principal and Outbuildings listed in 10.5A41.10 C.

STAFF COMMENTS - DIMENSIONAL STANDARDS IN THE CIVIC DISTRICT:

Purpose *– To assign basic dimensional standards to Civic properties.*

Background *– In contrast to Civic properties outside the Character District Zoning Area, all 9 properties within the Civic District currently have no dimensional controls including, but not limited to, building height, setbacks, or building footprint size. The CD4 development standards are proposed. Notably, this amendment proposes no use change to the Civic Districts and all Civic properties comply with and are well below these dimensional standards. As an alternative to the CD4 Development Standards, a new set of Development Standards could be also be established for the Civic District or, the existing blanket exemption could remain in place.*

8) Amend Article 15 – Definitions - Section 10.1530: Terms of General Applicability (deletions from existing language ~~stricken~~; additions to existing language colored and underlined; remaining language unchanged from existing):

Lot line, front

A boundary of a **lot** that separates the **lot** from ~~a **street** or~~ a **public place**. A **corner lot**, ~~or a~~ **through lot** or a waterfront **lot** shall have ~~two~~ multiple **front lot line**s. In the case of a **corner lot**, **through lot** or a waterfront **lot**, the ~~**front lot line**~~ **principal front yard** shall be the line bordering ~~a **street**~~ a **public place** on which the **lot** has its address as defined by the City.

STAFF COMMENTS - FRONT LOT LINE:

Purpose *– To clarify that corner, through or waterfront lots can have multiple front lot lines and the property address only determines the principle front lot line.*

Background *– This avoids any ambiguity as to how building heights are allocated on corner, through or waterfront lots.*

Public place

A **street** way, park, **pedestrian alleyway** or **community space** that provides public access.

STAFF COMMENTS - PUBLIC PLACE:

Purpose *– To add a definition for a public place.*

Background *– Public places include, but are not limited to the existing community space types (i.e. pedestrian alleyways, greenways, squares or plazas) that provide public access.*

Urban districts

For the purposes of grade definitions and **building height** determinations, the **urban districts** are defined as the Character and Civic Districts.

STAFF COMMENTS – URBAN DISTRICTS:

***Purpose** – To add a new definition for **Urban districts** so building height can be measured along the street-facing façade of the building versus the entire perimeter of the building.*

***Background** – In urban districts this will prevent new buildings from using the existing or finished grades behind the building to raise the overall average height of the building along the street.*

Average existing grade

For all buildings located outside the **urban districts**, the **average existing grade** shall be the average ground levels adjoining the **building** at all exterior walls measured every five feet around the perimeter of the **building**. For all buildings located inside the **urban districts**, the **average existing grade** shall be the average existing ground level measured every five feet along the street-facing **facade** of all **lot lines** adjoining **a public place (**see also **building height**).

STAFF COMMENTS - AVERAGE EXISTING GRADE:

***Purpose** – To add a new definition for **Average Existing Grade** in order to minimize fill areas from being used to elevate the height of a proposed building.*

***Background** – Outside the Urban Districts, building height will continue to be measured from the average existing grade around the entire perimeter of the building. Within the Urban Districts it will only be measured along the street-facing façade(s) of the building.*

Average finished grade

For all buildings located outside the **urban districts**, the **average finished grade** shall be the average ground levels adjoining the **building** at all exterior walls measured every five feet around the perimeter of the **building**. For all buildings located inside the **urban districts**, the **average finished grade** shall be the average finished ground level measured every five feet along street-facing **facade** of all **lot lines** adjoining **a public place (**see also **building height**).

STAFF COMMENTS - AVERAGE FINISHED GRADE:

***Purpose** – To add the definition for **Average Finished Grade** in order to address cuts (or earth removal) being used to elevate the height of a building.*

***Background** – Outside the Urban Districts, this change will continue to use the average finished grade around the entire building to measure the average building height. Inside the Urban Districts, the average building height will be measured only along the street-facing façade(s) of the building.*

Building height

The greatest vertical measurement between ~~two reference points~~ the lower and upper reference points as defined below. This measurement shall be the **building height** for the purposes of this Ordinance.

(a) For buildings located outside the **urban districts** the lower reference point shall be the **average existing grade** or **average finished grade**, whichever is lower, measured along the

perimeter of the entire **building**. For buildings located inside the **urban districts** the lower reference point shall be established from the **average existing grade** or **average finished grade**, whichever is lower, along street-facing **facade** of all **lot lines** adjoining a **public place**. In the case of a corner lot, ~~or~~ through lot or waterfront lot the provisions of Section 5A.21.21 shall apply. The vertical distance between the lower and upper reference points shall not exceed the maximum number of stories or **building height**.

STAFF COMMENTS - BUILDING HEIGHT:

Purpose *– Within the Non-Urban Districts the building height will continue to be measured around the entire perimeter of the building. In contrast, in Urban Districts building height will only be measured along the street-facing facades adjoining a public place.*

Background *– Inside the Urban Districts several recent projects have included podium-type construction resulting in an additional story being added and thereby artificially increasing the average grade plane of the land around the building.*

(b) The upper reference point shall be any of the following:
(1) For a flat or flat-topped **mansard roof**, the highest point of the roof surface;
(2) For a ~~pitched~~ gable, gambrel, hip, ~~roof~~, hip-topped **mansard roof**, or **penthouse**~~or gambrel roof~~, the elevation midway between the level of the eaves or, floor in the case of a **penthouse**, and highest point of the roof. For this purpose, the "level of the eaves" shall mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves, but at no time shall this level be lower than the floor level of the uppermost **story** or **attic.**

STAFF COMMENTS - MANSARD ROOFS:

Purpose *– To clarify and differentiate how building height is measured between a flat- and hip-topped (or sloped) mansard roofs.*

Background *– The existing requirements for measuring hip-topped roofs are in conflict with the diagram currently in the code. In the end, a primary objective of the code is to encourage new buildings to have sloped roofs and to minimize flat-topped buildings.*

(c) A **parapet wall**, fence, railing, decorative cornice, or similar structure that extends more than four ~~two~~ feet above the roof surface shall be included in the determination of the **building height**, but shall not be included if it does not extend more than ~~two~~ four feet above the roof surface.~~.~~

STAFF COMMENTS - ROOF APPURTENANCES:

Purpose *– This would allow for taller root edge treatments along the edge of the roof surface on a flat-topped building.*

Background *– This would support adding a stronger roof edge treatment like a raised cornice or parapet wall. The current restriction of two feet along the roof edge of a 50-60 foot building has proven largely ineffective in achieving architectural interest along the roof edge.*

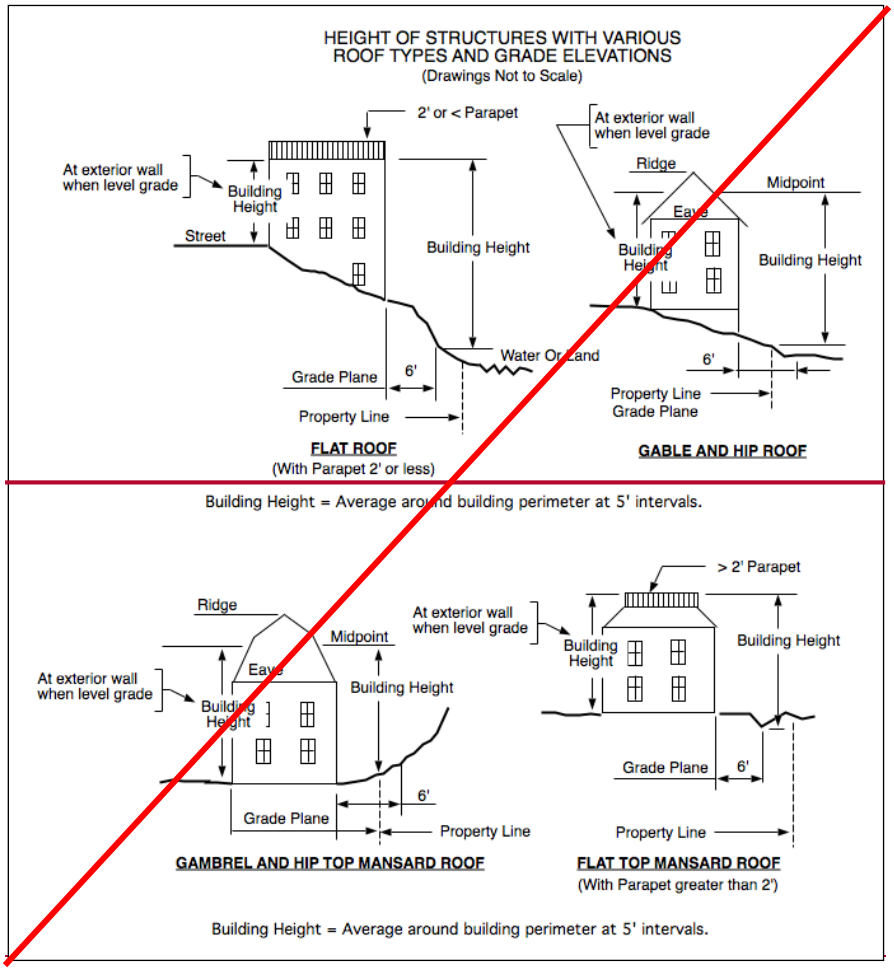
~~(d) To determine **building height**, measurements shall be taken at least every 5 feet around the entire perimeter of the **building.** The average is calculated from these figures and that figure shall be the **building**'s height for purposes of this Ordinance.~~

(See also: **average existing grade** and **average finished grade**, **parapet wall,** **mansard, penthouse** and **urban districts**)

STAFF COMMENTS – BUILDING HEIGHT GRAPHIC:

Purpose *– To delete this section and its reference to the building height diagram in order to remove existing inconsistencies on how building height is measured for some roof types and to reduce confusion in how building height is measured in urban and non-urban districts..*

Background *– The existing building height diagram illustrates how building height is currently measured. It exclusively relies on the finished grade. The proposed code amendments will separate urban districts from non-urban districts and consider both existing and finished grades.*



STAFF COMMENTS - BUILDING HEIGHT GRAPHIC:

Purpose *– To remove the diagram to avoid confusion and conflicts in how building height is measured inside and outside urban districts.*

Penthouse

A habitable space within the uppermost portion of a **building** above the **cornice** which is set back at least ~~15~~ 20 feet from all edges of the roof adjoining a **public place** and at least 15 feet from all other edges. ~~and~~ The total floor area of the **penthouse** shall not exceed 50% of the area of the **story** below and the height of the **penthouse** shall not exceed 10 feet above the **story** below for flat roof surface or 14 feet for a gable, hip, or hip-topped **mansard roof** surface. Except for elevator or stairwell access allowed under Section 10.517, no other **roof appurtenance**s shall exceed the maximum allowed height of a **penthouse**. For internal courtyards at least 40 feet from a street or vehicular right-of-way or easement, the **penthouse** shall be setback at least 8 feet from the edge of the roof of the story below. **(**see also **building height)**

STAFF COMMENTS - PENTHOUSES:

Purpose *– To modify the dimensional standards for penthouses to minimize public views from a public place and bring penthouses into parity with the height requirements for other attic areas.*

Background *– The proposed dimensional standards will increase the setback of a penthouse along a public place and encourage the use of sloped roofs. This will also allow a penthouse to be fully treated like an attic space by using the mid-point of its height to calculate the overall height of the building.*

Mansard roof

A building with either a flat- or hip-topped mansard roof as follows:

a) Flat-topped mansard - ~~a~~ four-sided flat-top mansard roof ~~or hip-topped topped roof~~ characterized by ~~two~~ one slope on each side of its sides ~~with~~ where the sloped roof may be punctured by dormer windows and the higher roof surface is a **flat roof**;

~~a)~~ b) H~~h~~ip-topped mansard – a roof characterized by two slopes on each side with the lower slope punctured by dormer windows. The upper slope of the roof may not be visible from **street** level when viewed from close to the **building**~~.~~ and the highest roof structure shall not be a **flat roof** as defined herein.

STAFF COMMENTS - MANSARD ROOF:

Purpose – *More clearly differentiate the difference between a flat- and hip-topped mansard roof.*

Background *– A flat-topped mansard roof is analogous to a flat-topped building whereas a hip-topped mansard roof is similar to a sloped roof or attic (like a gable, gambrel or hip roof).*

Short story

Either (1) a top story that is below the cornice line of a sloped roof and is at least 20% shorter in height than the story below; or (2) a story within a flat-topped **mansard roof** with a pitch no greater than 30:12.

STAFF COMMENTS - SHORT STORY:

Purpose – *Address the existing conflict between how flat- and hip-topped mansard roofs are measured in terms of building height.*

Background *– Flat-topped mansards are measured the same as flat-roofed buildings. In contrast, hip-topped mansard roofs are measured like sloped roof buildings where the mid-point between the ridge and eave is averaged. This amendment remove the conflict as to how the building height of a hip-topped mansard roof is measured.*

THE FOLLOWING REVISION IS A RESPONSE TO THE FEEDBACK RECEIVED IN THE PLANNING BOARD MEETING HELD ON AUGUST 8, 2022.

5) Amend Article 5 – Section 10.5A43.32: Building and Story Heights (deletions from existing language stricken; additions to existing language colored and underlined; remaining language unchanged from existing):

a. Amend Section 10.10.5A43.32 (b) as follows:

(a) All **roof appurtenance**s and other features that exceed the allowed **building height** for the zoning district shall not exceed 33 percent of the total roof area of the **structure** and, except for elevators, ~~and~~ stair towers, and decorative railings no taller than four feet in height, shall be set back at least 10 feet from any edge of the roof.

STAFF COMMENTS – ROOF APPURTENANCES (DECORATIVE RAILINGS):

Purpose *– To allow for decorative railings up to 4 feet in height to be located along the roof edge.*

Background *– Currently, all roof appurtenances (including decorative rail systems) are required to be located at least 10 feet from the edge of the roof. This will allow for better use of the roof surface and the opportunity to allow for decorative rail systems to add interest to the edge of the roof and the overall skyline of the city.*

EXHIBIT 1 – EXISTING BUILDING HEIGHT STANDARDS MAP (SHOWING THE GAPS FOR MUNICIPAL AND CIVIC DISTRICT PROPERTIES AND FOUNDRY PLACE).

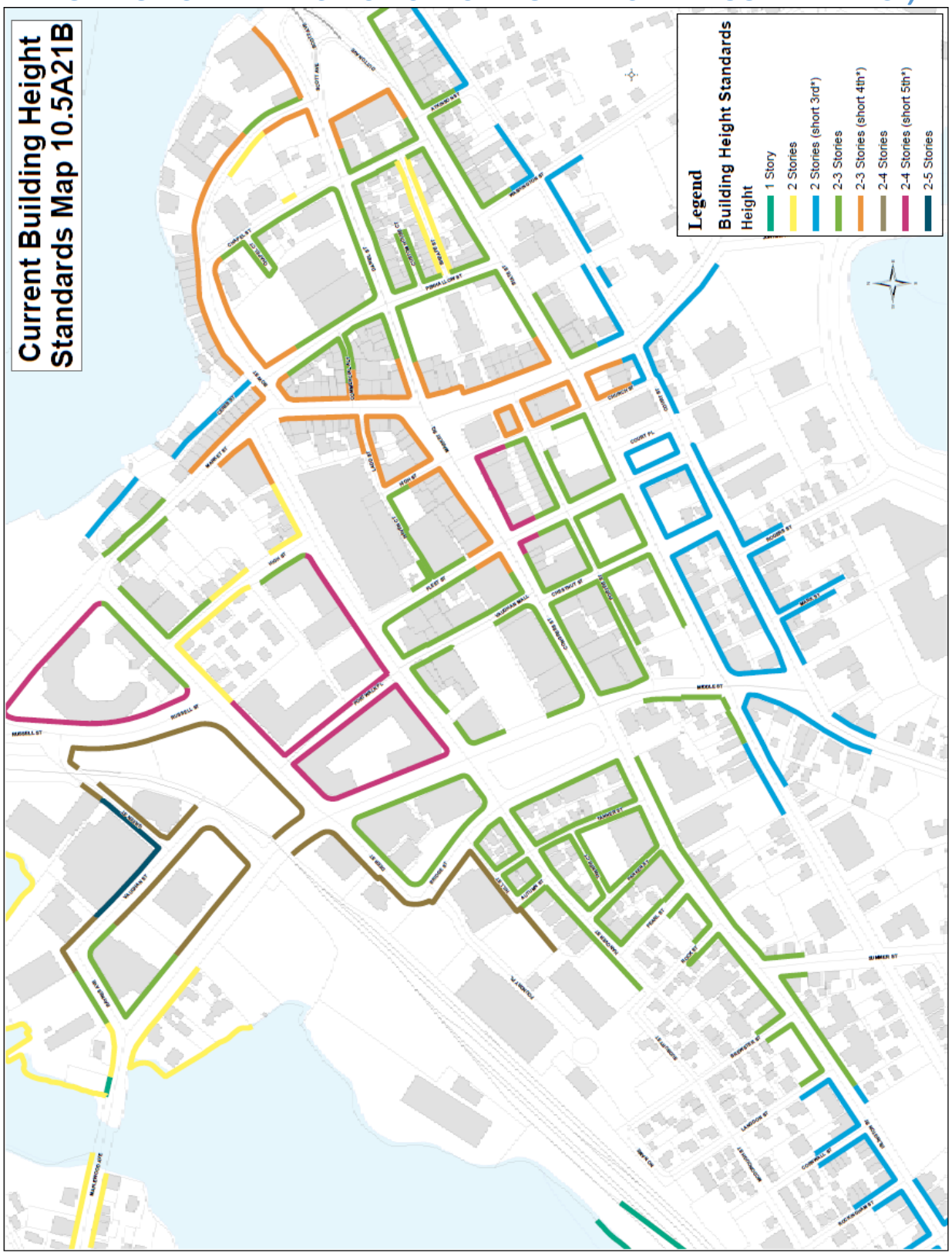


EXHIBIT 2 – PROPOSED AMENDMENTS TO THE BUILDING HEIGHT STANDARDS MAP

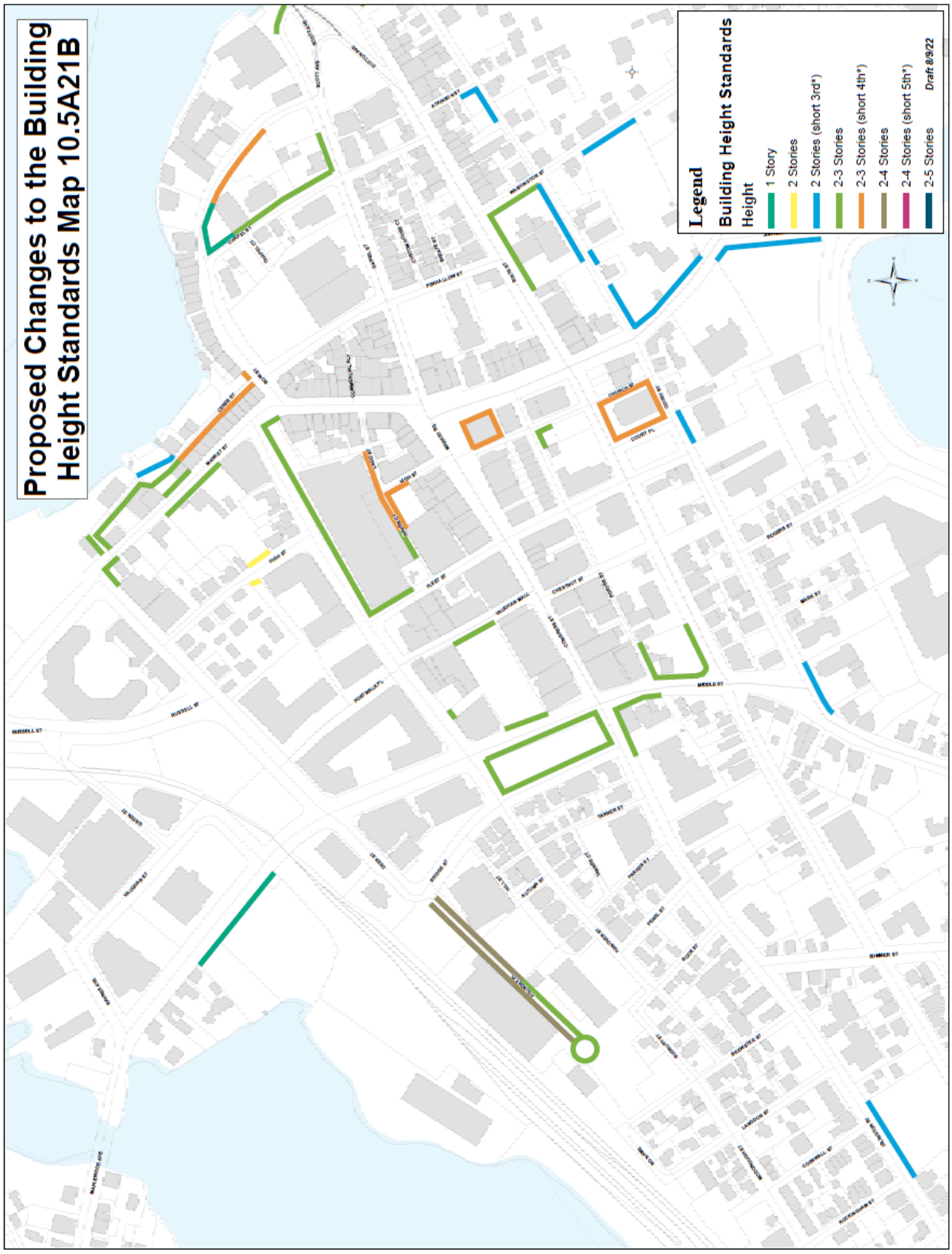


EXHIBIT 3 – REVISED BUILDING HEIGHT STANDARDS MAP SHOWING THE EXISTING AND PROPOSED BUILDING HEIGHTS STANDARDS