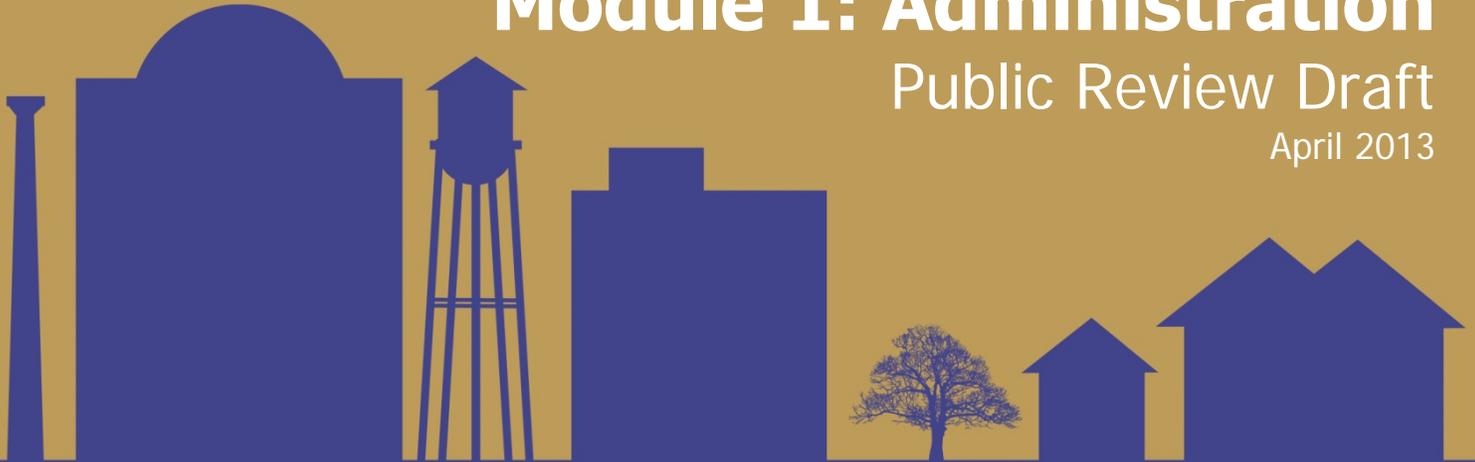


Module 1: Administration

Public Review Draft

April 2013



UPDATE

HIGH POINT

DEVELOPMENT ORDINANCE



CLARION

TABLE OF CONTENTS

Chapter 1: General Provisions..... 1-1

Chapter 2: Administration..... 2-1

Chapter 3: Zoning Districts3.1

Chapter 4: Use Standards4.1

Chapter 5: Development Standards5.1

Chapter 6: Environmental Standards6.1

Chapter 7: Subdivision Standards.....7.1

Chapter 8: Nonconformities 8-1

Chapter 9: Enforcement 9-1

Chapter 10: Definitions 10-1

CHAPTER 1: GENERAL PROVISIONS

- 1.1. Title..... 1-1**
- 1.2. Authority..... 1-1**
 - 1.2.1. General Authority..... 1-1
 - 1.2.2. References to North Carolina General Statutes 1-1
- 1.3. General Purpose and Intent 1-1**
- 1.4. Applicability 1-2**
 - 1.4.1. Effective Date..... 1-2
 - 1.4.2. General Applicability..... 1-2
 - 1.4.3. Application To Governmental Units 1-2
 - 1.4.4. No Development Until Compliance With All Applicable Law 1-3
 - 1.4.5. Annexation..... 1-3
- 1.5. Conformance With Adopted Policy 1-3**
 - 1.5.1. Adopted Policy Guidance 1-3
 - 1.5.2. Conformance..... 1-3
- 1.6. Procedures Manual 1-4**
 - 1.6.1. Contents 1-4
 - 1.6.2. Supplemental to Development Ordinance..... 1-4
- 1.7. Relationship With Other Laws, Covenants or Deed Restrictions 1-4**
 - 1.7.1. Minimum Requirements..... 1-4
 - 1.7.2. Conflicts with Other City Codes or Laws 1-4
 - 1.7.3. Conflicts with Private Agreements 1-5
 - 1.7.4. Conflicts with State or Federal Law 1-5
 - 1.7.5. Existing Agreements or Vested Rights..... 1-5
- 1.8. Transitional Provisions 1-5**
 - 1.8.1. Prior Violations Continue..... 1-5
 - 1.8.2. Existing Nonconformities 1-5
 - 1.8.3. Pending Complete Applications 1-5
 - 1.8.4. Approved Applications 1-6
 - 1.8.5. Prior-Approved Conditional Use Zoning 1-6
 - 1.8.6. Prior-Approved Conditional Zoning 1-6
 - 1.8.7. Lands Subject to an Approved Planned Unit Development District Designation 1-7
 - 1.8.8. Existing Uses..... 1-7
- 1.9. Transition to New Zoning Districts..... 1-7**
- 1.10. Vested Rights..... 1-9**
- 1.11. Severability..... 1-9**

KEY CHANGES FROM THE CURRENT ORDINANCE:

Chapter 1 contains the general authority and framework for the updated Development Ordinance. The changes in the chapter from the current ordinance include:

- Expansion of the purpose and intent statements to better reflect the policy direction (pg. 1-1).
- Provisions that better describe the relationship between the city's adopted planning policies and the Ordinance (pg. 1-3).
- Description of the contents and purpose of the Procedures Manual (pg. 1-4).
- Establishment of a new set of transitional provisions that address how existing violations, nonconformities, planned unit developments, applications in progress, and other development under the current ordinance will be handled in the new Ordinance (pg. 1-5 to 1-9).
- A table summarizing how the current zoning districts will be translated to the new zoning districts (pg. 1-8).
- Vested rights provisions (pg. 1-10).

Footnotes are included in the document that identify, as appropriate, new code sections, changes in existing code provisions, changes based on recommendations from the Code Assessment, and changes made based on comments from UPDATE Advisory Committee members. These footnotes will remain in the draft version of the document but will be removed prior to its adoption.

CHAPTER 1: GENERAL PROVISIONS

1.1. TITLE¹

This Ordinance shall be officially known as the “Development Ordinance of the City of High Point” and may be referred to as “the Development Ordinance,” “this Ordinance,” and several abbreviated references (“the DO,” “this DO,” or “DO.”)

1.2. AUTHORITY²

1.2.1. GENERAL AUTHORITY

This Ordinance consolidates the city’s zoning, subdivision, and flood damage prevention regulations, as authorized by the North Carolina General Statutes. It is adopted in accordance with:

- A.** The authority granted to the City of High Point by the General Assembly of the State of North Carolina;
- B.** The North Carolina General Statutes, including:
 - 1.** Chapter 160A, Article 8 (Police Powers);
 - 2.** Chapter 160A, Article 19 (Planning and Regulation of Development);
 - 3.** Chapter 143, Article 21 (Water and Air Resources);
 - 4.** Chapter 113A, Article 4 (Sedimentation and Pollution Control);
- C.** All other relevant laws of the State of North Carolina;
- D.** The High Point City Charter; and
- E.** Any special legislation enacted by the General Assembly.

1.2.2. REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

1.3. GENERAL PURPOSE AND INTENT³

The purpose of this Ordinance is to protect the public health, safety, morals, and general welfare of the citizens and landowners of the City of High Point, and to implement the policies and objectives of city-adopted plans addressing the city’s growth and development. More specifically, the intent of this Ordinance is to:

- A.** Foster convenient, compatible, and efficient relationships among land uses;

¹ This section carries forward Section 9-1-1 of the current ordinance.

² This is a new section referencing the statutory basis for zoning and subdivision in High Point. It replaces Section 9-1-5 in the current ordinance.

³ This is a new section that replaces Section 9-1-3, Purpose, of the current ordinance. It incorporates the zoning regulation purposes from the existing ordinance (9-1-3-b), with some minor revisions, and brings in other relevant goal statements from the city’s long range planning documents, including the Growth Vision Statement, Land Use Plan, and Core City Plan. The 19 other subsections with purpose statements (e.g., subdivision regulations, water supply watershed management, planned unit development purposes, etc.) in the current ordinance are relocated to the procedural, district, use, and development standards chapters of the updated development ordinance, as appropriate.

- B.** Diversify and strengthen the city's economy;⁴
- C.** Better manage and lessen congestion in the streets;
- D.** Improve and revitalize the city's central core area, as identified in the Core City Plan;
- E.** Ensure the provision of adequate open space between uses for light, air, and fire safety;
- F.** Secure the safety of land owners and residents from flooding, fire, seismic activity, and dangers presented from extreme weather events, to the extent possible;
- G.** Prevent the overcrowding of land and avoid undue concentrations of population;
- H.** Facilitate the adequate and economic provision of transportation, water, sewage, schools, parks, and other public services;
- I.** Improve development quality and the quality of life for city residents and visitors;
- J.** Protect water quality within the Watershed Critical Areas and the General Watershed Areas of designated water supply watersheds;
- K.** Preserve and enhance visual attractiveness and economic vitality;
- L.** Preserve the neighborhood character and quality of residential communities while providing increased housing choices indicated in adopted plans, as appropriate;
- M.** Establish new compact, mixed-use centers in appropriate locations, as identified in adopted plans;
- N.** Maintain and enhance the character of distinct areas in the city through an emphasis on design and form standards;
- O.** Require appropriate setbacks for buildings and other structures to facilitate the safe movement of vehicular and pedestrian traffic, provide adequate fire lanes, and ensure adequate distance from dust, noise, and fumes created by vehicular traffic;
- P.** Protect and revitalize the city's neighborhoods and gateways;
- Q.** Add flexibility and provide incentives for beneficial redevelopment, development that incorporates sustainable features, and increased pedestrian-orientation;
- R.** Protect existing established development and neighborhoods from incompatible infill and redevelopment; and
- S.** Protect open space, natural resources, and rural character, where appropriate.

1.4. APPLICABILITY⁵

1.4.1. EFFECTIVE DATE

This Ordinance shall be in full force and effect on (*insert the effective date of this Ordinance*), and repeals and replaces the High Point Development Ordinance, as originally adopted on January 7, 1992, and subsequently amended.

1.4.2. GENERAL APPLICABILITY

The provisions of this Ordinance shall apply to the development of all land within the corporate limits and the Extraterritorial Jurisdiction (ETJ) of the City of High Point unless it is expressly exempted by a specific section or subsection of this Ordinance.

1.4.3. APPLICATION TO GOVERNMENTAL UNITS

⁴ Some Advisory Committee members indicated that the primary focus of the update process is to retain community investment and attract economic development.

⁵ This is a new section that builds on the provisions in Section 9-1-4 of the current ordinance by adding provisions that make it clear who is subject to the regulations. It also sets out development exempted from the updated development ordinance.

Subsection 1.4.4 No Development Until Compliance With All Applicable Law

Except as stated elsewhere, this Ordinance shall apply to:

- A.** Development by the city or its agencies or departments;
- B.** Development of buildings by state or city agencies or departments, public colleges or universities, or other political subdivisions of the state, in accordance with the standards in Section 160A-392 of the North Carolina General Statutes; and
- C.** Development owned or held in tenancy by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law.

1.4.4. NO DEVELOPMENT UNTIL COMPLIANCE WITH ALL APPLICABLE LAW⁶

- A.** Unless exempted, no land shall be developed without compliance with this Ordinance and all other applicable city, state, and federal regulations.
- B.** No person shall use, occupy, or sell any land or a building or authorize or permit the use, occupancy, or sale of land or a building under their control, except in accordance with this Ordinance.
- C.** No building, or portion thereof, shall be erected, used, occupied, maintained, moved, or altered except in conformity with the applicable regulations in this Ordinance.

1.4.5. ANNEXATION⁷

If any portion of the territory subject to county jurisdiction is annexed by the city or taken into the city's ETJ, county regulations and powers of enforcement shall remain in effect until one of the following occurs:

- A.** The city has adopted regulations for the area; or
- B.** A period of 60 days has elapsed following the effective date of annexation or extension of the ETJ.

1.5. CONFORMANCE WITH ADOPTED POLICY⁸

1.5.1. ADOPTED POLICY GUIDANCE

The *Community Growth Vision* document, adopted in 2007, establishes a vision for the city's future development and provides a foundation for a series of more detailed plans such as the *Land Use Plan for the High Point Planning Area* (referred to as the Land Use Plan). The Land Use Plan, adopted in 2000, communicates long-term development goals for the city as a whole and provides a framework for a series of area plans and infrastructure system plans. The *High Point Core City Plan* (the Core City Plan) adopted in 2007, is an example of an area plan that provides strategic policy guidance for a specific part of the city. The *Bikeway, Greenway, and Trails Master Plan* and the *Long Range Transportation Plan* are examples of infrastructure system plans that provide policy guidance related to the city's public infrastructure systems. These documents, along with other adopted planning policies, comprise the city's adopted policy guidance for this Ordinance.

1.5.2. CONFORMANCE

⁶ This section replaces Section 9-1-9(a) of the current ordinance.

⁷ This section carries forward Section 9-1-12(c) in the current ordinance.

⁸ This section replaces Section 9-1-10 in the current ordinance. It recognizes the comprehensive plan as well as other long range policy guidance, area plans, and infrastructure system plans.

- A.** This Ordinance is intended to ensure that all development within the city is consistent with the goals, objectives, policies, strategies, and actions contained in the city's adopted policy guidance.
- B.** To the extent this Ordinance is or becomes inconsistent with the adopted policy guidance, it should be amended to remain consistent. All amendments to this Ordinance's text or to the Official Zoning Map should maintain and enhance consistency between this Ordinance and adopted policy guidance.

1.6. PROCEDURES MANUAL⁹

1.6.1. CONTENTS

The Planning and Development Director is authorized by the City Council to establish the requirements for the content and form for each type of development application reviewed under this Ordinance. The Planning and Development Director shall prepare and publish a Procedures Manual that sets forth rules for the following requirements:

- A.** Conduct of pre-application conferences;
- B.** Required content and format of applications;
- C.** Minimum required numbers of copies of applications;
- D.** Preliminary plat, site plan, and planned development master plan content requirements;
- E.** Required professional qualifications for preparation of preliminary plats, site plans, and planned development master plans;
- F.** Application submittal deadlines;
- G.** Application fees, as adopted annually by the City Council; and
- H.** Other procedures, requirements, specifications and practices deemed advisable or necessary for the effective and efficient administration of this Ordinance.

1.6.2. SUPPLEMENTAL TO DEVELOPMENT ORDINANCE

The Procedures Manual is a supplement to this Ordinance. In the event of a conflict between this Ordinance and the Procedures Manual, this Ordinance controls.

1.7. RELATIONSHIP WITH OTHER LAWS, COVENANTS OR DEED RESTRICTIONS¹⁰

1.7.1. MINIMUM REQUIREMENTS

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

1.7.2. CONFLICTS WITH OTHER CITY CODES OR LAWS

⁹ This is a new section that references the Procedures Manual. Members of the Advisory Committee mentioned that the Procedures Manual could be confused with ordinance requirements. This section clarifies that the development ordinance controls. In addition to the items described in the subsection, the Procedures Manual will also contain Appendices 4,5,8,9,10, and 11 from the current ordinance (the balance of the existing appendices will be replaced by the text in the updated development ordinance).

¹⁰ This section builds on the provisions in Section 9-1-7(a) & (b) of the current ordinance. The section also clarifies that the city may review, but is not responsible for enforcement of covenants or other private agreements.

If a provision of this Ordinance is inconsistent with another provision of this Ordinance, or with a provision found in other adopted ordinances of the city, the more restrictive provision shall govern unless the terms of the more restrictive provision specifies otherwise. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

1.7.3. CONFLICTS WITH PRIVATE AGREEMENTS

The city may review private agreements, such as those related to maintenance of private common open space set-asides, shared parking, or cross access easements, but the city is not responsible for monitoring or enforcing private covenants and restrictions.

1.7.4. CONFLICTS WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with state or federal law, the more restrictive provision controls, to the extent permitted by law.

1.7.5. EXISTING AGREEMENTS OR VESTED RIGHTS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights, provided such agreements or vested rights are lawfully established and remain in effect.

1.8. TRANSITIONAL PROVISIONS¹¹

1.8.1. PRIOR VIOLATIONS CONTINUE

- A. Any violation of the previous ordinance shall continue to be a violation under this Ordinance unless the development complies with this Ordinance.
- B. Violations of this Ordinance shall be subject to Chapter 9: Enforcement.

1.8.2. EXISTING NONCONFORMITIES

If any use, structure, lot, sign, or site feature legally existed on *[insert the effective date of this Ordinance]*, but does not fully comply with the standards of this Ordinance, the use, structure, lot, sign, or site feature is considered nonconforming under this Ordinance and shall comply with the requirements in Chapter 8: Nonconformities.

1.8.3. PENDING COMPLETE APPLICATIONS

- A. Any development application accepted as complete before *[insert the effective date of this Ordinance]*, but still pending final action as of that date, shall be reviewed and decided in accordance with the regulations in effect when the application was accepted as complete. To the extent such an application is approved and proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Chapter 8: Nonconformities.
- B. Completed applications shall be processed in good faith and shall comply with any time

¹¹ This is a new section that builds on the provisions in Section 9-1-9(b) of the current ordinance and sets out the rules for how violations and applications in progress will be addressed in the updated ordinance. The section also includes a transitional table describing how the city's current base zoning districts will be translated into new zoning districts in the updated ordinance (this table is almost identical to the table found on Pages 3-11 through 3-13 of the Code Assessment). The zoning districts in the updated development ordinance are similar to the existing zoning districts (with the exception of new names or consolidations) to avoid the need for city-wide re-mapping upon adoption of the new ordinance. In cases where multiple current zoning districts are consolidated into a single new district, all allowable uses are carried forward and the most permissive densities, intensities, and dimensional standards are used to avoid the creation of nonconformities.

frames for review, approval, and completion as established in the regulations in effect at the time of application acceptance. If the application fails to comply with the required time frames, it shall expire and future development shall be subject to the requirements of this Ordinance.

- C. An applicant with a pending application accepted before *[insert the effective date of this Ordinance]* may opt to have the proposed development reviewed under this Ordinance by withdrawing the pending application and submitting a new application in accordance with this Ordinance.

1.8.4. APPROVED APPLICATIONS

- A. Any development approvals or permits granted before *[insert the effective date of this Ordinance]* shall remain valid until their expiration date. Developments with valid approvals or permits shall be carried out in accordance with the terms and conditions of their approval and the development standards in effect at the time of approval, provided the approval or permit is valid and has not expired.
- B. If the prior approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent development of the site shall comply with this Ordinance.
- C. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Chapter 8: Nonconformities.

1.8.5. PRIOR-APPROVED CONDITIONAL USE ZONING¹²

A. Subject to Existing Conditions

Lands subject to a conditional use zoning classification and associated conditional use permit before *[insert the effective date of this Ordinance]* shall be translated to the corresponding new zoning district classification and shall continue to be subject to all conditions in the conditional use permit.

B. Amendment

To the extent a landowner proposes development that is not consistent what is allowed in the existing conditional use zoning district or conditional use permit, the development shall comply with the requirements of this Ordinance.

1.8.6. PRIOR-APPROVED CONDITIONAL ZONING¹³

A. Subject to Existing Conditions

Lands subject to a conditional zoning classification approved before *[insert the effective date of this Ordinance]* shall be translated to the corresponding new zoning district classification and shall continue to be subject to all conditions of approval.

B. Minor Deviations

¹² This section recognizes conditional use zoning district classifications and the associated conditional use permit approved prior to the effective date of these draft provisions. It clarifies that conditional use zoning designations are translated to the closest corresponding zoning district, that they continue to be governed by the terms and conditions of their original approvals, and that landowners seeking to deviate from the existing conditions must apply for a zoning map amendment, conditional rezoning, or planned unit development.

¹³ This section recognizes conditional zoning district designations established prior to the effective date of these draft provisions. It clarifies that conditional zoning designations are translated to the closest corresponding zoning district, that they continue to be governed by the terms and conditions of their original approvals, that landowners may request a minor deviation in conditions (as is allowed for conditional zoning in Section 2.4.5), and that landowners seeking material changes beyond the scope of a deviation from the existing conditions must apply for a zoning map amendment, conditional rezoning, or planned unit development.

Subsection 1.8.7 Lands Subject to an Approved Planned Unit Development District Designation

Unless prohibited by City Council as part of the original approval, development approved before *[insert the effective date of this Ordinance]* may include minor deviations from the approved conditions in accordance with the standards in Section 2.4.5.G.1, Minor Minor Deviations.

C. Amendment

To the extent a landowner proposes development that is not allowed by the conditional zoning, the development shall comply with the requirements of this Ordinance.

1.8.7. LANDS SUBJECT TO AN APPROVED PLANNED UNIT DEVELOPMENT DISTRICT DESIGNATION¹⁴

- A. Lands classified on the Official Zoning Map as PDR, PDM, or PDL that are subject to a master or general development plan approved before *[insert effective date of this ordinance]* shall retain the PDR, PDM, or PDL classification and continue to be subject to the master plan or general development plan and all associated conditions of approval.
- B. If the approval expires or substantial changes to the approved planned unit development are proposed, the planned unit development shall comply with the requirements of this Ordinance.
- C. For the purposes of this subsection, “substantial changes” do not include the following:
 1. Addition or expansion of an existing building’s floor area by less than ten percent;
 2. Expansion of an outdoor use area by less than 25 percent;
 3. A change in use that results in a new use with the same or less density/intensity;
 4. Increase in the amount of open space; or
 5. Development that does not result in any additional traffic, noise, dust, heat, glare, odor, or light.

1.8.8. EXISTING USES¹⁵

If a use was lawfully established permitted use and is subsequently made a special use in Table 4.1, Principal Use Table, the use shall be considered a lawfully-established special use.

1.9. TRANSITION TO NEW ZONING DISTRICTS

On *[insert the effective date of this Ordinance]*, land zoned with a zoning district classification from the previous ordinance shall be translated or reclassified to one of the zoning district classifications in this Ordinance as set forth in Chapter 3: Zoning Districts. Table 1.9, Transition to New Zoning Districts, summarizes the translation or reclassification of the zoning districts used in the previous ordinance to the zoning districts used in this Ordinance. (For example, Table 1.9 shows that all lands classified as Agricultural (AG) in the previous ordinance (under the column titled “Former Zoning District”) are now classified Rural (RU) in this Ordinance (under the column titled “Current Zoning District”).)

¹⁴ This section allows lands with a planned unit development (PUD) zoning district classification to remain and progress under their original approvals. However, if a development expires, or if a substantial change from the approved master plan is requested, the development will be required to comply with the new ordinance.

¹⁵ This is a new section that allows lawfully established “by-right” uses to continue as conforming in cases when the ordinance changes to require special uses for the same use type.

TABLE 1.9: ZONING DISTRICT TRANSLATION

FORMER ZONING DISTRICT	CURRENT ZONING DISTRICT
RESIDENTIAL DISTRICTS	
Residential Single Family – 40 (RS-40)	Residential Single Family – 12 (RS-12)
Residential Single Family – 20 (RS-20)	
Residential Single Family – 15 (RS-15)	
Residential Single Family – 12 (RS-12)	
Residential Single Family – 9 (RS-9)	Residential Single Family – 7 (RS-7)
Residential Single Family – 7 (RS-7)	
Residential Single Family – 5 (RS-5)	Residential Single Family – 5 (RS-5)
Residential Multifamily – 5 (RM-5)	Residential Multi-Family – 5 (RM-5)
Residential Multifamily – 8 (RM-8)	Residential Multi-Family – 12 (RM-12)
Residential Multifamily – 12 (RM-12)	
Residential Multifamily – 18 (RM-18)	Residential Multi-Family – 26 (RM-26)
Residential Multifamily – 26 (RM-26)	
BUSINESS DISTRICTS	
General Office Moderate Intensity (GO-M)	Office & Institutional (OI)
General Office High Intensity (GO-H)	
Limited Office (LO)	Transitional Office (TO)
Neighborhood Business (NB)	Neighborhood Business (NB)
Limited Business (LB)	
General Business (GB)	General Business (GB)
Highway Business (HB)	
Shopping Center (SC)	Retail Center (RC)
Central Business (CB)	Central Business (CB)
	Mixed-Use (MX) [NEW]
Corporate Park (CP)	Employment Center (EC)
Light Industrial (LI)	Light Industrial (LI)
Heavy Industrial (HI)	Heavy Industrial (HI)
SPECIAL DISTRICTS	
Agricultural (AG)	Rural (RU)
Public and Institutional (PI)	Institutional (I) [NEW]
	Parks and Conservation (PC) [NEW]
Main Street (MS)	Main Street (MS)
PLANNED DEVELOPMENT DISTRICTS	
Planned Unit Development – Residential (PDR)	
Planned Unit Development – Mixed (PDM)	
Planned Unit Development – Limited (PDL)	
Traditional Neighborhood (TN)	Planned Development-Traditional Neighborhood (PD-TN)
	Planned Development-Core City (PD-CC) [NEW]
	Planned Development-Suburban-Residential (PD-S-R) [NEW]
	Planned Development-Suburban-Commercial (PD-S-C) [NEW]
	Planned Development-Suburban-Employment Center (PD-S-EC) [NEW]
OVERLAY DISTRICTS	

TABLE 1.9: ZONING DISTRICT TRANSLATION

FORMER ZONING DISTRICT	CURRENT ZONING DISTRICT
Historic District (HD)	Local Historic Overlay (LHO)
Scenic Corridor District (SR)	Gateway Corridor Overlay (GCO)
Airport District (AR)	Airport Overlay (ARO)
Manufactured Housing District (MH)	Manufactured Housing Overlay (MHO)
Watershed Critical Area District (WCA)	Watershed Critical Area District (WCA)
General Watershed Area District (GWA)	General Watershed Area District (GWA)
Mixed-Use Center Overlay District (MUC)	
	Neighborhood Conservation Overlay (NCO) [NEW]
NOTES	

1.10. VESTED RIGHTS¹⁶

A. Site-Specific Development Plan or Phased Development Plan

If it is determined approval of a planned development, conditional zoning, special use, special exception, or conditional use permit includes a “site-specific development plan” or a “phased development plan” in accordance with Section 160A-385.1(b) of the North Carolina General Statutes, the approved development shall be subject to a vested right in accordance with Section 160A-385.1 of the North Carolina General Statutes.

B. Building Permit

The issuance of a building permit establishes a vested right to development in accordance with Section 160A-385.1 of the North Carolina General Statutes, as long as the building permit complies with the terms and conditions of approval.

C. Vested Rights Certificate

A vested right for a site plan, preliminary plat, or final plat may be established in accordance with Section 2.4.12, Vested Rights Certificate.

D. Prior Vesting

Amendments, supplements, repeals, or other changes in zoning regulations and zoning boundaries shall not be applicable or enforceable without the consent of the owner with regard to lots for which building permits or vested rights certificates have been issued (pursuant to state law) prior to the enactment of the ordinance making the change(s), so long as the building permit or vested rights certificate remain valid and unexpired.

1.11. SEVERABILITY¹⁷

The legislative intent of the City Council in adopting this Ordinance is that all provisions shall regulate development in accordance with the existing and future needs of the city as established in this Ordinance, and promote the public health, safety, and general welfare of the landowners and

¹⁶ This section builds on Section 9-3-18(a) of the current ordinance. The North Carolina General Statutes extend vested rights for site specific and phased development plans that are subject to a public hearing. For this reason, site plans and subdivision plats that are approved administratively are not vested under the statute. Development applicants that want to establish a vested right for a site plan or subdivision are required to obtain a vested rights certificate. This procedure replaces Section 9-3-18 in the current ordinance.

¹⁷ This section builds on the provisions set forth in Section 9-1-13 and declares that if any part of the ordinance is ruled invalid, the remainder of the ordinance is not affected.

residents of High Point. If any section, subsection, sentence, boundary, or clause of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and any section, subsection, sentence, boundary, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, boundaries, clauses, or phrases are declared invalid.

CHAPTER 2: ADMINISTRATION

2.1.	Summary Development Review Table.....	2-1
2.2.	Review Authorities	2-4
2.2.1.	Overview	2-4
2.2.2.	City Council	2-5
2.2.3.	Planning and Zoning Commission (PZC)	2-6
2.2.4.	Board of Adjustment (BOA)	2-9
2.2.5.	Historic Preservation Commission (HPC)	2-11
2.2.6.	Technical Review Committee (TRC)	2-15
2.2.7.	Planning and Development Director	2-16
2.2.8.	Engineering Services Director	2-17
2.2.9.	Public Services Director	2-19
2.2.10.	Urban Forestry Committee (UFC)	2-19
2.3.	Standard Review Procedures	2-21
2.3.1.	General.....	2-21
2.3.2.	Pre-Application Conference	2-21
2.3.3.	Neighborhood Meeting	2-22
2.3.4.	Application Submittal and Acceptance.....	2-24
2.3.5.	Staff Review and Action.....	2-25
2.3.6.	Public Notification	2-26
2.3.7.	Review By PZC or HPC	2-30
2.3.8.	Action by Decision-Making Body	2-31
2.3.9.	Conditions of Approval	2-32
2.3.10.	Notification of Decision or Action	2-32
2.3.11.	Effect of Development Approval	2-33
2.3.12.	Amendment of Development Approval	2-33
2.3.13.	Continuance	2-33
2.3.14.	Withdrawal.....	2-34
2.3.15.	Application for Zoning Map Amendment, Conditional Zoning, or Planned development Disapproval.....	2-34
2.3.16.	Limitations on Successive Applications	2-34
2.3.17.	Expiration of Permit of Development Approval.....	2-34
2.4.	Specific Review Procedures.....	2-36
2.4.1.	Overview	2-36
2.4.2.	Land Use Plan Amendment	2-36
2.4.3.	Text Amendment	2-38
2.4.4.	Zoning Map Amendment	2-40
2.4.5.	Conditional Zoning.....	2-43
2.4.6.	Planned Development	2-48
2.4.7.	Special Use	2-52
2.4.8.	Special Exception.....	2-54
2.4.9.	Certificate of Appropriateness	2-56
2.4.10.	Voluntary Annexation	2-59
2.4.11.	Development Agreement	2-61
2.4.12.	Vested Rights Certificate.....	2-65
2.4.13.	Beneficial Use determination	2-67
2.4.14.	Variance	2-72
2.4.15.	Watershed Variance	2-76
2.4.16.	Street Name Change	2-79
2.4.17.	Street Abandonment	2-81
2.4.18.	Right-of-Way Encroachment	2-82
2.4.19.	Appeal	2-84
2.4.20.	Site Plan	2-86
2.4.21.	Preliminary Plat	2-88

2.4.22.	Final Plat.....	2-91
2.4.23.	Exclusion Map	2-95
2.4.24.	Land Disturbing Permit	2-96
2.4.25.	Building Permit	2-97
2.4.26.	Zoning Compliance Permit	2-99
2.4.27.	Certificate of Occupancy.....	2-100
2.4.28.	Temporary Use Permit	2-101
2.4.29.	Public Tree Certificate.....	2-102
2.4.30.	Floodplain Development Permit.....	2-104
2.4.31.	Sign Permit	2-105
2.4.32.	Type I/Type II Administrative Adjustment.....	2-106
2.4.33.	Determination	2-109
	.....	2-111
2.4.34.	Easement Reconveyance	2-110

KEY CHANGES FROM CURRENT ORDINANCE:

Chapter 2: Administration, contains matters related to the procedural review of development. The changes:

- Consolidate all of the procedural information into one chapter.
- Include new procedural flow charts that illustrate each development review procedure.
- Establish a Procedures Manual that serves as a user's guide for applicants and members of the public.
- Standardizes procedures for each development permit or approval.
- Adds a new summary table of development review responsibilities (pg. 2-1).
- Broadens pre-application conference requirements to include special exceptions, map amendments, planned developments, and special uses (pg. 2-21).
- Broadens use of neighborhood meetings to include map amendments requesting a more intense zoning district, conditional zonings, planned developments, and special uses (pg. 2-22)
- Adds a development agreement process (pg. 2-61), a new planned development procedure (pg. 2-48), a beneficial use determination process (pg. 2-67), and a zoning compliance permit (pg. 2-99).
- Replaces the modification procedure with a two-tier administrative adjustment procedure (pg. 2-106).
- Replaces the certificate of compliance with a certificate of occupancy procedure (pg. 2-100).
- Codifies current procedures, including exclusion map (pg. 2-95), street abandonment (pg. 2-81), right-of-way encroachment (pg. 2-82), and easement reconveyance (pg. 2-110).
- Removes the minor site plan, minor subdivision, and integrated multiple use development (IMUD) standards.
- Includes new criteria for land use plan amendments (pg. 2-36).

CHAPTER 2: ADMINISTRATION

2.1. SUMMARY DEVELOPMENT REVIEW TABLE¹⁸

- A.** Table 2.1, Summary Development Review Table, identifies the review authority for development applications reviewed under this Ordinance. The table also identifies:
- 1.** The relevant section of this Ordinance where procedural information may be found;
 - 2.** Whether or not a pre-application conference is mandatory or optional;
 - 3.** If a neighborhood meeting is required as part of an application’s review procedure;
 - 4.** If a public meeting or a public hearing is required; and
 - 5.** If a required public hearing is conducted as a legislative or quasi-judicial public hearing.
- B.** Detailed information on each development review procedure is included in Section 2.4, Specific Review Procedures.

TABLE 2.1 SUMMARY DEVELOPMENT REVIEW TABLE											
M = Mandatory O = Optional C = Comment R = Recommendation D = Decision A = Appeal											
<> = Public Meeting { } = Legislative Public Hearing [] = Quasi-Judicial Public Hearing "." = not applicable / / = see notes											
PROCEDURE	SECTION REFERENCE	PRE-APPLICATION CONFERENCE	NEIGHBORHOOD MEETING	REVIEW AUTHORITIES							
				STAFF				DECISION-MAKING BODIES			
				PLANNING AND DEVELOPMENT DIRECTOR	ENGINEERING SERVICES DIRECTOR	TECHNICAL REVIEW COMMITTEE (TRC)	URBAN FORESTRY COMMITTEE (UFC)	HISTORIC PRESERVATION COMMISSION (HPC)	PLANNING & ZONING COMMISSION (PZC)	CITY COUNCIL	BOARD OF ADJUSTMENT (BOA)
DECISION-MAKING BODY REVIEW AND DECISION											
Land Use Plan Amendment	2.4.2	M	.	R	.	.	.	.	<R>	{D}	.
Text Amendment	2.4.33	M	.	R	.	.	.	.	<R>	{D}	.
Zoning Map Amendment	2.4.4	M	M /1/	R	.	.	.	<R> /2/	<R>	{D}	.
Conditional Zoning	2.4.5	M	M	R	.	.	.	<R> /2/	<R>	{D}	.
Planned Development	2.4.6	M	M	R	.	C /3/	.	<R> /2/	<R>	{D}	.
Special Use	2.4.7	M	M	R	.	.	.	<R> /2/	<R>	[D]	.

¹⁸ This section includes a summary table of the development review procedures in this revised ordinance (as described in Pages 2-11 through 2-14 in the Code Assessment). The summary table identifies all development procedures which the review and decision-making bodies are responsible for, and the various steps in the review process. It allows a code user to quickly discern the procedure associated with an application. The table also includes a hyperlink to the relevant code section and organizes the review bodies to be more sequential. The table structure is revised from the one in the Code Assessment to incorporate information related to pre-application conference, neighborhood meetings, and whether the review by a particular advisory and decision-making body is a public meeting, legislative public hearing, or quasi-judicial public hearing.

Chapter 2: Administration

Section 2.1 Summary Development Review Table

Subsection 1.8.8 Existing Uses

TABLE 2.1 SUMMARY DEVELOPMENT REVIEW TABLE

M = Mandatory O = Optional C = Comment R = Recommendation D = Decision A = Appeal
 <> = Public Meeting { } = Legislative Public Hearing [] = Quasi-Judicial Public Hearing "." = not applicable
 / / = see notes

PROCEDURE	SECTION REFERENCE	PRE-APPLICATION CONFERENCE	NEIGHBORHOOD MEETING	REVIEW AUTHORITIES							
				STAFF				DECISION-MAKING BODIES			
				PLANNING AND DEVELOPMENT DIRECTOR	ENGINEERING SERVICES DIRECTOR	TECHNICAL REVIEW COMMITTEE (TRC)	URBAN FORESTRY COMMITTEE (UFC)	HISTORIC PRESERVATION COMMISSION (HPC)	PLANNING & ZONING COMMISSION (PZC)	CITY COUNCIL	BOARD OF ADJUSTMENT (BOA)
Special Exception	2.4.8	M	.	R	.	.	.	<R>/2/	.	.	[D]
Certificate of Appropriateness	2.4.9	O	.	R	.	.	.	{D}/4/	.	.	[A]
Voluntary Annexation	2.4.10	O	.	R	.	C	.	.	.	{D}	.
Development Agreement	2.4.11	M	.	R	.	.	.	.	<R>	{D}	.
Vested Rights Certificate	2.4.12	O	.	R	.	.	.	.	<R>	[D]	.
Beneficial Use Determination /5/	2.4.13	O	.	C	.	.	.	.	<R>	{D}	.
Variance	2.4.14	M	.	R	.	.	.	<R>/2/	.	.	[D]
Watershed Variance	2.4.15	O	.	.	.	R /6/	.	.	.	<D>	.
Street Name Change	2.4.16	O	.	R	.	.	.	.	{D}	.	.
Street Abandonment	2.4.17	M	.	R	.	C	.	.	<R>	{D}	.
Right-of-Way Encroachment	2.4.18	O	.	.	.	D /7/	.	.	.	{D}	.
Appeal	2.4.2	O	.	C	C /8/	.	.	.	.	.	[D]
STAFF REVIEW AND DECISION											
Site Plan	2.4.20	.	.	.	.	D	.	.	.	.	[A]
Preliminary Plat	2.4.21	.	.	.	.	D	.	.	.	.	[A]
Group Development	2.4.<>	O	.	.	.	D	.	.	.	.	[A]
Final Plat	2.4.22	.	.	D	.	.	.	.	.	.	[A]

Section 2.1 Summary Development Review Table

Subsection 1.8.8 Existing Uses Existing Uses

TABLE 2.1 SUMMARY DEVELOPMENT REVIEW TABLE

M = Mandatory O = Optional C = Comment R = Recommendation D = Decision A = Appeal
 <> = Public Meeting { } = Legislative Public Hearing [] = Quasi-Judicial Public Hearing "." = not applicable
 // = see notes

PROCEDURE	SECTION REFERENCE	PRE-APPLICATION CONFERENCE	NEIGHBORHOOD MEETING	REVIEW AUTHORITIES							
				STAFF				DECISION-MAKING BODIES			
				PLANNING AND DEVELOPMENT DIRECTOR	ENGINEERING SERVICES DIRECTOR	TECHNICAL REVIEW COMMITTEE (TRC)	URBAN FORESTRY COMMITTEE (UFC)	HISTORIC PRESERVATION COMMISSION (HPC)	PLANNING & ZONING COMMISSION (PZC)	CITY COUNCIL	BOARD OF ADJUSTMENT (BOA)
Exclusion Map	2.4.24	.	.	D	.	.	.	.	.	.	[A]
Land Disturbing Permit	2.4.25	O	.	.	D	.	.	.	.	.	[A]
Building Permit	2.4.20	O	.	D	.	.	.	.	.	.	[A]
Zoning Compliance Permit	2.4.27	O	.	D	.	.	.	.	.	.	[A]
Certificate of Occupancy	2.4.27	O	.	D	.	.	.	.	.	.	[A]
Temporary Use Permit	2.4.29	O	.	D	.	.	.	.	.	.	[A]
Public Tree Certificate	2.4.30	.	.	.	R	.	D	.	.	.	[A]
Floodplain Development Permit	2.4.30	O	.	.	D	.	.	.	.	.	[A]
Sign Permit	2.4.32	O	.	D	.	.	.	.	.	.	[A]
Type I Administrative Adjustment	2.4.33	O	.	D	.	.	.	.	.	.	[A]
Type II Administrative Adjustment	2.4.33	O	.	R	.	D	.	.	.	.	[A]
Determination	Error! Reference source not found.	O	.	D	.	.	.	.	.	.	[A]
Easement Reconveyance	2.4.29	O	.	D /9/	.	R	.	.	.	.	.

NOTES

TABLE 2.1 SUMMARY DEVELOPMENT REVIEW TABLE

M = Mandatory O = Optional C = Comment R = Recommendation D = Decision A = Appeal
 <> = Public Meeting { } = Legislative Public Hearing [] = Quasi-Judicial Public Hearing “. ” = not applicable
 / / = see notes

PROCEDURE	SECTION REFERENCE	PRE-APPLICATION CONFERENCE	NEIGHBORHOOD MEETING	REVIEW AUTHORITIES							
				STAFF				DECISION-MAKING BODIES			
				PLANNING AND DEVELOPMENT DIRECTOR	ENGINEERING SERVICES DIRECTOR	TECHNICAL REVIEW COMMITTEE (TRC)	URBAN FORESTRY COMMITTEE (UFC)	HISTORIC PRESERVATION COMMISSION (HPC)	PLANNING & ZONING COMMISSION (PZC)	CITY COUNCIL	BOARD OF ADJUSTMENT (BOA)

- /1/ Only zoning map amendment applications seeking to re-designate land to a more intense zoning district designation are subject to a neighborhood meeting requirement.
- /2/ The Historic Preservation Commission provides a recommendation on applications associated with a local historic district and comments on applications associated with a landmark.
- /3/ Technical Review Committee comments focus on infrastructure issues and whether municipal services are available.
- /4/ The Historic Preservation Commission may choose to conduct a public hearing on a certificate of appropriateness application.
- /5/ The City Attorney provides counsel to the City Council, Planning and Zoning Commission, and the Planning and Development Director.
- /6/ Watershed variances may be major or minor. Major variances require approval by the City Council prior to consideration by the North Carolina Environmental Management Commission.
- /7/ The Technical Review Committee decides right-of-way encroachments for features located below ground and comments on above ground right-of-way encroachments.
- /8/ The Engineering Services Director provides comments on appeals of soil and erosion control-related decisions.
- /9/ The City Attorney prepares a quitclaim deed for signature by the Mayor following a decision by the Planning Director.

2.2. REVIEW AUTHORITIES¹⁹

2.2.1. OVERVIEW

- A.** The following review authorities have powers and responsibilities in administering and reviewing development applications under this Ordinance:
- 1.** City Council;
 - 2.** Planning and Zoning Commission (PZC);
 - 3.** Board of Adjustment (BOA);
 - 4.** Historic Preservation Commission (HPC);

¹⁹ This section replaces Section 9-9-1(c)-(g) of the current ordinance by consolidating these provisions with the other relevant standards related to review body composition and responsibilities in Sections 9-9-2 through 9-9-6. There are also new provisions on the conduct of meetings. Procedural information for appeal, special exception, and variance procedures is relocated to the relevant procedures in Section 2.4. This section also includes the Urban Forestry Committee (from Section 9-9-7 in the current ordinance), who is involved in the review of development applications that affect trees on public lands and street rights-of-way.

- 5. Technical Review Committee (TRC);
 - 6. Planning and Development Director;
 - 7. Engineering Services Director;
 - 8. Public Services Director; and
 - 9. The Urban Forestry Committee (UFC).
- B.** In addition to the review authorities identified in this section, there are other city agencies, departments, or officials who may review and comment on specific application types during the review process, as specified in the Procedures Manual.

2.2.2. CITY COUNCIL²⁰

To exercise the authority granted the City Council by state law, the Council shall the powers and duties under this Ordinance set out in Table 2.2.2, City Council.

TABLE 2.2.2: CITY COUNCIL

A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO INITIATE, REVIEW, AND DECIDE APPLICATIONS FOR:	
	(a) Land use plan amendments;	(h) Development agreements;
	(b) Text amendments;	(i) Vested rights certificates;
	(c) Zoning map amendments;	(j) Beneficial use determination;
	(d) Conditional zonings;	(k) Watershed variances;
	(e) Planned developments;	(l) Street abandonments.
	(f) Special uses;	(m) Right-of-way encroachments
	(g) Voluntary annexations;	
	2. OTHER POWERS AND DUTIES – THE CITY COUNCIL SHALL HAVE THE FOLLOWING OTHER POWERS AND DUTIES:	
	(a) To approve, by resolution, a schedule of fees governing:	
	(1) Applications for permits and other development approvals reviewed under this Ordinance; and	
	(2) Civil penalties for violations of this Ordinance.	
(b) To take any other action not delegated to the Planning and Zoning Commission, Board of Adjustment, Historic Preservation Committee, Urban Forestry Committee, Technical Review Committee, Planning and Development Director, Engineering Services Director, or Public Services Director, as the City Council may deem desirable and necessary to implement the provisions of this Ordinance.		
B. CONFLICT OF INTEREST	1. PRACTICE	
	(a) A member shall not participate in or vote on any matter in a manner that would violate affected persons’ constitutional rights to an impartial decision maker. This includes, but is not limited to:	
		(1) A member having a fixed opinion prior to consideration of the matter that is not susceptible to change;
		(2) Undisclosed ex parte communications;
	(3) A close familial, business, or other associational relationship with an affected person; or	

²⁰ This is a new section outlining the powers and duties of the City Council. One significant change is delegation of City Council's appeal authority on site plans and preliminary plats to the BOA.

TABLE 2.2.2: CITY COUNCIL

	(4) Financial interest in the outcome of the matter.
	(b) If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the objection.

2.2.3. PLANNING AND ZONING COMMISSION (PZC)²¹

The Planning and Zoning Commission is hereby established in accordance with Section 160A-361 of the North Carolina General Statutes. Table 2.2.3, Planning and Zoning Commission (PZC), sets out the Planning and Zoning Commission's powers and duties, composition, and rules of procedure.

TABLE 2.2.3: PLANNING AND ZONING COMMISSION (PZC)

A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:
	(a) Street name changes for existing streets.
	2. RECOMMENDATION AUTHORITY - TO MAKE RECOMMENDATIONS TO THE CITY COUNCIL ON THE FOLLOWING APPLICATIONS:
	(a) Land use plan amendments;
	(b) Text amendments;
	(c) Zoning map amendments;
	(d) Conditional zonings;
	(e) Planned developments;
	(f) Special uses;
	(g) Development agreements;
(h) Vested rights certificates;	
(i) Beneficial use determination; and	
(j) Street abandonments.	
3. OTHER POWERS AND DUTIES – THE PZC SHALL HAVE THE FOLLOWING OTHER POWERS AND DUTIES:	
(a) To develop a comprehensive plan for the territory under its jurisdiction, subject to specific direction from the City Council.	
(b) To make such other studies and plans and to review such other related matters as directed by the City Council.	
(c) To exercise other powers and authority provided to it by the City Council, this Ordinance, or State law.	
B. COMPOSITION	1. MEMBERSHIP:
	(a) The Planning and Zoning Commission shall consist of nine regular members. ²²
	2. RESIDENCE LOCATION AND APPOINTMENT:
	(a) Eight members shall be residents of the City of High Point and shall be appointed by the City Council.
	(b) One member shall be a resident of the ETJ and shall be appointed by the Guilford County Board of Commissioners, in accordance with Section 160A-362 of the North Carolina General Statutes.
(c) The ETJ member shall have the same rights, privileges, and duties as the other members and may vote on all matters before the Commission.	
(d) If a city resident member moves outside the city, or the ETJ member moves outside the ETJ, the move constitutes a resignation, effective upon the date a replacement is appointed in accordance with the procedures of this section.	

²¹ This section carries forward provisions from Section 9-9-2 of the current ordinance along with supplemental information on composition and the conduct of meetings. PZC powers and duties are revised to make them consistent with Table 2.1.

²² NOTE: the current ordinance is silent as to the number of standing alternate members.

TABLE 2.2.3: PLANNING AND ZONING COMMISSION (PZC)

C. RULES OF PROCEDURE	3. ALTERNATE MEMBERS:
	(a) The City Council may appoint alternate members to serve in the absence or temporary disqualification of regular members.
	(b) Each alternate member attending a meeting and serving in the absence of a regular member may exercise all the powers and duties of a regular member.
	4. MEMBER TERMS:
	(a) Members shall serve a three-year term and shall continue to serve until their successors are appointed, provided that upon initial appointment their terms of office may be staggered.
	(b) The terms of all members shall not expire at the same time.
	(c) Regular members shall not serve more than two full consecutive terms.
	(d) Vacancies shall be filled by a new member or an alternate member appointed to serve for the remainder of the unexpired term.
	5. OFFICERS:
	(a) The Commission shall elect, from its members, a Chair and Vice Chair for a one year term of office commencing on July 1.
	(b) Officers shall not serve more than two consecutive terms in the same office.
	(c) The Chair shall preside over all meetings.
	(d) In the absence of the Chair, the Vice-Chair shall preside over meetings.
	(e) If both the Chair and Vice-Chair are absent, the Commission membership shall vote to determine who shall serve as acting Chair for the meeting.
	6. STAFF - THE PLANNING AND DEVELOPMENT DIRECTOR SHALL:
	(a) Provide administrative support to the Commission;
	(b) Record the minutes of all meetings;
	(c) Conduct all correspondence of the Commission;
	(d) Supervise all clerical work; and
	(e) Provide other technical support, as needed.
	1. SCHEDULE:
	(a) The Commission shall hold at least one regular meeting in each month unless the Chair determines that there are no agenda items for consideration.
	2. PUBLICATION OF NOTICE:
	(a) Notice of all meetings shall be provided in accordance with state law.
	3. OPEN MEETINGS:
	(a) All meetings and hearings shall be open to the public.
	4. OFFICIAL RECORD:
(a) The Commission shall keep minutes of its proceedings, showing the vote of each member upon every action or, if absent or failing to vote, indicate such fact.	
(b) The Commission shall keep records of its examinations and other official actions	
(c) All records and minutes shall be public record.	
5. QUORUM:	
(a) Five members shall constitute a quorum.	
(b) No official business of the Commission may be conducted without a quorum present.	
6. VOTING:	
(a) An affirmative vote of the majority of Commission members present and constituting a	

TABLE 2.2.3: PLANNING AND ZONING COMMISSION (PZC)

	quorum is required for all decisions.
	(b) The Chair shall vote as any other member.
	(c) The ETJ member shall vote on all matters as any other member.
	7. OATHS:
	(a) When required, the Chair shall administer required oaths to witnesses in any matter coming before the Commission.
	8. CONTINUANCE:
	(a) The Commission may continue a public hearing or delay voting on any matter to a subsequent meeting upon showing of good cause.
	9. ABSENCE:
	(a) Members shall inform the Planning and Development Director of any anticipated absence immediately after receipt of the agenda.
	(b) A regular member who misses three consecutive regular meetings or 33 percent or more of the regular meetings in a calendar year shall lose their status as a voting member until reinstated.
	(c) Absences due to sickness, death in the family, or other emergencies of similar nature shall be regarded as approved absences and shall not affect the member's status on the Commission; except that in the event of a long illness or other such case resulting in a prolonged absence, the member may be replaced.
	10. SPECIAL COMMITTEES:
	(a) The Commission may establish special committees to assist it in studying specific issues.
	(b) The membership of a special committee is not limited to Commission members.
	(c) In establishing these committees, the Commission may not delegate its official powers and duties.
	11. COMPENSATION:
	(a) Compensation for members may be provided for by the City Council.
	12. CONFLICT OF INTEREST:
	(a) A member shall not participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. This includes, but is not limited to:
	(1) A member having a fixed opinion prior to consideration of the matter that is not susceptible to change;
	(2) Undisclosed ex parte communications;
	(3) A close familial, business, or other associational relationship with an affected person; or
	(4) Financial interest in the outcome of the matter.
	(b) If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the objection.
	13. RULES OF PROCEDURE:
	(a) The Commission shall adopt rules necessary to conduct its affairs and establish its organization, committees, procedures, meeting notice, and meeting conduct.
	(b) The Commission's rules of procedure shall be made available for public inspection in the Planning and Development Department.

2.2.4. BOARD OF ADJUSTMENT (BOA)²³

The Board of Adjustment is hereby established in accordance with Section 160A-388 of the North Carolina General Statutes. Table 2.2.4, Board of Adjustment (BOA), sets out the Board of Adjustment’s powers and duties, composition, and rules of procedure.

TABLE 2.2.4: BOARD OF ADJUSTMENT (BOA)	
A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:
	(a) Special exceptions;
	(b) Variances; and
	(c) Appeals on decisions of the Planning and Development Director, Engineering Services Director, Technical Review Committee, Historic Preservation Commission, and Urban Forestry Committee.
B. COMPOSITION	2. OTHER POWERS AND DUTIES:
	(a) To hear and decide appeals from and review any order, requirement, decision, or determination made by the Planning and Development Director with regard to High Point City Code Title 9, Chapter 11, Article E (Minimum Housing Code) provisions.
	(b) To exercise other powers and authority provided to it by the City Council, this Ordinance, or state law.
	1. MEMBERSHIP:
B. COMPOSITION	(a) The Board of Adjustment shall consist of five regular members and up to four alternate members.
	2. RESIDENCE LOCATION AND APPOINTMENT:
	(a) At least four members shall be residents of the City of High Point and shall be appointed by the City Council.
	(b) At least one member shall be a resident of the ETJ and shall be appointed by the Guilford County Board of Commissioners, in accordance with Section 160A-362 of the North Carolina General Statutes.
	(c) The ETJ member shall have the same rights, privileges, and duties as the other members and may vote on all matters coming before the Commission.
	3. ALTERNATE MEMBERS:
	(a) The City Council may appoint alternate members to serve in the absence or temporary disqualification of regular members.
	(b) Each alternate member attending a meeting and serving in the absence of a regular member has and may exercise all the powers and duties of a regular member.
	4. MEMBER TERMS:
	(a) Members shall serve a three-year term and shall continue to serve until their successors are appointed, provided that upon initial appointment the terms of office may be staggered.
	(b) The terms of all members shall not expire at the same time.
	(c) Regular members shall not serve more than two full consecutive terms.
(d) Vacancies shall be filled by a new member or an alternate member appointed to serve for the remainder of the unexpired term.	
5. OFFICERS:	
(a) The Board shall elect from its members a Chair and Vice Chair for a one year term of	

²³ This section carries forward Section 9-9-6 from the current ordinance, along with supplemental information on composition and the conduct of meetings. One change in the BOA responsibilities is that the Planning and Development Director is authorized to interpret the Official Zoning Map. An appeal of the Planning and Development Director’s decision may be taken to the BOA.

TABLE 2.2.4: BOARD OF ADJUSTMENT (BOA)

	office commencing on July 1.
	(b) Officers shall not serve more than two consecutive terms in the same office.
	(c) The Chair shall preside over all meetings.
	(d) In the absence of the Chair, the Vice-Chair shall preside over meetings.
	(e) If both the Chair and Vice-Chair are absent, the Board membership shall vote to determine who shall serve as acting Chair for the meeting.
	6. STAFF - THE PLANNING AND DEVELOPMENT DIRECTOR SHALL:
	(a) Provide administrative support to the Board;
	(b) Record the minutes of all meetings;
	(c) Conduct all correspondence of the Board;
	(d) Supervise all clerical work; and
(e) Provide other technical support, as needed.	
C. RULES OF PROCEDURE	1. SCHEDULE:
	(a) The Board shall hold at least one regular meeting in each month unless the Chair determines that there are no agenda items for consideration.
	2. PUBLICATION OF NOTICE:
	(a) Notice of all meetings shall be provided in accordance with state law.
	3. OPEN MEETINGS:
	(a) All meetings and hearings shall be open to the public.
	4. OFFICIAL RECORD:
	(a) The Board shall keep minutes of its proceedings, showing the vote of each member upon every action or, if absent or failing to vote, indicate such fact.
	(b) The Board shall keep records of its examinations and other official actions.
	(c) All records and minutes shall be public record.
	5. QUORUM:
	(a) Fourth-fifths of the total number of regular members shall constitute a quorum.
	(b) No official business of the Board may be conducted without a quorum present.
	6. VOTING:
	(a) The concurring vote of four-fifths of the total number of members shall be necessary to grant any special exception, variance, or approve any appeal reversing or modifying a decision.
	(b) The Chair shall vote as any other member.
	(c) An ETJ member shall vote on all matters as any other member.
	(d) The ETJ member shall be required to vote on all matters involving land located within the ETJ.
	(e) Any vacant position on the Board and members disqualified from voting shall not be considered in calculating the four-fifths supermajority.
	7. OATHS:
(a) When required, the Chair shall administer required oaths to witnesses in any matter coming before the Board.	
8. CONTINUANCE:	
(a) The Board may continue a public hearing or delay voting on any matter to a subsequent meeting, upon a showing of good cause.	
9. ABSENCE:	
(a) Members shall inform the Planning and Development Director of any anticipated absence	

Subsection 2.2.5 Historic Preservation Commission (HPC)Historic Preservation Commission (HPC)

TABLE 2.2.4: BOARD OF ADJUSTMENT (BOA)

	immediately after receipt of the agenda.
	(b) A regular member who misses three consecutive regular meetings or 33 percent or more of the regular meetings in a calendar year loses their status as a voting member until reinstated.
	(c) Absences due to sickness, death in the family, or other emergencies of similar nature shall be regarded as approved absences and shall not affect the member's status on the Commission; except that in the event of a long illness or other such case resulting in a prolonged absence, the member may be replaced.
	10. SPECIAL COMMITTEES:
	(a) The Board may establish special committees to assist it in studying specific issues.
	(b) The membership of a special committee is not limited to Board members.
	(c) In establishing these committees, the Board may not delegate its official powers and duties.
	11. COMPENSATION:
	(a) Compensation for members may be provided for by the City Council.
	12. CONFLICT OF INTEREST:
	(a) A member shall not participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. This includes, but is not limited to:
	(1) A member having a fixed opinion prior to consideration of the matter that is not susceptible to change;
	(2) Undisclosed ex parte communications;
	(3) A close familial, business, or other associational relationship with an affected person; or
	(4) Financial interest in the outcome of the matter.
	(b) If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the objection.
	13. RULES OF PROCEDURE:
	(a) The Board shall adopt rules necessary to conduct its affairs and establish its organization, committees, procedures, meeting notice, and meeting conduct.
	(b) The Board's rules of procedure shall be made available for public inspection in the Planning and Development Department.

2.2.5. HISTORIC PRESERVATION COMMISSION (HPC)²⁴

The Historic Preservation Commission is hereby established in accordance with Chapter 160A-400.8 of the North Carolina General Statutes. Table 2.2.5, Historic Preservation Commission (HPC) sets out the Historic Preservation Commission's powers and duties, composition, and rules of procedure.

TABLE 2.2.5: HISTORIC PRESERVATION COMMISSION (HPC)

A. POWERS	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:
	(a) certificates of appropriateness.

²⁴ This section carries forward the standards in Section 9-9-5 of the current ordinance along with supplemental information on composition and the conduct of meetings.

TABLE 2.2.5: HISTORIC PRESERVATION COMMISSION (HPC)

AND DUTIES	2. RECOMMENDATION AUTHORITY - TO REVIEW AND MAKE RECOMMENDATIONS ON THE FOLLOWING, WHEN THEY INVOLVE LAND LOCATED WITHIN THE LOCAL HISTORIC OVERLAY (LHO) DISTRICT:	
	(a) Zoning map amendments;	(d) Special uses;
	(b) Conditional zonings;	(e) Special exceptions; and
	(c) Planned developments;	(f) Variances.
	3. OTHER POWERS AND DUTIES – THE COMMISSION SHALL HAVE THE FOLLOWING OTHER POWERS AND DUTIES:	
	(a) To revoke an approved certificate of appropriateness upon a showing of good cause.	
	(b) To recommend to the City Council areas to be designated by ordinance as a local Historic District.	
	(c) To recommend to the Guilford County Historic Preservation Commission individual structures, buildings, sites, areas, or objects to be designated by ordinance as landmarks.	
	(d) To recommend, as a Certified Local Government representative, individual structures, buildings, sites, or areas be designated for inclusion in a National Register Historic Site or District.	
	(e) To undertake an inventory of properties of historical, pre-historical, architectural, and/or cultural significance.	
	(f) To recommend appropriate changes to this Ordinance which relate to local historic districts or which relate to the preservation of historic structures, landmarks, or areas within the city.	
	(g) To acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established historic districts or to any such properties designated as landmarks, to hold, manage, preserve, restore, and improve the same, and to exchange or dispose of the property by public or private sale, lease, or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property. ²⁵	
	(h) To restore, preserve, and operate historic properties.	
	(i) To recommend to the City Council that designation of any area as a local historic district or part thereof, be revoked or removed for good cause shown.	
	(j) To recommend to the Guilford County Historic Preservation Commission that designation of any building, structure, site, area, or object as a landmark, be revoked or removed for good cause shown.	
	(k) To conduct an educational program with respect to historic properties and districts within the city.	
	(l) To prepare and recommend the official adoption of a preservation element as part of the city's comprehensive plan.	
(m) To negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.		
(n) To cooperate with the state, federal, and local governments, in accordance with the purposes of Subsection 3.8.5, Local Historic Overlay (LHO).		
(o) Contract with the State, the United States of America, any agency of either, or with any other organization, when authorized by the City Council, and provided the terms are not inconsistent with state or federal law.		
(p) To enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof; however, no member, employee, or agent may enter any private building or structure without the express consent of the owner or		

²⁵ This provision is taken from the city's existing ordinance.

TABLE 2.2.5: HISTORIC PRESERVATION COMMISSION (HPC)

	occupant thereof.
	(q) To review and act upon proposals for alterations, demolitions, or new construction within local historic districts, or for the alterations or demolition of designated landmarks, in accordance with this section.
	(r) To adopt and update detailed architectural and historic guidelines applicable in the LHO district.
	(s) To exercise other powers and authority provided to it by the City Council, this Ordinance, and state law.
B. COMPOSITION	1. MEMBERSHIP:
	(a) The Historic Preservation Commission shall consist of nine regular members.
	2. RESIDENCE LOCATION AND QUALIFICATIONS:
	(a) All members of the Commission shall reside within the city's planning jurisdiction.
	(b) Members shall have demonstrated experience or an interest in the preservation of historic structures, and should be employed in architecture, history, planning, archaeology, or a related discipline.
	3. ALTERNATE MEMBERS:
	(a) The City Council may appoint alternate members to serve in the absence or temporary disqualification of regular members.
	(b) Each alternate member attending a meeting and serving in the absence of a regular member may exercise all the powers and duties of a regular member.
	4. MEMBER TERMS:
	(a) Members shall serve a three-year term and shall continue to serve until their successors are appointed, provided that upon initial appointment the terms of office may be staggered.
	(b) The terms of all members shall not expire at the same time.
	(c) Regular members shall not serve more than two full consecutive terms.
	(d) Vacancies shall be filled by a new member or an alternate member appointed to serve for the remainder of the unexpired term.
	5. OFFICERS:
	(a) The Commission shall elect from its members a Chair and Vice Chair for a one year term of office commencing on July 1.
	(b) Officers shall not serve more than two consecutive terms in the same office.
	(c) The Chair shall preside over all meetings.
	(d) In the absence of the Chair, the Vice-Chair shall preside over meetings.
	(e) If both the Chair and Vice-Chair are absent, the Commission membership shall vote to determine who shall serve as acting Chair for the meeting.
	6. STAFF - THE PLANNING AND DEVELOPMENT DIRECTOR SHALL:
(a) Provide administrative support to the Commission;	
(b) Record the minutes of all meetings;	
(c) Conduct all correspondence of the Commission;	
(d) Supervise all clerical work; and	
(e) Provide other technical support, as needed.	
C. RULES OF PROCEDURE	1. SCHEDULE:
	(a) The Commission shall hold at least one regular meeting in each month unless the Chair determines that there are no agenda items for consideration.
	2. PUBLICATION OF NOTICE:
(a) Notice of all meetings shall be provided in accordance with state law.	

TABLE 2.2.5: HISTORIC PRESERVATION COMMISSION (HPC)

	3. OPEN MEETINGS:
	(a) All meetings and hearings shall be open to the public.
	4. OFFICIAL RECORD:
	(a) The Commission shall keep minutes of its proceedings, showing the vote of each member upon every action or, if absent or failing to vote, indicate such fact.
	(b) The Commission shall keep records of its examinations and other official actions.
	(c) All records and minutes shall be public record.
	5. QUORUM:
	(a) Five members shall constitute a quorum.
	(b) No official business of the Commission may be conducted without a quorum present.
	6. VOTING:
	(a) An affirmative vote of the majority of Commission members present and constituting a quorum is required for all decisions.
	(b) The Chair shall vote as any other member.
	7. OATHS:
	(a) When required, the Chair shall administer required oaths to witnesses in any matter coming before the Commission.
	8. CONTINUANCE:
	(a) The Commission may continue a public hearing or delay voting on any matter to a subsequent meeting upon a showing of good cause.
	9. ABSENCE:
	(a) Members shall inform the Planning and Development Director of any anticipated absence immediately after receipt of the agenda.
(b) A regular member who misses three consecutive regular meetings or 33 percent or more of the regular meetings in a calendar year loses their status as a voting member until reinstated.	
(c) Absences due to sickness, death in the family, or other emergencies of similar nature shall be regarded as approved absences and shall not affect the member's status on the Commission; except that in the event of a long illness or other such case resulting in a prolonged absence, the member may be replaced.	
10. SPECIAL COMMITTEES:	
(a) The Commission may establish special committees to assist it in studying specific issues.	
(b) The membership of a special committee is not limited to Commission members.	
(c) In establishing these committees the Commission may not delegate its official powers and duties.	
11. COMPENSATION:	
(a) Compensation for members may be provided for by the City Council.	
12. CONFLICT OF INTEREST:	
(a) A member shall not participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. This includes, but is not limited to:	
(1) A member having a fixed opinion prior to consideration of the matter that is not susceptible to change;	
(2) Undisclosed ex parte communications;	
(3) A close familial, business, or other associational relationship with an affected person;	

Subsection 2.2.6 Technical Review Committee (TRC) Technical Review Committee (TRC)

TABLE 2.2.5: HISTORIC PRESERVATION COMMISSION (HPC)

A. POWERS AND DUTIES	or
	(4) Financial interest in the outcome of the matter.
	(b) If an objection is raised to a member’s participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the objection.
	13. RULES OF PROCEDURE:
	(a) The Commission shall adopt rules necessary to conduct its affairs and establish its organization, committees, procedures, meeting notice, and meeting conduct.
	(b) The Commission’s rules of procedure shall be made available for public inspection in the Planning and Development Department.

2.2.6. TECHNICAL REVIEW COMMITTEE (TRC)²⁶

The Technical Review Committee (TRC) is hereby established in accordance with Section 160A-361 of the North Carolina General Statutes. Table 2.2.6, Technical Review Committee (TRC), sets out the TRC’s powers and duties, composition, and rules of procedure.

TABLE 2.2.6: TECHNICAL REVIEW COMMITTEE (TRC)

A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:	
	(a) Right-of-way encroachments (below ground);	(d) Group developments; and
	(b) Site plans;	(e) Type II administrative adjustments.
	(c) Preliminary plats;	
	2. RECOMMENDATION AUTHORITY - TO COMMENT OR MAKE RECOMMENDATIONS ON THE FOLLOWING APPLICATIONS:	
	(a) Planned developments (municipal service availability);	(e) Street abandonments;
	(b) Voluntary annexation (municipal service availability);	(f) Easement reconveyances; and
	(c) Right-of-way encroachment (above ground);	(g) City construction and infrastructure projects.
	(d) Watershed variances (minor);	
	3. OTHER POWERS AND DUTIES – THE TRC SHALL HAVE THE FOLLOWING OTHER POWERS AND DUTIES:	
	(a) To provide its expertise and technical assistance to the Planning and Development Director in compiling and maintaining a Procedures Manual and in establishing application content requirements and a submission schedule for review of applications and appeals.	
	(b) To review and recommend the acquisition, sale, and disposal of all city real property (not equipment).	
	(c) To perform any other related duties that the City Manager may direct.	
	(d) To exercise other powers and authority provided to it by the City Council, this Ordinance, or state law.	
1. MEMBERSHIP – THE TRC SHALL BE COMPRISED OF DEPARTMENT HEADS (OR THEIR DESIGNEES) FROM THE FOLLOWING CITY DEPARTMENTS:		

²⁶ This section carries forward the standards in Section 9-9-3 of the current ordinance.

TABLE 2.2.6: TECHNICAL REVIEW COMMITTEE (TRC)

B. COMPOSITION	(a) Planning and Development;	(c) Public Services; and
	(b) Transportation;	(d) Engineering Services.
	(e) Representatives from other departments, such as Police, Fire, Electric Utilities, and Parks and Recreation; private utility companies; and public or private school systems may also attend.	
	2. OFFICERS:	
	(a) The Planning and Development Director shall serve as Chair of the TRC, and shall schedule committee meetings, coordinate the committee’s activities, preside over committee meetings, prepare committee reports, and serve as liaison to the departments and agencies involved for clarification of issues and resolution of conflicts.	
C. RULES OF PROCEDURE	1. MEETINGS:	
	(a) The TRC shall establish a regular meeting schedule which is set out in the Procedures Manual.	
	(b) The Planning and Development Director may invite applicants to attend TRC meetings.	

2.2.7. PLANNING AND DEVELOPMENT DIRECTOR²⁷

Table,2.2.7, Planning and Development Director sets out the Planning and Development Director’s powers and duties under this Ordinance.

TABLE 2.2.7: PLANNING AND DEVELOPMENT DIRECTOR

A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:	
	(a) Final plats;	(f) Temporary use permits;
	(b) Exclusion maps;	(g) Sign permits;
	(c) Building permits;	(h) Type I administrative adjustments;
	(d) Zoning compliance permits,	(i) Determinations; and
	(e) Certificates of occupancy;	(j) Easement reconveyances.
	2. RECOMMENDATION AUTHORITY - TO COMMENT OR MAKE RECOMMENDATIONS ON THE FOLLOWING APPLICATIONS:	
	(a) Land use plan amendments;	(j) Development agreements;
	(b) Text amendments;	(k) Vested rights certificates;
	(c) Zoning map amendments;	(l) Beneficial use determinations;
	(d) Conditional zonings;	(m) Variances;
	(e) Planned developments;	(n) Street name changes;
	(f) Special uses;	(o) Street abandonments;
	(g) Special exceptions;	(p) Appeals; and
(h) Certificates of appropriateness;	(q) Type II administrative adjustments.	
(i) Voluntary annexations;		
3. OTHER POWERS AND DUTIES – THE PLANNING AND DEVELOPMENT DIRECTOR SHALL HAVE THE FOLLOWING OTHER POWERS AND DUTIES:		

²⁷ This is a new section, replacing section 9-9-9, Enforcement Officer, of the current ordinance. The powers and duties are consistent with Table 2.1, Summary Development Review Table. The ordinance authorizes the Planning and Development Director to delegate some duties to professional-level staff (see Rules of Construction in Chapter 10). The powers and duties associated with the Floodplain Administrator are relocated to the Engineering Services Director since this is the official responsible for review and decision of floodplain development permits.

TABLE 2.2.7: PLANNING AND DEVELOPMENT DIRECTOR

	(a) To investigate violations and enforce this Ordinance in accordance with Chapter 9: Enforcement.
	(b) To establish application content requirements and a submission schedule for review of applications and appeals.
	(c) To ensure proper public notification regarding pending development applications is provided in accordance with state law.
	(d) To serve as Chair of the TRC.
	(e) To review development applications for compliance with this Ordinance and submit staff reports to decision-making bodies.
	(f) To issue permits and certificates in accordance with this Ordinance.
	(g) To maintain the Official Zoning Map and related materials.
	(h) To compile and maintain a Procedures Manual.
	(i) To provide expertise and technical assistance to city staff and decision-making bodies, upon request.
	(j) To maintain all records pertaining to the provisions of this Ordinance and make records available for public inspection.
	(k) To perform other duties as may be assigned by the City Council.

2.2.8. ENGINEERING SERVICES DIRECTOR²⁸

Table 2.2.8, Engineering Services Director, sets out the Engineering Service Director’s powers and duties under this Ordinance.

TABLE 2.2.8: ENGINEERING SERVICES DIRECTOR

A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:	
	(a) Land disturbing permits; and	(b) Floodplain development permits.
	2. RECOMMENDATION AUTHORITY - TO COMMENT OR MAKE RECOMMENDATIONS ON THE FOLLOWING APPLICATIONS:	
	(a) Public tree certificates; and	(b) Appeals.
	3. POWERS AND DUTIES AS FLOODPLAIN ADMINISTRATOR – THE ENGINEERING SERVICES DIRECTOR SHALL HAVE THE FOLLOWING POWERS AND DUTIES AS FLOODPLAIN ADMINISTRATOR:	
	(a) To notify adjacent communities, the North Carolina Department of Crime Control and Public Safety, the Division of Emergency Management, and the State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).	
	(b) To assure that maintenance is provided within the altered or relocated portion of a watercourse so that its flood-carrying capacity is maintained.	
	(c) To prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 6. <> are met.	
	(d) To obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 6. <>.	

²⁸ This is a new section that sets forth the powers and duties of the Engineering Services Director in accordance with Table 2.1, Summary Development Review Table. Because the Engineering Services Director is designated as the official responsible for review and decision for floodplain development permits, Section 9-9-9(c) of the current ordinance related to Floodplain Administrator duties is relocated to this section, with no substantive modifications.

TABLE 2.2.8: ENGINEERING SERVICES DIRECTOR

<p>(e) To obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 6.<>.</p>
<p>(f) To obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with Section 6.<>.</p>
<p>(g) To obtain certifications from a registered professional engineer or architect in accordance with Section 6.<>, when floodproofing is utilized for a particular structure.</p>
<p>(h) To make determinations, where needed, as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation in accordance with Section 2.4.19, Appeal.</p>
<p>(i) To obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed in accordance with to Section 6.<>, in order to administer the provisions of this Ordinance when Base Flood Elevation (BFE) data has not been provided.</p>
<p>(j) To obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this Ordinance when Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided.</p>
<p>(k) To advise a landowner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA when the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation, and maintain a copy of the Letter of Map Amendment (LOMA), if issued by FEMA, in the floodplain development permit file.</p>
<p>(l) To permanently maintain all records that pertain to the administration of Section <> of this Ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.</p>
<p>(m) To make on-site inspections of work in progress. As the work in accordance with to a floodplain development permit progresses, the Engineering Services Director shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this Ordinance and the terms of the permit. In exercising this power, the Engineering Services Director has a right, upon presentation of proper credentials, to enter on any premises within the city's planning jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.</p>
<p>(n) To issue stop-work orders as required. Whenever a building or part of a building is being constructed, reconstructed, altered, or repaired in violation of the Flood Damage Prevention regulations, the Engineering Services Director may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.</p>
<p>(o) To revoke and require the return of a floodplain development permit as required, by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.</p>

TABLE 2.2.8: ENGINEERING SERVICES DIRECTOR

	(p) To enter, upon presentation of proper credentials, on any premises within the city's planning jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.
	(q) To follow through with corrective procedures in accordance with Section 6.<>.
	(r) To provide input and make recommendations on floodplain variance requests.
	(s) To maintain a current map repository to include, but not be limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Section 6.<> of this Ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA.
	(t) To notify State and FEMA of mapping needs.
	(u) To coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).
	3. OTHER POWERS AND DUTIES – THE ENGINEERING SERVICES DIRECTOR SHALL HAVE THE FOLLOWING OTHER POWERS AND DUTIES:
(a) To carry out any other powers and duties delegated to it by the City Council, consistent with this Ordinance and state law.	

2.2.9. PUBLIC SERVICES DIRECTOR

Table 2.2.9, Public Services Director, sets out the Public Service Director's powers and duties under this Ordinance.

TABLE 2.2.9: PUBLIC SERVICES DIRECTOR

A. POWERS AND DUTIES	1. THE PUBLIC SERVICES DIRECTOR SHALL HAVE THE FOLLOWING POWERS AND DUTIES:
	(a) Enforcement of the watershed regulations in Section 6.2, Watershed Protection.
	(b) Inspection of stormwater management devices and best management practices constructed in accordance with Section 6.3, Soil Erosion and Sedimentation.

2.2.10. URBAN FORESTRY COMMITTEE (UFC)²⁹

The Urban Forestry Committee (UFC) is established to oversee the implementation of the city's urban forestry program, in accordance with to the provisions of this Ordinance and Section 160A-361 of the North Carolina General Statutes. Table 2.2.10, Urban Forestry Committee (UFC), sets out the Urban Forestry Committee's powers and duties, composition, and rules of procedure.

TABLE 2.2.10: URBAN FORESTRY COMMITTEE (UFC)

A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:
	(a) Public tree ³⁰ certificate.
	2. RECOMMENDATION AUTHORITY - TO MAKE RECOMMENDATIONS ON THE FOLLOWING:

²⁹ This section carries forward the Urban Forestry Committee provisions in Section 9-9-7, of the existing Ordinance, but includes revisions and clarifications to better reflect current practice while also seeking to add greater efficiency, clarity, and predictability to the development review process. These provisions may evolve further during the ordinance review process.

³⁰ Public trees are street trees in the public right of way, trees in parks, and trees on land controlled by the city.

TABLE 2.2.10: URBAN FORESTRY COMMITTEE (UFC)

	(a) Placement of public trees, as appropriate, related to an application for a site plan, preliminary plat, or zoning compliance permit.	
	(b) Placement of public trees as part of development undertaken by the city.	
	3. OTHER POWERS AND DUTIES – THE UFC SHALL HAVE THE FOLLOWING OTHER POWERS AND DUTIES:	
	(a) To develop a comprehensive strategy for the protection, maintenance, planning, planting and removal of trees on city-owned or controlled property.	
	(b) To facilitate the planting, growth, and protection of trees within the community.	
	(c) To develop and implement programs that educate the community about proper tree planting and maintenance practices, encourage volunteer tree planting efforts, and increase public awareness and support of the city's urban forest.	
	(d) To identify and recommend the removal of dead, dying, diseased, or insect-infested trees.	
	(e) To coordinate and sponsor the city's annual observance of Arbor Day.	
	(f) To develop, adopt, and maintain standards and practices for the conservation and maintenance of trees on city-owned or controlled property.	
	(g) To develop, adopt and maintain guidelines for the planting of trees in the community, including standards and specifications for plantings on street rights-of-way and adjacent to overhead and underground utilities, preferred trees for planting along street rights-of-way, and recommended tree species that are best suited for the community's climate and conditions.	
	(h) To review and approve requests to plant, prune, or remove trees on city-owned or controlled property in accordance with this Ordinance and the city's adopted standards and practices.	
	(i) To review the city's ordinances, codes, and policies to promote the proper utilization of trees and recommend appropriate changes as necessary.	
	(j) To develop and maintain an inventory of trees on city owned or controlled property.	
	(k) To identify and solicit grants, loans, or contributions from governmental agencies, corporations, organizations, and individuals that benefit the city's urban forestry program.	
	(l) To prepare an annual work program and budget for the city's urban forestry program and an annual report on the city's activities and expenditures.	
(m) To complete any other tasks assigned by City Council necessary to implement the duties and responsibilities mentioned above		
B. COMPOSITION	1. MEMBERSHIP: THE UFC SHALL BE COMPRISED OF DEPARTMENT HEADS (OR THEIR DESIGNEES) FROM THE FOLLOWING CITY DEPARTMENTS:	
	(a) Planning and Development;	(c) Electric Utilities; and
	(b) Public Services;	(d) Parks and Recreation.
	2. OFFICERS:	
	(a) The Planning and Development Director shall serve as Chair of the UFC, and shall schedule committee meetings, coordinate the committee's activities, preside over committee meetings, prepare committee reports, and serve as liaison to the departments and agencies involved for clarification of issues and resolution of conflicts.	
C. RULES OF PROCEDURE	1. MEETINGS:	
	(a) The UFC shall establish a regular meeting schedule which is set out in the Procedures Manual.	
	(b) The Planning and Development Director may invite applicants to attend UFC meetings.	

2.3. STANDARD REVIEW PROCEDURES³¹

2.3.1. GENERAL

- A.** This section describes the standard procedural steps and rules generally applicable to development applications reviewed under this Ordinance, unless otherwise specified in Section 2.4. Specific Review Procedures. The flow charts of specific procedures in Section 2.4 depict the procedural steps that apply to the review of the particular type of development application.
- B.** The city has prepared a Procedures Manual that includes information and requirements for persons submitting applications for development review under this Ordinance. The manual includes application submittal requirements, review schedules, and additional details on application review procedures.

2.3.2. PRE-APPLICATION CONFERENCE³²

A. Purpose

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a development application. A pre-application conference is also an opportunity for city staff to become familiar with, and offer preliminary comments about, the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

B. Applicability

1. Pre-Application Conference Required

A pre-application conference between the applicant and city staff shall be held before submittal of the following applications:

- (a)** Land use plan amendments;
- (b)** Text amendments;
- (c)** Zoning map amendments;
- (d)** Conditional zonings;
- (e)** Planned developments;
- (f)** Special uses;
- (g)** Special exceptions;
- (h)** Development agreements;
- (i)** Variances; and
- (j)** Street abandonments.

³¹ This section sets out a range of standard review procedures (as described on pages 2-21 through 2-25 in the Code Assessment). The standard review procedures apply to all development applications unless otherwise noted and address all aspects of the development review procedures, taking the applicant from the initial stage of development review, to the end of the process. In the current zoning ordinance several of the procedures for development applications (like public notice or appeal provisions) are set forth several different times in individual permit processes. Repetitive listings of the same information makes ordinances cumbersome and inconsistent as different parts of the text are amended over time. The standard review procedure section seeks to address these problems.

³² This section builds on the pre-application conference requirements set out in the sections on special use permit, zoning map amendment, traditional neighborhood development, and planned unit development procedures in the current ordinance. It expands the range of application types subject to mandatory pre-application conferences to include conditional zonings, special exceptions, development agreements, variances, and street abandonments. (Site plans and preliminary plats will be subject to the new land use clearance certificate process instead of a pre-application conference.) The city seeks to keep the pre-application process open and flexible so there are few formal requirements for a pre-application conference. The Procedures Manual will provide additional detail about pre-application conferences.

2. Pre-Application Conference Optional

A pre-application conference may be requested and held at the applicant's option for any development application other than those listed in Section 2.3.2.B.1, Pre-Application Conference Required.

C. Scheduling

Applicants shall contact the Planning and Development Department to schedule a pre-application conference.

D. Effect

A completed pre-application conference entitles and applicant to take the next step in the application process.

2.3.3. NEIGHBORHOOD MEETING³³

A. Purpose

The purpose of the neighborhood meeting is to inform owners and occupants of nearby lands about a development application that is going to be reviewed under this Ordinance, and to provide the applicant an opportunity to hear comments and concerns about the development proposal as a means of resolving conflicts and outstanding issues, where possible.

B. Favored Practice

Neighborhood meetings are encouraged as opportunities for informal communication between applicants and the owners and occupants of nearby lands, and other residents who may be affected by development proposals.

C. Applicability

A neighborhood meeting is required with any of the following applications:

- 1.** Zoning map amendments that propose to establish a more intense base zoning district;³⁴
- 2.** Conditional zonings;
- 3.** Planned developments; and
- 4.** Special uses.

D. Procedure

If a neighborhood meeting is required, it shall comply with the following procedures:

1. Timing

The applicant shall hold the neighborhood meeting before submittal of the application to the Planning and Development Director.

2. Form

The neighborhood meeting can take the form of a meeting, gathering, or a telephone communication between the applicant or the applicant's representative

³³ This section carries forward the "informational meeting" requirements for conditional use zoning districts, planned unit developments, and special use permits in the current ordinance, and calls it "neighborhood meeting." These draft standards broaden the range of development applications subject to neighborhood meeting requirements to include zoning map amendments seeking to establish a more intensive zoning district.

³⁴ Some Advisory Committee members have indicated that not all rezoning applications [to establish a more intensive zoning district] require neighborhood meetings, and that developers know when a meeting is necessary.

and landowners or other interested parties. Nothing shall prohibit multiple meetings or telephone communications from taking place.

3. Notification

- (a) Prior to the neighborhood meeting, the applicant shall provide notice of the meeting to all owners of land located within 300 feet of the land subject to the application, as shown on the county abstract listing.
- (b) Failure of a party to receive notice of the meeting shall not invalidate the application.

4. Information Provided

The applicant shall provide the following information to those attending the meeting:

- (a) A written description of the proposed development;
- (b) A written statement provided by the Department of Planning and Development that describes:
 - (1) The purpose of the neighborhood meeting;
 - (2) The development review process the application will follow;
 - (3) The potential for changes in the applicant's development proposal as it proceeds through the review process;
 - (4) Sources of further information about the development review process; and
 - (5) Any additional information that would promote understanding of the development proposal.

5. Conduct of Meeting

At the meeting, the applicant shall explain the development proposal and application, inform attendees about the application review process and the potential for change to the proposal as it proceeds through the process, respond to questions and concerns neighbors raise about the application, and propose ways to resolve conflicts and concerns.

6. Written Summary

At least 22 days before the initial consideration of the application by the PZC, the applicant shall file a written summary of the meeting with the Planning and Development Department that includes:

- (a) The date, time, and location of the meeting;
- (b) The method and date of notification about the meeting;
- (c) A list of landowners notified about the meeting;
- (d) A list of meeting attendees;
- (e) The written description of the development proposal presented to the attendees; and
- (f) A summary of attendee comments, ideas, and suggestions from citizens that were incorporated into the development proposal.

The written summary shall be included with the application materials and be made available to the public for inspection.

7. Failure to Conduct a Neighborhood Meeting³⁵

³⁵ NOTE: This section carries forward the provisions in the current ordinance regarding failure to conduct a neighborhood meeting. Modern development codes that include neighborhood meeting requirements do not allow applications to progress to review stages until mandatory neighborhood meeting requirements are met. One alternative for the city to consider is to declare the application incomplete if a mandatory

- (a) Failure by the applicant to conduct a neighborhood meeting in accordance with this section shall not prevent consideration of the application, if the applicant provides, in writing, the reasons for such failure.
- (b) Failure to conduct a neighborhood meeting or to follow the procedure in this subsection may be considered by the PZC or City Council.

2.3.4. APPLICATION SUBMITTAL AND ACCEPTANCE³⁶

A. Authority to File Applications

Unless expressly stated otherwise in this Ordinance, development applications reviewed under this Ordinance shall be submitted by the owner, contract purchaser, or other person having a recognized property interest in the land on which development is proposed.

B. Application Content

The Planning and Development Director is authorized to establish the requirements for application content and forms, which shall be placed in the Procedures Manual.

C. Application Fees

The City Council shall establish application fees, and may amend and update those fees as necessary.

D. Submittal and Review Schedule

The Planning and Development Director is authorized to and shall establish specific rules for submittal and review schedules (including time frames for review) for the various types of development applications, which shall be included in the Procedures Manual.

E. Application Submittal

1. Applications shall be submitted to the Planning and Development Director in the form established by the Planning and Development Director, along with the appropriate application fee.
2. Except for applications initiated by the City Council, no development application requiring approval by the City Council may be filed that includes land subject to a pending appeal being considered by the Board of Adjustment or the courts.³⁷

F. Determination of Application Completeness

1. Completeness Review

On receiving a development application, the Planning and Development Director shall determine whether the application is complete or incomplete based on the application completeness requirements in the Procedures Manual.

2. Application Incomplete

If the application is incomplete, the Planning and Development Director shall notify the applicant of the deficiencies.

3. Application Complete

neighborhood meeting is not conducted in accordance with this section. Additional discussion is needed with the Update Advisory Committee on this issue.

³⁶ This section builds on the standards in Section 9-3-3(a) of the current ordinance, but the provisions allowing the Enforcement Officer to waive portions of the submittal requirements are not carried forward.

³⁷ This section broadens the standards in Section 9-3-12(b)(6)d of the current ordinance pertaining to zoning map amendments to include all applications considered by the City Council.

On determining that the application is complete, the Planning and Development Director shall commence review in accordance with the procedures and standards of this Ordinance.

2.3.5. STAFF REVIEW AND ACTION³⁸

A. Staff Review

1. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.
2. When an application is determined complete, it shall be distributed by the Planning and Development Director to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, if appropriate.
3. In considering the application, the Planning and Development Director, the TRC, or other city staff (as appropriate), shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
4. If deficiencies in complying with applicable standards of this Ordinance are identified, the Planning and Development Director shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

B. Staff Report and Recommendation

1. The Planning and Development Director shall prepare a written staff report on any application subject to a public meeting or public hearing. The staff report shall conclude whether the application complies with all applicable review standards of this Ordinance, and recommend one of the decisions authorized for the particular type of application, based on the review standards applicable to the application type, in accordance with Section 2.4, Specific Review Procedures. The staff report may identify and recommend conditions of approval addressing how compliance deficiencies might be corrected and how adverse effects of the development application might be mitigated.
2. A staff report is not required for an application decided by the Planning and Development Director, TRC, UFC, or Engineering Services Director, even though one may be prepared.

C. Distribution and Availability of Application and Staff Report

In cases where a development application is subject to review by the HPC, PZC, BOA, or City Council, the Planning and Development Director shall take the following actions within a reasonable time period before the application is scheduled for review:

1. Schedule and ensure any required notice of the application (if appropriate) is prepared in accordance with Section 2.3.6, Public Notification;
2. Transmit the application, related materials, and staff report to the appropriate review authority;
3. Transmit a copy of the staff report to the applicant; and
4. Make the application, related materials, and staff report available for examination by the public in the Planning and Development Department during normal business hours.

D. Applications Subject to Decision by Staff

³⁸ This is a new section intended to make the development review process more transparent for applicants and members of the public.

1. Decision

If an application is subject to staff review and a final decision by the Planning and Development Director, TRC, UFC, or Engineering Services Director, as appropriate, the Planning and Development Director, TRC, UFC, or Engineering Services Director shall approve, approve subject to conditions, or disapprove the application, based on the review standards set forth in Section 2.4, Specific Review Procedures, for the particular type of application.

2. Conditions of Approval

Conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of this Ordinance. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the development permit or approval.

2.3.6. PUBLIC NOTIFICATION³⁹

A. Public Hearing Scheduling

When a development application is subject to a public hearing, the Planning and Development Director shall ensure that the public hearing is scheduled for a regular meeting or a meeting specially called for that purpose by the review authority.

B. Public Notification⁴⁰

All development applications subject to public notification shall comply with the North Carolina General Statutes, the provisions listed in Table 2.3.6, Public Notification Timing Requirements, the provisions of this section, and other provisions in this Ordinance related to public notice.

1. Notification Requirements

The Planning and Development Director shall ensure public notification of a public hearing on a development application is provided in accordance with the timing requirements in Table 2.3.6, Public Notification Timing Requirements, for the type of application and the type of notice. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

TABLE 2.3.6: PUBLIC NOTIFICATION TIMING REQUIREMENTS

APPLICATION TYPE	DECISION-MAKING BODY REVIEW	TYPES OF REQUIRED PUBLIC NOTICE				
		PUBLISHED NOTICE		MAILED NOTICE		POSTED NOTICE
		RETAIL ADVERTISEMENT	LEGAL ADVERTISEMENT	1 ST CLASS MAIL	CERTIFIED MAIL	
Land Use Plan Amendment	P&Z Commission	X	.	X [2]	.	.

³⁹ This is a new section that replaces Section 9-9-1 in the current ordinance (as well as the public notice provisions from various development application procedures throughout the text of the current ordinance).

⁴⁰ This section carries forward the city's current public notification practices, which exceed minimum state requirements for mailed and published notice.

TABLE 2.3.6: PUBLIC NOTIFICATION TIMING REQUIREMENTS

APPLICATION TYPE	DECISION-MAKING BODY REVIEW	TYPES OF REQUIRED PUBLIC NOTICE				
		PUBLISHED NOTICE		MAILED NOTICE		POSTED NOTICE
		RETAIL ADVERTISEMENT	LEGAL ADVERTISEMENT	1 ST CLASS MAIL	CERTIFIED MAIL	
	City Council	.	X [1]	X	.	.
Text Amendment	P&Z Commission	X	.	.	.	.
	City Council	.	X [1]	.	.	.
Zoning Map Amendment	P&Z Commission	X	.	X [3]	.	X [4]
Conditional Zoning	City Council	.	X [1]	X [3]	.	X [4]
Planned Development						
Special Use	P&Z Commission	X	.	X [3]	.	X [4]
	City Council	.	X [1]	X [3]	.	X [4]
Special Exception	BOA	.	X [1]	X [5]	.	X [4]
Certificate of Appropriateness	HPC	.	.	X [6]	.	.
Voluntary Annexation	City Council	.	X [7]	.	.	.
Development Agreement	P&Z Commission	X	.	X [3]	.	X [4]
	City Council	.	X [1]	X [3]	.	X [4]
Vested Rights Certificate	P&Z Commission	X	.	X [3]	.	X [4]
	City Council	.	X [1]	X [3]	.	X [4]
Beneficial Use Determination	P&Z Commission	X	.	.	.	.
	City Council	.	X [1]	.	.	.
Variance	BOA	.	X [1]	X [5]	.	X [4]
Street Name Change	P&Z Commission	X	.	X [8]	.	.
Street Abandonment	P&Z Commission	X	.	.	X [10]	X [11]
	City Council	.	X [9]	.	X [10]	.
Appeal	BOA		X [1]	X [12]		X [12]

[1] Legal advertisement provided once a week for two successive calendar weeks, with first notice between 10 and 25 days before the hearing.

[2] Mailed notice only provided between 10 and 25 days before the hearing, when associated with a zoning map amendment.

[3] Mailed notice provided between 10 and 25 days before the hearing.

[4] Posted notice provided at least 10 days before the hearing.

[5] Mailed notice provided to landowners within 100 feet of the subject lot or site between 10 and 25 days before the hearing.

[6] Mailed notice provided to all landowners in the subject LHO district between 10 and 25 days before the hearing.

TABLE 2.3.6: PUBLIC NOTIFICATION TIMING REQUIREMENTS

APPLICATION TYPE	DECISION-MAKING BODY REVIEW	TYPES OF REQUIRED PUBLIC NOTICE				
		PUBLISHED NOTICE		MAILED NOTICE		POSTED NOTICE
		RETAIL ADVERTISEMENT	LEGAL ADVERTISEMENT	1 ST CLASS MAIL	CERTIFIED MAIL	

[7] Legal advertisement provided once, at least 10 days before the hearing.

[8] Mailed notice provided to all landowners abutting the street between 10 and 25 days before the hearing.

[9] Published notice provided once a week for four weeks before the hearing.

[10] Mailed notice provided to all landowners abutting the street, plus NCDOT if street is under NCDOT control, between 10 and 25 days before the hearing.

[11] Posted notice required in at least two locations along the street at least 10 days before the hearing.

[12] Mailed notice provided between 10 and 25 days before the hearing and posted notice provided at least 10 days before the hearing are required when an appeal relates to a particular lot or site.

2. Published Notice Requirements

- (a) Except where otherwise stated in this subsection, when the provisions of this Ordinance require that notice of a public hearing be published, the Planning and Development Director shall publish a notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the city.
- (b) The first time notice is published, it shall be not less than ten days nor more than 25 days before the date fixed for the hearing.

3. Mailed Notice Requirements

- (a) Except where otherwise specified in Table 2.3.6, mailed notice shall be mailed to:
 - (1) All owners of the land subject to the application;
 - (2) The applicant, if different from the land owner; and
 - (3) All owners of land within 300 feet of the property lines of land subject to the application (including owners of land located outside the city) whose address is known by reference to the latest county abstract listing.
- (b) Notice shall be deemed mailed by its deposit in the United States mail, first class or certified (as appropriate), properly addressed, postage paid. The content and form of the notice shall comply with Section 2.3.6.B.5, Notice Content, and the North Carolina General Statutes.
- (c) The Planning and Development Director shall prepare an affidavit affirming that notice meeting these standards was mailed. The affidavit shall be conclusive that notice has been given in compliance with the terms of this subsection. The affidavit shall be included in the support materials of the application.
- (d) A copy of the mailed notice shall be maintained in the Planning and Development Department for public inspection during normal business hours.

4. Posted Notice Requirements

Posted notice shall be made by the Planning and Development Director, and shall comply with the following:

- (a) A sign shall be placed on subject property in a conspicuous location so as to be clearly visible to the traveled portion of the respective street. Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.
- (b) The content and form of the notice shall comply with Section 2.3.6.B.5, Notice Content, and the North Carolina General Statutes.

5. Notice Content

Unless expressly noted otherwise, all notices for public hearings, whether done by mail (mailed notice), publication (publishing in a newspaper of general circulation in the city), or posting shall:

- (a) Identify the date, time, and place of the public hearing;
- (b) Describe the land involved by street address or by its relationship to a fronting street and the nearest cross street (if applicable), and its size (except posted notice);
- (c) Describe the nature and scope of the proposed development or action; and
- (d) State that substantial changes in the proposal may be made following the public hearing.

6. Notice Involving Street Abandonment

- (a) In the case of street abandonment, the city shall publish the required City Council resolution of intent once a week for four successive weeks in a newspaper of general circulation.
- (b) The resolution shall indicate the time, date, and location of a public hearing to consider the street abandonment.
- (c) In addition to published notice, all the owners of land, as listed on the county abstract listing, fronting or abutting the street or segment affected by the abandonment, shall be given certified mailed notice of the proposed abandonment.
- (d) Notice shall also be mailed to the North Carolina Department of Transportation, if the street is under the control and authority of the department.
- (e) In addition, the notification of the public hearing purpose, date, time, and location shall be posted in at least two locations along the street.

7. Notice Involving Street Name Change Requests

- (a) In the case of a street name change request, all the owners of land, as listed on the county abstract listing, fronting, or abutting the street or segment affected by the request, shall be given first class mailed notice of the request.
- (b) The city shall also make a good faith effort to notify renters of property affected.
- (c) If the street name change is approved, the owners of properties affected shall be sent address change notices containing the effective date of the change.

8. Constructive Notice

- (a) Minor defects in any notice shall not impair the notice or invalidate proceedings if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:
 - (1) Errors in a legal description;
 - (2) Errors or omissions in the county abstract listing; or
 - (3) Typographical or grammatical errors that do not impede communication of the notice to affected parties.
- (b) Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property(ies) shall be strictly adhered to.
- (c) If questions arise at the hearing regarding the adequacy of notice, the Planning and Development Director shall make a formal finding in writing as to whether there is substantial compliance with the notice requirements of this Ordinance.

2.3.7. REVIEW BY PZC OR HPC ⁴¹

If an application is subject to a recommendation by the PZC or HPC, it shall review and act on the application in accordance with the following procedures:

A. General

The PZC or HPC, as appropriate, shall consider the application, relevant support materials, staff report, and any public comments. One of the decisions authorized for the particular type of application shall be recommended, based on the review standards applicable to the application type, as set forth in Section 2.4, Specific Review Procedures.

B. General Conduct

Members conducting a review and providing a recommendation shall act in accordance with the following guidelines:

1. No Prejudice

Consider the application without prejudice.

2. No Commitment Prior to Review

Make no commitment or agreement or take a public position on an application or on any proposed condition until the application is reviewed during the meeting.

3. Disclosure

Disclose any information obtained outside the public meeting that they believe has influenced their evaluation of the application.

4. Deliberation

Refrain from deliberation or formulation of a judgment or decision prior to the meeting at which the application is considered.

5. Conflict of Interest

Recuse themselves from voting on an application where the outcome is reasonably likely to have a direct, substantial, and readily identifiable financial impact on them.

C. Clearly State Factors for Recommendation

⁴¹ This is a new section that builds on the standards in Section 9-3-12(b)(16) and Section 9-3-13(c)(6) of the current ordinance.

Subsection 2.3.8 Action by Decision-Making Body

The recommendation shall clearly state the factors considered in making the recommendation and the basis or rationale for the recommendation.

D. Vote

1. A decision to recommend approval shall be decided by a simple majority of a quorum present.
2. A tie vote by members of the PZC shall be forwarded to the City Council without a recommendation.
3. Applications receiving a recommendation for disapproval by the PZC shall require two-thirds (2/3rd) favorable vote of the City Council members present and voting to be approved.

E. Timing

Unless an application is deferred or continued, a vote or recommendation on an application shall be made within 60 days from the date of the initial meeting where it is considered.

F. Failure to Recommend

If the PZC or HPC fails to make a recommendation in the time allotted, the applicant may request and take the application to the City Council without a recommendation from the PZC or HPC.

2.3.8. ACTION BY DECISION-MAKING BODY⁴²

If an application is subject to a decision by the City Council, PZC, BOA, or HPC, the decision-making body shall review and decide the application in accordance with the following procedures.

A. General

The decision-making body shall conduct any required public hearing(s) and consider the application, relevant support materials, staff report, any review authority recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section 2.4, Specific Review Procedures.

B. General Conduct

Members making a decision shall act in accordance with the following guidelines:

1. No Prejudice

Consider the application without prejudice.

2. No Commitment Prior to Review

Make no commitment or agreement or take a public position on an application or on any proposed condition until the application is reviewed during the hearing.

3. Disclosure

Disclose any information obtained outside the public hearing that they believe has influenced their evaluation of the application.

4. Deliberation

Refrain from deliberation or formulation of a judgment or decision prior to the meeting to consider the application.

⁴² This is a new section that builds on the standards in Section 9-3-12(b)(16) of the current ordinance.

5. Conflict of Interest

Recuse themselves from voting on an application where the outcome is reasonably likely to have a direct, substantial, and readily identifiable financial impact on them.

C. Remand

The decision-making body may remand the application to the appropriate advisory body for further consideration of new information or specified issues or concerns, if appropriate.

D. Clearly State Factors for Decision

Unless stated otherwise in this Ordinance, the decision of the decision-making body shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

E. Vote

- 1.** An application receiving a recommendation for disapproval from the PZC shall only be approved by the City Council with a (two-thirds) $\frac{2}{3}$ majority of the City Council members present and voting.
- 2.** An application subject to a valid protest petition (zoning map amendment, conditional zoning, or planned development) shall require a (three-fourths) $\frac{3}{4}$ supermajority vote of the members of the City Council for approval.
- 3.** A board member shall recuse himself from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, or readily identifiable financial impact on the member.
- 4.** Vacant seats and members who are recused shall not be considered members for the calculation of the requisite supermajority.
- 5.** If the City Council fails to act within [redacted] days after the conclusion of the public hearing on the application, the application shall be deemed denied.⁴³

F. Timing

The decision-making body shall take action on the application as promptly as reasonably possible in consideration of the public interest.

2.3.9. CONDITIONS OF APPROVAL⁴⁴

- A.** Unless expressly stated otherwise in the specific procedures in Section 2.4, Specific Review Procedures, a condition of approval shall be limited to those deemed necessary to ensure compliance with the review standards for the particular type of application, or to prevent or minimize adverse effects from the proposed development on surrounding lands. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the notice of decision or development permit approval.
- B.** Conditions of approval associated with a conditional zoning may only be offered by the applicant and may only be accepted or not accepted as proposed, by the City Council.

2.3.10. NOTIFICATION OF DECISION OR ACTION⁴⁵

⁴³ NOTE TO STAFF: This standard is taken from Section 9-3-12(b)(13)€ from the current ordinance, but it does not list a date. Is there a policy or rule of thumb on this?

⁴⁴

⁴⁵ This is a new standard proposed for the city's consideration.

Subsection 2.3.11 Effect of Development Approval

Within ten business days after a final decision on a development application, the Planning and Development Director shall provide the applicant written notice of the decision or action and make a copy of the decision available to the public in the offices of the Planning and Development Department, during normal business hours.

2.3.11. EFFECT OF DEVELOPMENT APPROVAL

A. Approval Limited

Approval of a development application in accordance with this Ordinance authorizes only the particular use, plan for development, or other specific activity approved.

B. Permit Prerequisite

In the event a permit or development approval is prerequisite to another permit or development approval (e.g., administrative adjustment or variance approval prior to a site plan approval), development may not take place until all required approvals are obtained. Approval of one development application does not guarantee approval of any subsequent development application.

C. Sequence of Permit Issuance^{46/47}

1. If required, a land-disturbing permit shall be issued in advance of any other permit or development approval, except for a watershed development plan, a floodplain development permit, or a landscaping plan.
2. If required, a well or septic tank permit, driveway approval, water and sewer construction plan, site plan, preliminary plat, watershed development plan, or final plat shall be approved prior to issuance of a building permit.
3. The Planning and Development Director may issue permits for a temporary construction trailer, a safety structure, and other customary construction structures prior to approval of a site plan or preliminary plat.

2.3.12. AMENDMENT OF DEVELOPMENT APPROVAL

Amendment of a permit or development approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

2.3.13. CONTINUANCE⁴⁸

A. Planning and Development Director Continuance

A development application decided by the City Council, PZC, BOA, or HPC may be granted a one-month continuance by the Planning and Development Director, provided the request to continue is submitted in writing by the applicant at least 22 days prior to the initial consideration of a development application. The Planning and Development Director is authorized to grant only one continuance. The application must then either be forwarded to the review body for consideration or withdrawn.

B. Decision-Making Body Continuance

⁴⁶ This section carries forward the standards in Section 9-3-4 of the current ordinance with minor changes related to removal of integrated multiple use developments (as described on Page 2-20 of the Code Assessment).

⁴⁷ The Piedmont Triad Airport Authority is authorized to review development applications associated with above-ground development located in its flight path. This issue is still under consideration.

⁴⁸ This section carries forward and broadens Section 9-3-12(b) of the current ordinance related to deferral of zoning map amendment applications.

1. When a development application is before the City Council, PZC, BOA, or HPC for a decision, the decision-making may continue consideration of the application for up to two months, provided the reason for the continuance is stated in the motion to continue. Nothing in this section shall prohibit a continuance from being granted for a greater period of time, provided it is mutually agreed upon by the decision-making body and the applicant.
2. In cases where a development application has been forwarded to the City Council following PZC review and recommendation, the applicant cannot request a continuance until the City Council public hearing.

2.3.14. WITHDRAWAL⁴⁹

- A. An applicant may request and the Director of Planning and Development may grant an applicant's request to withdraw of an application if it is done at least 22 days before the date the application is to be considered by the City Council, PZC, BOA or HPC. A request to withdraw an application submitted after that date shall only be considered by the decision-making body at the public meeting or hearing.
- B. If an applicant withdraws an application for the same land after public notification two times within a single calendar year, the same application may not be resubmitted for a period of one year from the date of the second withdrawal.

2.3.15. LIMITATIONS ON SUCCESSIVE APPLICATIONS⁵⁰

A. In General

Except where specifically authorized in this Ordinance, if an application has been denied by the City Council, a similar application relating to the same land may not be filed within one year of the date of denial.

B. Application for Zoning Map Amendment, Conditional Zoning, or Planned Development Disapproval

1. If a development application for a zoning map amendment, conditional zoning, or planned development is disapproved, an application proposing the same or similar development on all or part of the same land shall not be submitted within one year after the date of denial unless:
 - (a) The application is for a initial zoning map amendment associated with a voluntary annexation petition; or
 - (b) The City Council waives the time limit in accordance with subsection (2) below.
2. A landowner subject to this subsection or a landowner's authorized agent may submit a written request for waiver of the time limit, along with a fee to defray the cost of processing the request, to the Planning and Development Director, who shall transmit the request to the City Council. The City Council may grant a waiver of the time limit only on a finding by two-thirds (2/3rd) of its membership that the owner or agent has demonstrated that:
 - (a) There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might

⁴⁹ This section carries forward and broadens the standards in Section 9-3-12(b) related to withdrawal of zoning map amendment applications.

⁵⁰ This section carries forward and broadens the standards in Section 9-3-12(b) related to filing of successive applications.

Subsection 2.3.16 Expiration of Permit of Development Approval
Expiration of Permit of Development Approval

- reasonably affect the City Council's application of the relevant review standards to the development proposed in the new application; or
- (b) New or additional information is available that was not available at the time of review of the prior application and that might reasonably affect the City Council's application of the relevant review standards to the development proposed in the new application; or
 - (c) The new application proposed to be submitted is materially different from the prior application; or
 - (d) The final decision on the prior application was based on a material mistake of fact.

2.3.16. EXPIRATION OF PERMIT OF DEVELOPMENT APPROVAL⁵¹

A. General

1. Except for zoning map amendments, conditional zonings, planned developments, and development permits and approvals subject to a vested right, development approvals granted in accordance with this Ordinance shall expire as provided in Section 2.4, Specific Review Procedures, for the particular type of development permit or approval.
2. If no expiration period is provided in Section 2.4, Specific Review Procedures, the development permit or approval shall expire unless a building permit or zoning compliance permit is obtained within six months of the approval.
3. A change in ownership of the land shall not affect the established expiration time period. The filing of an appeal shall delay the established expiration period until final resolution of the appeal.

B. Extension of Expiration Time Period

1. Except as otherwise provided in Section 2.4, Specific Review Procedures, for the particular type of development permit or approval, the Planning and Development Director may, on receipt a written request for extension before the expiration date and on a showing of good cause, grant one or more extensions of the expiration time period for up to a cumulative total of one year.
2. Any further extensions shall be subject to approval by the decision-making body that granted the development permit or approval, on submittal of a request for extension to the Planning and Development Director before the expiration date and a showing of good cause.

⁵¹ This is a new section proposed for the city's consideration.

2.4. SPECIFIC REVIEW PROCEDURES⁵²

2.4.1. OVERVIEW

A. General

This section sets forth supplemental procedures, standards, and related information for each of the specific review procedures for development applications reviewed under this Ordinance, as identified in Table 2.1, Summary Development Review Table. They apply in addition to, or instead of, the standard procedures set forth in Section 2.3, Standard Review Procedures.

B. Structure of Procedures

1. For each type of development application reviewed under this Ordinance, the following sections state the purpose of the development permit or approval, the review standards for the application, and provisions addressing expiration and amendment, if applicable.
2. Development application provisions in this section are organized in accordance with the sequence of procedures in Table 2.1, Summary Development Review Table.

C. Procedural Flowchart Legend

Each development application review procedure in this section includes a procedural flowchart that depicts the steps in the review process. White boxes indicate actions of the applicant. Light blue boxes indicate actions of city staff. Black boxes show quasi-judicial public hearings, dark grey boxes show legislative public hearings, and light grey boxes show public meetings. Boxes with dashed lines show optional steps.

2.4.2. LAND USE PLAN AMENDMENT⁵³

A. Purpose

The purpose of this section is to provide a uniform means for amending the High Point Land Use Plan whenever the public necessity, changed conditions, convenience, general welfare, or appropriate land use practices justify or require doing so.

B. Land Use Plan Amendment Procedure

1. Pre-Application Conference

Required(see Section 2.3.2).

2. Application Submittal and Acceptance

(a) Applicable (see Section 2.3.4).

(b) Applications may be initiated by the City Council, the PZC, the Planning and Development Director, any person who may submit applications in accordance with Section 2.3.4.A, Authority to File Applications, or any other interested party.

⁵² This section sets out the range of specific review procedures in the updated development ordinance. These procedures are discussed on Pages 2-10 through 2-21 of the Code Assessment. Each procedure follows a standard format and is accompanied by a procedural flow chart. The Procedures Manual will set out submittal requirements and a key for understanding the flow charts.

⁵³ This section carries forward Section 9-3-19 of the current ordinance and conforms it to the format used in this draft ordinance.

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.2.C, Land Use Plan Amendment Review Standards.

4. Public Notification

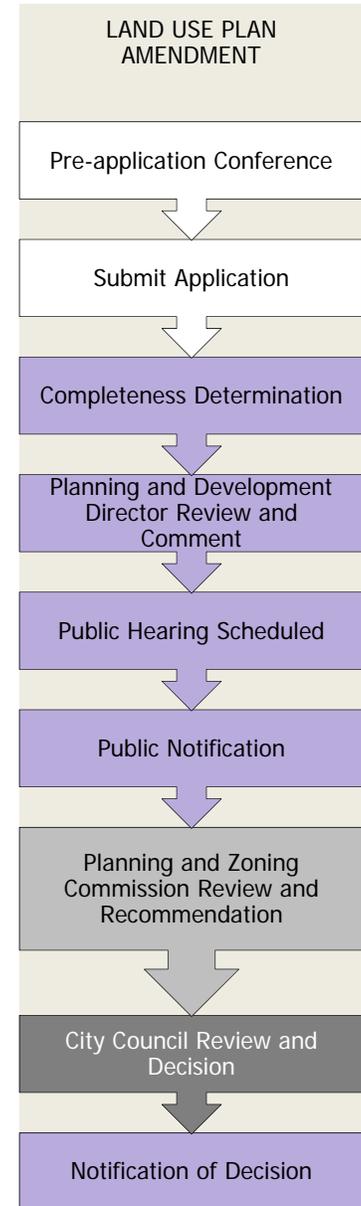
Applicable (see Section 2.3.6).

5. PZC Review and Recommendation

- (a) Applicable (see Section 2.3.7).
- (b) The PZC, following a public meeting, shall make a recommendation on an application in accordance with Section 2.3.7, Review , and Section 2.4.2.C, Land Use Plan Amendment Review Standards.

6. City Council Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The City Council, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.2.C, Land Use Plan Amendment Review Standards.
- (c) The decision shall be one of the following:
 - (1) Adoption of the Land Use Plan amendment as proposed;
 - (2) Adoption of a revised Land Use Plan amendment;
 - (3) Denial of the Land Use Plan amendment; or
 - (4) Remand of the Land Use Plan amendment application back to the PZC for further consideration.



C. Land Use Plan Amendment Review Standards

Amending the High Point Land Use Plan is a matter committed to the legislative discretion of the City Council and is not controlled by any one factor. In determining whether to adopt or deny a proposed land use plan amendment, the City Council may weigh the relevance of and consider whether and the extent to which the proposed land use plan amendment:

- 1. Is consistent with the goals, objectives, and policies of the Community Growth Vision Statement, High Point Land Use Plan, Core City Plan, and other applicable city-adopted plans;
- 2. Is not in conflict with any provision of this Ordinance or the City of High Point Code of Ordinances;

- 3. Is required by changed conditions;
- 4. Addresses a demonstrated community need;
- 5. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the city;
- 6. Would result in a logical and orderly development pattern; and
- 7. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, and the natural functioning of the environment.

D. Effect

Applicable (see Section 2.3.11).

E. Amendment

Applicable (see Section 2.3.12).

F. Expiration

Approval of a land use plan amendment shall not expire, but the amended High Point Land Use Plan is subject to further amendment in accordance with the land use plan amendment procedures set forth in this section.

2.4.3. TEXT AMENDMENT⁵⁴

A. Purpose

The purpose of this section is to provide a uniform means for amending the text of this Ordinance whenever the public necessity, changed conditions, convenience, general welfare, or appropriate land use practices justify or require doing so.

B. Text Amendment Procedure

1. Pre-Application Conference

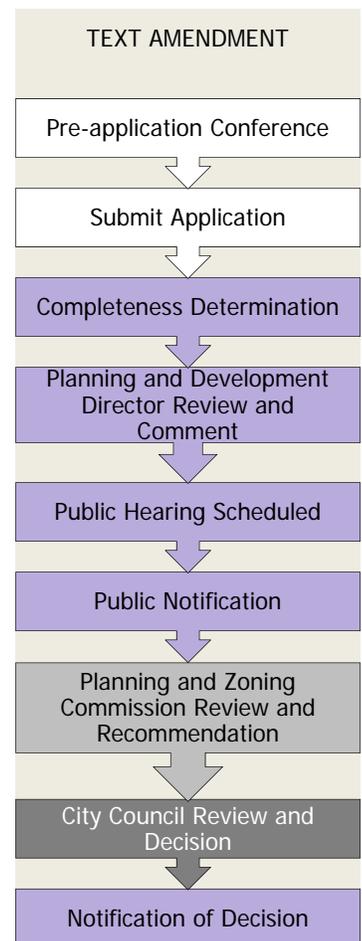
Applicable (see Section 2.3.2).

2. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4).
- (b) Applications may be initiated by the City Council, the PZC, the Planning and Development Director, the TRC, any landowner, or any resident of the city.
- (c) No text amendment application may be filed by an applicant who has filed an application for an appeal that is still pending.

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance



⁵⁴ This carries forward Section 9-3-15 from the current ordinance and conforms it to the format used in this draft ordinance.

with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.3.C, Text Amendment Review Standards.

4. Public Notification

Applicable (see Section 2.3.6).

5. PZC Review and Recommendation

(a) Applicable (see Section 2.3.7).

(b) The PZC, following a public meeting, shall make a recommendation on an application in accordance with Section 2.3.7, Review , and Section 2.4.3.C, Text Amendment Review Standards.

(c) The PZC shall comment on whether or not the text amendment is consistent with the High Point Land Use Plan and any other applicable planning policy.

6. City Council Review and Decision

(a) Applicable (see Section 2.3.8).

(b) The City Council, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.3.C, Text Amendment Review Standards.

(c) The decision shall be one of the following:

(1) Adoption of the text amendment as proposed;

(2) Adoption of a revised text amendment;

(3) Denial of the text amendment; or

(4) Remand of the text amendment application to the PZC for further consideration.

(d) In making its decision, the City Council shall adopt a written statement of consistency and reasonableness that:

(1) Describes whether the decision is consistent with all city-adopted plans that are applicable; and

(2) Explains why the decision is reasonable and in the public interest.

C. Text Amendment Review Standards

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the City Council and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the City Council may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

1. Is consistent with the goals, objectives, and policies of the Community Growth Vision Statement, High Point Land Use Plan, Core City Plan, and other applicable city-adopted plans;
2. Is not in conflict with any provision of this Ordinance or the City of High Point Code of Ordinances;
3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the city;
6. Would result in a logical and orderly development pattern; and
7. Would not result in significantly adverse impacts on the natural environment,

including but not limited to water, air, noise, stormwater management, wildlife, vegetation, and the natural functioning of the environment.

D. Effect

Applicable (see Section 2.3.11).

E. Amendment

Applicable (see Section 2.3.12).

F. Expiration

Approval of a text amendment shall not expire.

2.4.4. ZONING MAP AMENDMENT⁵⁵

A. Purpose

The purpose of this section is to provide a uniform means for reviewing and deciding proposed general amendments to the Official Zoning Map whenever the public necessity, general welfare, the High Point Land Use Plan, Core City Plan, or appropriate land use practices justify or require doing so.

B. Zoning Map Amendment Procedure

1. Pre-Application Conference

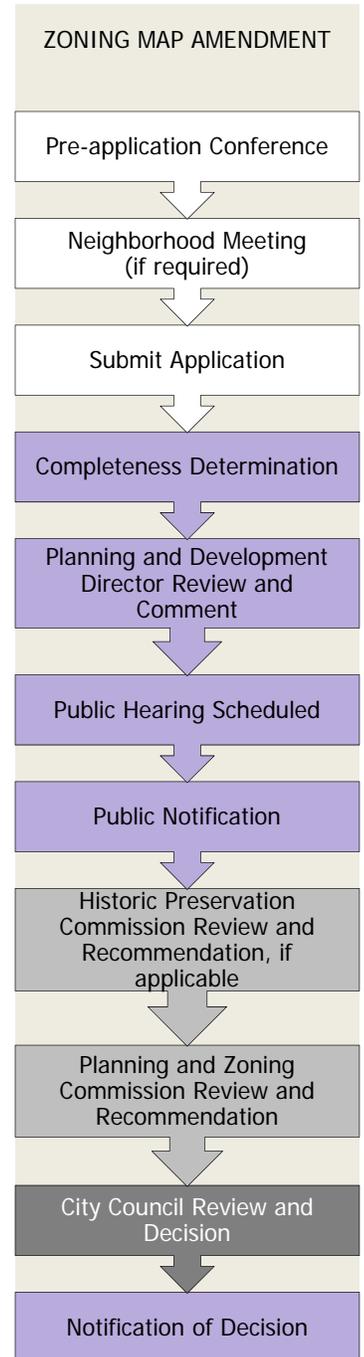
Applicable (see Section 2.3.2).

2. Neighborhood Meeting

- (a) Applicable (see Section 2.3.3).
- (b) Neighborhood meetings are required in cases where a more intense zoning district classification is being requested.

3. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4).
- (b) Applications may be initiated by the City Council, the PZC, the Planning and Development Director, or any person who may submit applications in accordance with Section 2.3.4.A, Authority to File Applications.
- (c) When required by Section 5.<>, Traffic Impact Analysis, a traffic impact analysis shall be submitted for review with the submittal of an application for a zoning map amendment.
- (d) Where City Council initiates the original zoning, it shall not be necessary to provide a metes and bounds description provided city maps are used that clearly delineate the area involved and the proposed zoning classification.



⁵⁵ This section carries forward Section 9-3-12 of the current ordinance and conforms it to the format used in this draft ordinance.

4. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.4.C, Zoning Map Amendment Review Standards.

5. Public Notification

Applicable (see Section 2.3.6).

6. HPC and PZC Review and Recommendation

- (a) Applicable (see Section 2.3.7).
- (b) If the application is associated with a LHO district, the HPC, following a public meeting, shall provide a recommendation on the application to the PZC, in accordance with the standards in Section 3. <>.
- (c) The PZC, following a public meeting, shall make a recommendation on the application in accordance with Section 2.3.7, Review , and Section 2.4.4.C, Zoning Map Amendment Review Standards, and shall comment on the application's consistency with the applicable long range planning documents.

7. City Council Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The City Council, at the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.4.C, Zoning Map Amendment Review Standards.
- (c) The decision shall be one of the following:
 - (1) Approval of the zoning map amendment as submitted;
 - (2) Approval of the zoning map amendment with a reduction in the area proposed to be rezoned;
 - (3) Approval of a zoning map amendment to a more restricted base zoning district; or
 - (4) Denial of the zoning map amendment application.
- (d) In making its decision, the City Council shall adopt a written statement of consistency and reasonableness that:
 - (1) Describes whether the decision is consistent with all city-adopted plans that are applicable; and
 - (2) Explains why the decision is reasonable and in the public interest.

8. Protest Petitions

If a protest petition is filed, the Planning and Development Director shall determine its validity prior to the public hearing conducted by the City Council. Approval of a zoning map amendment subject to a valid protest petition by the City Council shall require a three-fourths (¾) vote in the affirmative by the City Council.

- (a) To be determined valid, a protest petition shall meet the following requirements:
 - (1) The protest petition shall be signed by:
 - (i) The owners of 20 percent or more of the land area included in a proposed change; or

Ordinances;

3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Is compatible with existing and proposed uses surrounding the land subject to the application, and is the appropriate zoning district and uses for the land;
6. Adversely impacts nearby lands;
7. Results in a logical and orderly development pattern;
8. Results in significant adverse impacts on the natural environment—including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment;
9. Results in development that is adequately served by public facilities (e.g., streets, potable water, sewerage, stormwater management, solid waste collection and disposal, schools, parks, police, and fire and emergency medical facilities);
10. Would not result in significantly adverse impacts on the land values in the surrounding area;
11. Would not conflict with the public interest and;
12. Is in harmony with the purposes and intent of this Ordinance.

D. Effect

Applicable (see Section [2.3.11](#)).

E. Amendment

Applicable (see Section [2.3.12](#)).

F. Application Denial

Applicable (see Section [2.3.15.B](#), Application).

G. Expiration

Approval of an Official Zoning Map amendment shall not expire. The amended Official Zoning Map is subject to further amendment in accordance with the official zoning map amendment procedures set forth in this section.

2.4.5. CONDITIONAL ZONING⁵⁶

A. Purpose

The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish conditional zoning districts. In cases where the standards of a general use zoning district are inadequate to ensure that development allowed by the district will conform to the city's adopted plans or to appropriately address the impacts expected to be generated by development, a landowner may apply for a conditional zoning. The conditional zoning establishes a parallel conditional zoning district that is equivalent to a corresponding general use zoning district, but is subject to additional conditions or restrictions that the applicant and city mutually agree are necessary to ensure conformance with adopted plans and to adequately address expected development impacts.

B. Applied to Entire Site

⁵⁶ This section replaces Section 9-3-13 in the current ordinance. Section 9-3-13(c)(6) related to the conduct of reviewers is relocated to the standard review procedures. The ability of the applicant to propose conditions related to off-street parking, landscaping, or dimensional standards that are less restrictive than those found in the base zoning district is removed in favor of new forms of flexibility such as administrative adjustments and alternative means of compliance.

Applications for conditional zoning submitted after [insert effective date of this Ordinance] shall include all the land area within a recorded lot or site that is the subject of the application. Conditional zoning applications may not establish bi-furcated zoning classifications where only a portion of a lot or site is subject to a conditional zoning classification.

C. Conditional Zoning Procedure

1. Pre-Application Conference

Applicable (see Section 2.3.2).

2. Neighborhood Meeting

Applicable (see Section 2.3.3).

3. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4).
- (b) Conditional zoning applications may only be initiated by the landowner(s) of the land subject to the application.
- (c) All conditions of approval proposed by the applicant must be included with the conditional zoning application.
- (d) An application for a conditional zoning may include a conditional zoning plan that illustrates the proposed development in order to demonstrate proposed conditions where text does not provide an adequate description.
- (e) When required by Section 5.<>, Traffic Impact Analysis, a traffic impact analysis shall be submitted for review with the submittal of an application for a conditional zoning.

4. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.5.C.8, Changes to Application.

5. Public Notification

Applicable (see Section 2.3.6).

6. HPC and PZC Review and Recommendation

- (a) Applicable (see Section 2.3.7).
- (b) If the application is located within a LHO district, the HPC, following a public meeting, shall provide a recommendation on the application to the



- PZC, in accordance with the standards in Section 3.<>.
- (c) The PZC, following a public meeting, shall make a recommendation on the application in accordance with Section 2.3.7, Review , Section 2.4.5.C.8, Changes to Application, and Section 2.4.5.D, Conditional Zoning Review Standards.
 - (d) During its review of the application, the PZC may suggest revisions to the proposed conditions (including the conditional zoning plan), consistent with the provisions of Section 2.3.9, Conditions of Approval. Only those revisions agreed to in writing by the applicant shall be incorporated into the application.
 - (e) Upon completion of the public meeting, the PZC shall comment on the application's consistency with the applicable long range planning documents.

7. City Council Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The City Council, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, Section 2.4.5.C.8, Changes to Application, and Section 2.4.5.D, Conditional Zoning Review Standards.
- (c) The decision shall be one of the following:
 - (1) Approval of the conditional zoning subject to the conditions included in the application;
 - (2) Approval of the conditional zoning subject to any revised or additional conditions agreed to by the applicant, in writing;
 - (3) Denial of the conditional zoning; or
 - (4) Remand of the conditional zoning application to the PZC for further consideration.
- (d) As part of the decision, the City Council shall adopt a written statement of consistency and reasonableness that:
 - (1) Describes whether the decision is consistent with all city-adopted plans that are applicable; and
 - (2) Explains why the decision is reasonable and in the public interest.

8. Changes to Application

An applicant may modify the conditions associated with a conditional zoning application until 22 days prior to the initial review by the PZC. After that time, the PZC, the applicant may only propose modifications in accordance with the following:

- (a) Modifications shall be made in writing to the Planning and Development Director;
- (b) Modifications shall be signed by all landowners or those authorized to submit the application; and
- (c) Modifications shall be approved by the City Council.

Modifications shall not be proposed within 48 hours of the consideration of the application by the City Council.

9. Protest Petitions

An application for a conditional zoning shall be subject to the protest petition provisions in Section 2.4.4.B.8, Protest Petitions.

10. Designation on Official Zoning Map

The Planning and Development Director shall make changes to the Official Zoning Map promptly after approval of a conditional zoning district application by the City Council.

D. Conditional Zoning Review Standards

The advisability of a conditional zoning is a matter committed to the legislative discretion of the City Council and is not controlled by any one factor. In determining whether to approve or deny a conditional zoning, the City Council may consider the standards in Section 2.4.4.C, Zoning Map Amendment Review Standards, as well as the following standards:

1. Consistency with Adopted Plans

Whether and the extent to which the proposed conditional zoning district is appropriate for its proposed location, and is consistent with the purposes, goals, objectives, and policies of all applicable plans.

2. Reasonableness/Public Interest

Whether an approval of the conditional zoning is reasonable and in the public interest.

3. Review Factors

Whether the applicant's proposed conditional zoning district, including the proposed use(s), written conditions and conditional zoning plan, will satisfactorily:

- (a)** Result in a development that is compatible with surrounding development character and land uses;
- (b)** Minimizes and effectively mitigates any identified adverse impact on adjacent and nearby property, such as that caused by traffic, parking, noise, lighting, trash, loading areas, etc.;
- (c)** Minimizes and effectively mitigates any identified adverse environmental impact on water and air resources, minimizes land disturbance, preserves trees, and protects habitat;
- (d)** Minimizes and effectively mitigates any identified adverse impact on municipal facilities and services, such as streets, potable water and wastewater facilities, parks, police and fire; and
- (e)** Minimizes and effectively mitigates any identified adverse effect on the use, enjoyment, or value of adjacent properties.

4. Changes in the Area

There have been changes in the type or nature of development in the area of the proposed conditional zoning district that support the application.

5. Development Patterns

The proposed conditional zoning district results in development that promotes a logical, preferred, and orderly development pattern.

E. Conditions of Approval

- 1.** Only conditions mutually agreed to by the owner(s) of the property to be conditionally zoned and the City Council may be approved as part of a conditional zoning district.
- 2.** Conditions shall be limited to those that address conformance of development and use on the site with city regulations and adopted planning guidance and that address the impacts reasonably expected to be generated by the development or

use of the site.

3. Conditions may be in the form of text or plans and maps.
4. No condition shall be less restrictive than the standards of the parallel general use zoning district, any applicable overlay zoning district standard, or other applicable requirements in this Ordinance.
5. No condition shall be made part of the application which:
 - (a) Specifies the ownership status, race, religion, or other characteristics of the occupants of housing units;
 - (b) Establishes a minimum size of a dwelling unit;
 - (c) Establishes a minimum value of buildings or improvements;
 - (d) Excludes residents based upon race, religion, or income; or
 - (e) Obligates the city to perform in any manner relative to the approval of the conditional zoning or development of the land.

F. Effect

1. Lands rezoned to a conditional zoning district shall be subject to the standards applicable to the parallel general use zoning district (including the range of allowable land uses), as modified by the more restrictive conditions proposed by the applicant and approved by the City Council for the conditional zoning district. These standards and modifying conditions are perpetually binding on the land as an amendment to this Ordinance and the Official Zoning Map, and may only be modified in accordance with the procedure for zoning map amendment, conditional zoning, or planned development.
2. No condition shall have the effect of removing or amending any requirement of this Ordinance.
3. No permit or development approval shall be issued for development subject to a conditional zoning district except in accordance with the approved conditions and conditional zoning plan (if appropriate), for the approval conditional zoning district.

G. Amendment

1. Minor Deviations

Unless expressly prohibited by City Council in approval of a conditional rezoning, subsequent permits and development approvals required on land subject to a conditional zoning district may include minor deviations from the approved conditions. Minor deviations are limited to changes that will result in equal or better compliance with the conditions of approval or that address technical considerations that could not reasonably be anticipated at the time of the conditional zoning. Minor deviations include, but are not limited to the following and may be approved by the Planning and Development Director:

- (a) Minor adjustments to the location of entrances or driveways, the rearrangement of internal streets or drives, configuration of parking areas, and configuration or location of open space or placement of required amenities;
- (b) Minor adjustments to other features on a conditional zoning plan that are not specifically conditioned;
- (c) Minor adjustments to the height of a structure by 10 percent or five feet, whichever is less;
- (d) Minor adjustments to the proposed building elevation or façade, including materials, provided that the change retains the same general architectural character;

- (e) Increases in residential density of up to ten percent, not to exceed the zoning district maximum, and increases in nonresidential gross floor area of up to ten percent, or 50,000 square feet, whichever is less;
- (f) Reductions in the number of parking spaces by up to ten percent or five spaces, whichever is greater; or
- (g) Minor adjustments to setbacks, buffers, and landscaped areas shown on a conditional zoning plan, as long as they continue to meet the minimum requirements of this Ordinance.

2. Material Changes are Amendments

Changes that materially affect the basic configuration of the development are not considered deviations, and shall only be changed as amendments to the conditional zoning in accordance with Section 2.3.12, Amendment of Development Approval.

H. Application Denial

Applicable (see Section 2.3.15.B, Application .

I. Expiration

If no application for approval of a preliminary plat or site plan for any part of the rezoned land is submitted within three years after approval of the conditional zoning, the PZC may forward a recommendation to the City Council to initiate an application to rezone the land to a general use district determined to be appropriate. Prior to making such a recommendation, the PZC shall determine that the landowner(s) has been notified and given a reasonable opportunity to comment.

2.4.6. PLANNED DEVELOPMENT⁵⁷

A. Purpose

A planned development is a development that is planned and developed under unified control in accordance with more flexible standards and procedures that are conducive to creating more compact, mixed-use, pedestrian-oriented, higher quality development than could be achieved through general use (base) zoning district regulations. The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish a Planned Development (PD) zoning district.

B. Scope

A planned development is established by amendment of the Official Zoning Map to rezone land to a planned development zoning district classification that is defined by a master plan and a terms and conditions document.

C. Planned Development Procedure

1. Pre-Application Conference

Applicable (see Section 2.3.2).

2. Neighborhood Meeting

Applicable (see Section 2.3.3).

3. Application Submittal and Acceptance

⁵⁷ This is a new procedure described on Pages 2-15 and 2-16 of the Code Assessment. It follows the official map amendment procedure, but requires a master plan and terms and condition document. It allows new planned developments to accommodate a wide range of use types and deviate from development standards with the understanding that the development quality should exceed that achievable through strict application of the standards.

- (a) Applicable (see Section 2.3.4). Planned development applications may not be initiated by anyone other than the landowner(s) of the land subject to the application.
- (b) The application shall include a master plan depicting the general configuration and relationship of the principal elements of the proposed development, including uses, general building types, density/intensity, resource protection, pedestrian and vehicular circulation, open space, public facilities, and phasing.
- (c) The application shall also include a terms and conditions document specifying terms and conditions defining development parameters, providing for environmental mitigation, and outlining how public facilities will be provided to serve the planned development.
- (d) To ensure unified control, the application shall also include a copy of the title to all land that is part of the proposed PD zoning district classification.
- (e) When required by Section 5.<>, Traffic Impact Analysis, a Traffic Impact Analysis shall be submitted for review with the submittal of an application.

4. Staff Review and Action

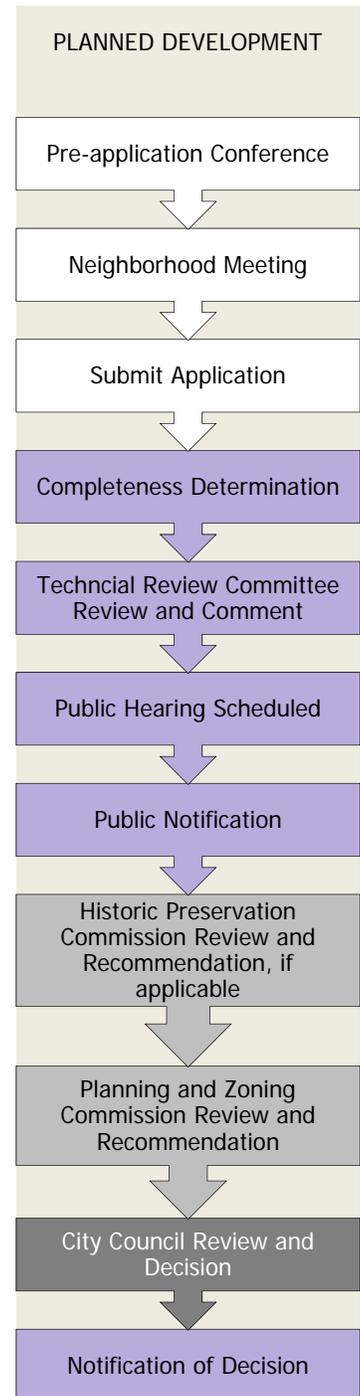
Applicable (see Section 2.3.5).

5. Public Notification

Applicable (see Section 2.3.6).

6. TRC, HPC, and PZC Review and Recommendation

- (a) Applicable (see Section 2.3.7).
- (b) The TRC shall review the application and comment on the availability of municipal services to the development.
- (c) If the application is located within a LHO district, the HPC, following a public meeting, shall provide a recommendation on the application to the PZC, in accordance with the standards in Section 3.<>.
- (d) The PZC, following a public meeting, shall make a recommendation on the application in accordance with Section 2.3.7, Review , and Section 2.4.6.D, Planned Development Review Standards.
- (e) Upon completion of the public meeting, the PZC shall comment on the application's consistency with the applicable long range planning documents.



7. City Council Review and Decision

- (a)** Applicable (see Section 2.3.8).
- (b)** The City Council, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.6.D, Planned Development Review Standards. The decision shall be one of the following:
 - (1)** Approval of the planned development subject to the planned development master plan and planned development terms and conditions;
 - (2)** Approval of the planned development subject to additional or revised conditions related to the planned development master plan or planned development terms and conditions;
 - (3)** Denial of the planned development; or
 - (4)** Remand of the planned development application to the PZC for further consideration.
- (c)** As part of the decision, the City Council shall adopt a written statement of consistency and reasonableness that:
 - (1)** Describes whether the decision is consistent with all city-adopted plans that are applicable; and
 - (2)** Explains why the decision is reasonable and in the public interest.

8. Protest Petitions

An application for a planned development district classification shall be subject to the protest petition provisions in Section 2.4.4.B.8, Protest Petitions.

9. Designation on the Official Zoning Map

The Planning and Development Director shall place the planned development district classification on the Official Zoning Map promptly after approval of a planned development district classification by the City Council.

D. Planned Development Review Standards

The advisability of establishing a planned development district classification is a matter committed to the legislative discretion of the City Council and is not controlled by any one factor. In determining whether to adopt or deny a planned development, the City Council shall consider the standards in Section 2.4.4.C, Zoning Map Amendment Review Standards, and the standards for the proposed type of PD district in Section 3.<>, Planned Development Base Zoning Districts.

E. Effect

Lands rezoned to a planned development district shall be subject to the approved planned development master plan and the approved planned development terms and conditions. The master plan and terms and conditions are binding on the land as an amendment to the Official Zoning Map. The applicant may apply for and obtain subsequent development permits and approvals necessary to implement the planned development master plan and terms and conditions in accordance with the appropriate procedures and standards in this Ordinance. Any permits or development approvals shall comply with the planned development master plan and the planned development terms and conditions.

F. Amendment

1. Minor Deviation

Subsequent plans and permits for development within an approved planned development may include minor deviations from the planned development master plan or planned development terms and conditions, provided such deviations are limited to changes addressing technical considerations that could not reasonably be anticipated during the review and consideration of the planned development zoning classification process, or any other change that has no material effect on the character of the approved planned development or any of its approved terms or conditions. Minor deviations include, but are not limited to the following, and may be approved by the Planning and Development Director:

- (a) Minor adjustments to the location of entrances or driveways, the rearrangement of internal streets or drives, configuration of parking areas, configuration or location of open space, or placement of required amenities;
- (b) Minor adjustments to the arrangement of buildings provided there is no increase in the number of buildings or size;
- (c) Minor adjustments to the height of any structure to the extent additional floor space is not added;
- (d) Minor adjustments to the proposed building elevation or façade, including materials, provided the change retains the same general architectural character;
- (e) Reduction of the number of parking spaces up to ten percent or five spaces, whichever is greater; or
- (f) Minor adjustments to setbacks, buffers, and landscaped areas shown on a master plan, as long as they continue to meet the minimum requirements of this Ordinance.

2. Material Changes are Amendments

Changes that materially affect the basic concept of the planned development master plan or basic parameters establishing the terms and conditions are not considered minor deviations. They shall be considered amendments. Amendments include, but are not limited to:

- (a) Changes in use designations;
- (b) Density/intensity increases;
- (c) Decreases in open space;
- (d) Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected);
- (e) Change in the location of any public easement; or
- (f) Change in the proportion of housing types by more than 15 percent.

G. Application Denial

Applicable (see Section 2.3.15.B, Application).

H. Expiration

If no application for approval of a preliminary plat or site plan for any part of the planned development is submitted within three years after approval of the planned development district classification, the PZC may forward a recommendation to the City Council to initiate an application to rezone the land to any general use district determined to be appropriate. Prior to making such a recommendation, the PZC shall determine that the landowner(s) have been notified and given a reasonable opportunity to comment.

2.4.7. SPECIAL USE⁵⁸

A. Purpose

A special use is a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. The purpose of this section is to establish a mechanism to review special uses to ensure they are appropriate for a particular zoning district and their surroundings.

B. Applicability

Uses identified as requiring a special use in Table 4.1, Use Table, shall be approved as a special use in accordance with the procedures and standards of this section, prior to development.

C. Special Use Permit Procedure

1. Pre-Application Conference

Applicable (see Section 2.3.2).

2. Neighborhood Meeting

Applicable (see Section 2.3.3).

3. Application Submittal and Acceptance

(a) Applicable (see Section 2.3.4).

(b) An application shall be submitted only by the property owner(s), and shall include a site plan.

(c) When required by Section 5.<>, Traffic Impact Analysis, a traffic impact analysis shall also be submitted for review.

4. Staff Review and Action

Applicable (see Section 2.3.5). The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.7.D, Special Use Review Standards.

5. Public Notification

Applicable (see Section 2.3.6).

6. HPC and PZC Review and Recommendation

(a) Applicable (see Section 2.3.7).

(b) If the application pertains to land located within the LHO district, the HPC shall provide a recommendation on the application in accordance with Section 3.<>.

(c) The PZC, following a public meeting, shall make a recommendation on the



⁵⁸ This section carries forward Section 9-3-14 of the current ordinance and conforms it to the format used in this draft ordinance.

application in accordance with Section 2.3.7, Review by PZC or HPC, and Section 2.4.7.D, Special Use Review Standards.

7. City Council Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The City Council, after the conclusion of a quasi-judicial public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.7.D, Special Use Review Standards. The decision shall be the one of the following:
 - (1) Adoption of the special use;
 - (2) Adoption of the special use subject to conditions of approval;
 - (3) Denial of the special use; or
 - (4) Remand of the special use application to the PZC for further consideration.
- (c) Any conditions of approval shall meet or exceed the minimum requirements of this Ordinance.

D. Special Use Review Standards

The special use shall be approved if the applicant demonstrates the proposed special use:

1. Will not materially endanger the public health or safety if located where proposed;
2. Complies with all required standards, conditions, and specifications of this Ordinance, including Chapter 4: Use Standards;
3. Will not substantially injure the value of adjoining property;
4. Is a public necessity;
5. Will be in harmony with the area in which it is to be located; and
6. Is in general conformity with the Land Use Plan.

E. Conditions of Approval

Applicable (see Section 2.3.12)

F. Effect

1. Applicable (see Section 2.3.11).
2. A special use and the associated site plan approval are perpetually binding and run with the land unless, amended.
3. An action invalidating a special use condition of approval for any reason shall render the special use null and void.

G. Amendment

1. Minor Deviation

- (a) The City Council may approve a minor deviation to a special use requested by the applicant without a recommendation from the PZC and without a public hearing, upon receipt of a report from the Planning and Development Director or TRC on the proposed minor deviation.
- (b) A minor deviation includes minor changes to conditions of a special use or associated site plan which will result in equal or better performance of the conditions and that do not alter the objectives and purposes of the special use.
- (c) In granting a minor deviation, the City Council may require such conditions as will address the objectives of the requirements or conditions changed.

2. Amendments

- (a) A material change to a special use or to an associated site plan that alters the objectives and purposes of the requirements or conditions of the special use constitute amendments to the special use.
- (b) An amendment includes but is not limited to:
 - (1) Boundary changes;
 - (2) Use changes; and
 - (3) Increases in density or intensity of development.
- (c) Amendments shall be reviewed and considered in accordance with the same procedure and standards as required for the original issuance of the special use.

H. Expiration

1. General

- (a) Unless otherwise stated in the special use approval, a special use shall expire and become null and void 18 months after the date of issuance if a footing inspection for the development approved has not been passed or an applicant has not requested an extension in accordance with Section 2.4.8.H.2 below.
- (b) If development approved as a special use is discontinued for a period exceeding 18 months, or if a special use is replaced by a use otherwise permitted by right in the zoning district, the special use approval is deemed abandoned and the special use approval is null and void.

2. Extension

- (a) An applicant may request an extension of a special use approval in writing to the Planning and Development Director at least 60 days prior to expiration.
- (b) Extension requests are considered as minor deviations and shall be reviewed and approved by City Council in accordance with Section 2.4.8.G.1 above.

2.4.8. SPECIAL EXCEPTION⁵⁹

A. Purpose

The purpose of a special exception is to provide a landowner additional flexibility to develop property as long as there is assurance that approval of the special exception will be compatible with surrounding uses and not adversely affect the public health, safety, and welfare.

B. Applicability⁶⁰

An applicant may request approval of a special exception for the following development:

- 1. The expansion or enlargement of a legally nonconforming use in accordance Section 8.<>;
- 2. Deviation from the locational requirements for a sexually-oriented business in accordance with Section 4.<>;
- 3. The reduction of off-street parking standards in the LHO district in accordance with

⁵⁹ This section carries forward Section 9-9-6(k) from the current ordinance and conforms it to the format used in this draft ordinance.

⁶⁰ These standards do not carry forward the special exception requirements for reductions to off-street parking standards within the PI district as this district is not being carried forward.

Section 3.<>;

- 4. Placement of an accessory structure in front of a principal structure in accordance with Section 4.<>;
- 5. An increase in the maximum size of an accessory structure in rural areas in accordance with Section 4.<>;
- 6. Modification in the required orientation of a manufactured home relative to the street it fronts in accordance with Section 4.<>;
- 7. Placement of a nonconforming historic sign in accordance with Section 5.<>; and
- 8. Use of barbed wire fencing within a residential district in accordance with Section 5.<>.

C. Special Exception Procedure

1. Pre-Application Conference

Applicable (see Section 2.3.2).

2. Neighborhood Meeting

Optional (see Section 2.3.3).

3. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

4. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.8.D, Special Exception Review Standards.

5. Public Notification

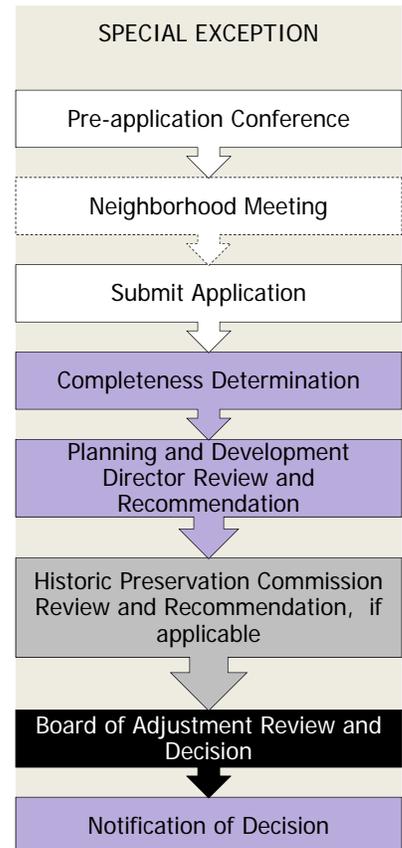
Applicable (see Section 2.3.6).

6. HPC Review and Recommendation

If the application pertains to land located within the LHO district, the HPC shall provide a recommendation on the application.

7. BOA Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The BOA, after the conclusion of a quasi-judicial public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.8.D, Special Exception Review Standards.



D. Special Exception Review Standards

An application for a special exception shall be approved upon a finding the applicant demonstrates:

1. The special exception, if granted, complies with all other standards and specifications of this Ordinance, including but not limited to the standards in Chapter 4: Use Standards;
2. The special exception, if granted, will not materially endanger the public health or safety;
3. The special exception, if granted, will not substantially injure the value of adjoining or abutting property; and
4. The special exception is a public necessity.

E. Conditions of Approval

Applicable (see Section 2.3.9). In approving a special exception the BOA may require reasonable and appropriate conditions of approval to ensure the special exception will be compatible with surrounding properties and not alter the essential character of the neighborhood in which it is located.

F. Effect

Applicable (see Section 2.3.11). An action invalidating a special exception condition of approval for any reason shall render the special exception null and void.

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

1. Unless otherwise stated in the special exception approval, a special exception shall expire and become null and void if construction or installation of the development approved in the special exception is not commenced within 12 months of issuance of the approval.
2. If construction or operation is commenced within the specified time period, the special exception shall continue in force as long as the development remains in place.

2.4.9. CERTIFICATE OF APPROPRIATENESS⁶¹

A. Purpose

The purpose of this section is to provide for the review of development, construction, alteration, or demolition of structures within the city's local historic districts by the Historic Preservation Commission (HPC) in accordance with the procedures and standards of this Ordinance and the *Design Review Guidelines-Historic Districts High Point, North Carolina*.

B. Applicability

1. General

- (a) A certificate of appropriateness shall be approved prior to making an architectural or environmental change to the exterior features of a property within a LHO district, regardless of whether a building permit is required.
- (b) For the purposes of this section "architectural or environmental change" means erection, alteration, construction, reconstruction, restoration,

⁶¹ This section carries forward Section 9-4-4(b)(4) from the current ordinance, as well as standards and guidelines from the *Design Review Guidelines-Historic Districts High Point, North Carolina*.

Subsection 2.4.9 Certificate of Appropriateness Certificate of Appropriateness

moving, or demolition of all or part of a building or other structure, or an appurtenant fixture.

- (c) For the purposes of this section "exterior features" includes the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, steps, pavement, masonry walls, fences, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, color, material, size, location, and associated landscaping of all such signs.
- (d) Except for development exempted in accordance with Section 2.4.9.C, Exemptions, all city buildings and public utilities in a LHO district shall be subject to the standards of this section, including changes in the character of street paving, street width, utility installation or removal, exterior lighting, street trees, fences, walls, or sidewalks.

C. Exemptions

The requirements of this section shall not apply to:

1. The ordinary maintenance, repair, or replacement of streets, sidewalks, pavement markings, utility service lines, street signs, traffic signs, and street light fixtures, provided such activities comply with the purpose and intent of this section and any guidelines adopted by the HPC.
2. The immediate restoration of utility service in the event of an emergency.

D. Certificate of Appropriateness Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Neighborhood Meeting

Optional (see Section 2.3.3).

3. Application Submittal and Acceptance

(a) Applicable (see Section 2.3.4).

(b) An application shall include sketches, drawings, photographs, specifications, descriptions, and other information which clearly show the proposed development.

4. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) Except as otherwise provided in Section 2.4.9.D.4(c), Minor Work, the Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.9.E, Certificate of Appropriateness Review Standards.

(c) Minor Work

(1) If development proposed subject to this section is identified by the *Design Review Guidelines-Historic Districts High Point, North Carolina*, which is incorporated here by reference, as a minor work, the Planning and Development Director may review and make a decision on the application in accordance with the standards in Section 2.4.9.E, Certificate of Appropriateness Review Standards.

- (2) If the Planning and Development Director proposes to disapprove the “minor work”, the application shall be forwarded to the HPC for a final decision in accordance with Section 6 below.

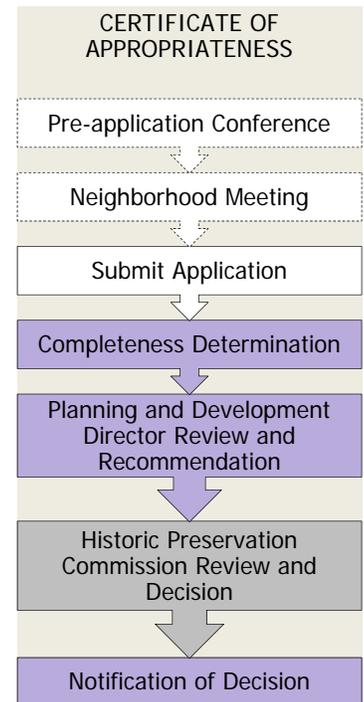
5. Public Notification

The HPC, in its discretion, may choose not to conduct a public hearing on a certificate of appropriateness. If a public hearing is conducted, it shall comply with the provisions in Section 2.3.6, Public Notification.

6. HPC Review and Decision

- (a) Applicable (See Section 2.3.8).
- (b) The HPC shall consider the application, relevant support materials, the staff report, and testimony or evidence given at the public hearing (if one is conducted), and take one of the following actions, based on the standards in Section 2.4.9.E, Certificate of Appropriateness Review Standards:

- (1) Approval of the application as submitted;
- (2) Approval of the application subject to conditions of approval; or
- (3) Denial of the application. The HPC shall not deny an application except for the purpose of preventing the construction, reconstruction, alteration, restoration, or moving of buildings, appurtenant features, or signs that are incompatible with the *Design Review Guidelines-Historic Districts High Point, North Carolina*.



E. Certificate of Appropriateness Review Standards

- 1. A Certificate of Appropriateness shall be approved upon a finding the applicant demonstrates the proposed development complies with the guidelines set forth in the *Design Review Guidelines-Historic Districts High Point, North Carolina*, and is otherwise congruous with the special character of the LHO district.
- 2. In making its decision on the application the HPC shall not consider the interior arrangement of a building or structure.

F. Condition of Approval

Applicable (see Section 2.3.9).

G. Delay in Relocation, Demolition, or Destruction

- 1. The effective date of a certificate of appropriateness authorizing the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within the LHO district may be delayed for a period of up to 365 days from the date of approval, except the maximum period of delay authorized by this section shall be reduced by the HPC where the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from the property by virtue

of the delay.

2. During this period the HPC shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site.
3. If the HPC finds a building or site within a LHO district has no special significance or value toward maintaining the character of the district, it shall waive all or part of the period and authorize demolition or removal before expiration of the time period.
4. If the HPC has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation is not been made by the City Council, the relocation, demolition, or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the HPC for a period of up to 180 days or until the City Council takes final action on the designation, whichever occurs first.
5. The City Council may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an LHO district. The ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.
6. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied, except where the HPC finds the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

H. Amendment

Applicable (see Section [2.3.12](#)).

I. Expiration

1. Unless otherwise stated in the approval of a certificate of appropriateness, a certificate of appropriateness shall expire and be null and void if a building permit is not issued or construction or installation commenced for development approved by the certificate within six months of the date of certificate issuance.
2. If work on development approved under a certificate of appropriateness is started then discontinued for a period exceeding 12 months, the certificate of appropriateness shall expire and become null and void.

2.4.10. VOLUNTARY ANNEXATION⁶²

A. Purpose

The purpose of this section is to establish a procedure for the consideration of voluntary annexation petitions from landowners seeking to add additional lands to the corporate limits of the city.

B. Applicability

The City Council may consider voluntary annexation petitions from:

1. The owners of land that are contiguous with the city's corporate limits; and
2. The owners of land that are not contiguous to the corporate limits when the proposed voluntary annexation complies with the following standards:
 - (a) The land proposed for annexation is no more than three miles from the

⁶² This is a new procedure added for voluntary annexation.

- (b) contiguous corporate limits; and
- (b) No portion of the land proposed for annexation is closer to the contiguous corporate limits of another municipality unless the land is subject to an approved annexation agreement that includes the land within the city's ultimate planning jurisdiction; and
- (c) If the land proposed for annexation is part of a recorded subdivision, all lots in the recorded subdivision are part of the annexation petition; and
- (d) The combined total land area associated with the annexation, when added to all other noncontiguous land areas annexed by the city does not exceed 10 percent of the land area located within the city's contiguous corporate limits.

C. Voluntary Annexation Review Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4).
- (b) The voluntary annexation petition shall be signed by all the owners of land proposed for annexation.
- (c) A voluntary annexation petition shall include a signed statement declaring whether or not any vested right with respect to the land subject to the petition has been established under Section 160A-385.1 or 153A-344.1 of the North Carolina General Statutes.

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) Following receipt of a voluntary annexation petition the City Clerk shall investigate and certify whether the petition is legally sufficient. If certified as legally sufficient, the petition shall be reviewed in accordance with this section.
- (c) The TRC shall review the application and comment on the city's ability to provide municipal services.
- (d) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.10, Voluntary Annexation.

4. Public Notification

Applicable (see Section 2.3.6).

5. City Council Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The City Council, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-



Making Body, and Section 2.4.10.D, Voluntary Annexation Standards.

(c) The decision shall be one of the following:

- (1) Approval of the voluntary annexation petition;
- (2) Denial of the voluntary annexation petition; or
- (3) Remand of the voluntary annexation petition to city staff for further consideration.

D. Voluntary Annexation Standards

Approval of a voluntary annexation is a matter committed to the legislative discretion of the City Council. The voluntary annexation petition may be approved upon a finding the petition complies with all the standards in Section 160A-31 or Section 160A-58 in the North Carolina General Statutes, as appropriate, and:

1. The voluntary annexation petition bears the signatures of all landowners within the area to be annexed;
2. The area to be annexed can be adequately served by the same municipal services provided within the city's primary corporate limits;
3. The debt obligations from serving the subject lands do not exceed the anticipated revenues to the city; and
4. The public health, safety, and welfare of city residents and the residents of the lands proposed for annexation will be best served by the annexation.

E. Recording

An ordinance approving a voluntary annexation adopted by the city, together with a map of the annexed area, shall be recorded in the office of the Register of Deeds for the county where the land is located within a reasonable period of time after adoption of the annexation.

F. Effect

1. Within 60 days of voluntary annexation, the City Council shall adopt a zoning district classification for the land involved. The City Council may consider a city-initiated or landowner-initiated zoning map amendment immediately following approval of the annexation.
2. Upon the effective date of annexation, the land shall be subject to the debts, laws, ordinances and regulations of the city, and shall be entitled to the same privileges and benefits as other parts of the city.

G. Amendment

Not applicable.

H. Expiration

Not applicable. Land may be de-annexed only by act of the North Carolina General Assembly.

2.4.11. DEVELOPMENT AGREEMENT⁶³

A. Purpose

1. The City Council finds and determines that development agreements may be useful to both the city and developers of land in the city by providing more regulatory certainty, establishing a schedule for development, assisting both developers and

⁶³ This is a new procedure described on Page 2-14 of the Code Assessment. It is voluntary and intended to accommodate large, multi-phase developments that build out over a decade or longer.

the city coordinate the provision of adequate public facilities to serve development, coordinating the phasing of development, and administering management efforts to maintain open space and environmentally sensitive lands.

- 2. The purpose of this section is to authorize development agreements to be entered into between a developer and the City Council in accordance with the procedures and standards of this section to encourage comprehensive planning and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, while providing certainty in the process of obtaining development permits and approvals, and reduce the economic costs of development by providing greater regulatory certainty.

B. Applicability

The City Council may enter into a development agreement with a developer, subject to Section 160A-400 of the North Carolina General Statutes. In entering into a development agreement the city may not exercise any authority or make any commitment that is unauthorized by general or local act, and may not impose any unauthorized tax or fee.

C. Development Agreement Procedure

1. Pre-Application Conference

Applicable (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.11.D, Development Agreement Review Standards.

4. Public Notification

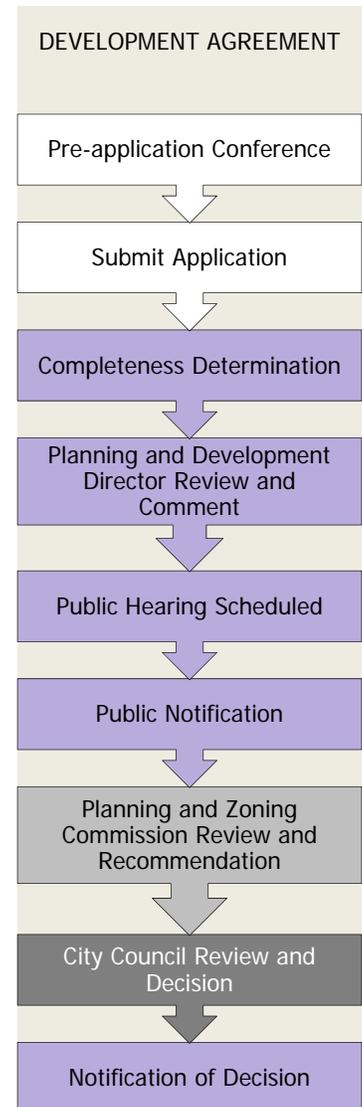
Applicable (see Section 2.3.6).

5. PZC Review and Recommendation

- (a) Applicable (see Section 2.3.7).
- (b) The PZC, following a public meeting, shall make a recommendation on the application in accordance with Section 2.3.7, Review by the PZC or HPC, and Section 2.4.11.D, Development Agreement Review Standards.

6. City Council Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The City Council, after the conclusion of a legislative public hearing, shall



decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.11.D, Development Agreement Review Standards.

- (c) The action taken shall be one of the following:
- (1) Enter into the development agreement, as submitted;
 - (2) Enter into the development agreement, subject to modifications agreed to in writing by the developer; or
 - (3) Not enter into the development agreement.

7. Recordation

Within 14 days after entering into a development agreement, the applicant shall record the agreement in the office of the Register of Deeds of the county where the subject land is located.

D. Development Agreement Review Standards

For consideration of the city to participate in a development agreement, a development subject to the agreement must meet the following:

1. The property subject to the development agreement shall contain 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property that may be precluded from the property at the time of application).
2. The development shall demonstrate phasing, and participation in the proposed agreement shall not exceed 20 years.
3. The development shall demonstrate the impact on existing and future provisions of capital improvements by the city, including at least one of the following: transportation, potable water, sanitary sewer, solid waste, stormwater management, educational, parks and recreational, and health systems and facilities.

E. Effect

1. Burdens and Benefits

The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

2. Rights and Obligations

Rights and obligations established by a development agreement shall not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site specific development plans, phased development plans, or other provisions of law.

3. Building and Housing Code

A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or the city's Minimum Housing Code.

4. Identify Subsequently Enacted Laws

Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

5. Application of Subsequently Adopted Laws

Except for grounds specified in Section 160A-385.1(e) of the North Carolina General Statutes, the city may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

6. Change in State or Federal Law

If state or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the city, by ordinance after notice and a hearing, may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the development agreement.

7. Vested Rights

This Ordinance does not abrogate any rights preserved by Sections 160A-385 or 160A-385.1 of the North Carolina General Statutes, or that may vest pursuant to common law or otherwise in the absence of a development agreement.

F. Approval of Debt

If any of the obligations of the city in the development agreement constitute debt, the city shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the city, with any applicable constitutional and statutory procedures for the approval of the debt. The agreement shall be signed by the City Attorney, Finance Director, and City Manager.

G. Periodic Review and Breach of Agreement

1. Annual Review

During any period of time in which a permit or development approval subject to a development agreement is active, the Planning and Development Director shall review the development at least once every 12 months for compliance with the agreement and file a report with the City Council. The developer must demonstrate good faith compliance with the terms of the development agreement. Failure to meet a commencement or completion date specified in the development agreement shall not, in and of itself, constitute a material breach of the agreement, but must be judged based upon the totality of the circumstances.

2. Material Breach

If the City Council finds and determines that the developer has committed a material breach of the terms or conditions of the development agreement, the City Attorney shall serve written notice of the breach upon the developer within a reasonable time after the periodic review. Such notice shall set forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and shall provide the developer a reasonable time in which to cure the material breach.

3. Failure to Cure Material Breach

If the developer fails to cure the material breach within the time given, then the City Council unilaterally may terminate or modify the development agreement.

H. Amendment

1. Mutual Consent

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

2. Material Change

Consideration of a proposed significant or material change of a development agreement shall follow the same procedures as required for initial approval of the agreement.

3. Minor Deviation

The Planning and Development Director may approve minor deviations of the development agreement with the mutual consent of the other parties to the agreement, without following the same procedures as required for initial approval of the agreement, upon making written findings that the proposed minor deviations would not significantly change the use, intensity, or design of the development, would be consistent with the purposes and goals of the agreement, would comply with this Ordinance, and would not adversely affect the public health, safety, or general welfare.

2.4.12. VESTED RIGHTS CERTIFICATE⁶⁴

A. Purpose

The purpose of this section is to establish procedures by which an applicant or landowner with certain development approvals may establish a vested right to the development authorized by the approval.

B. Applicability

1. Generally

A vested right may be established in accordance with this section for the following permits and development approvals:

- (a) Site plans;
- (b) Preliminary plats; or
- (c) Variances.

2. Timing

To the maximum extent practicable, any application for a vested rights certificate shall be processed concurrently with a site plan, preliminary plat, or variance.

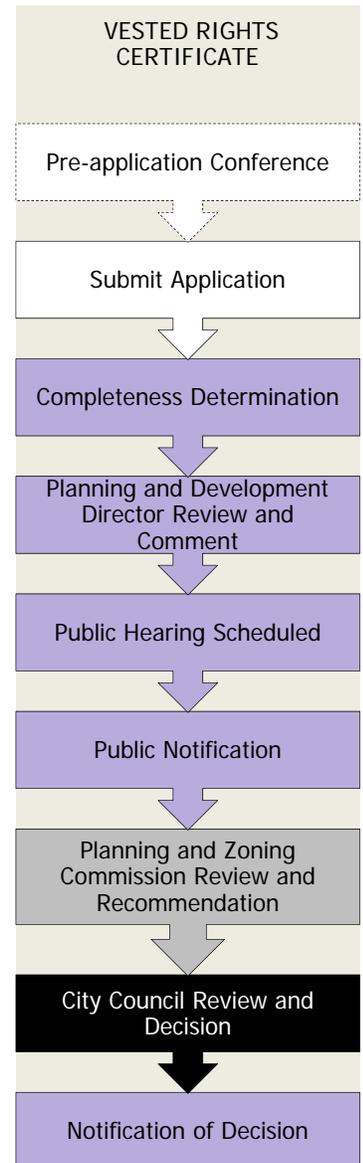
C. Vested Rights Certificate Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4). Applications may be initiated by any person who may submit an



⁶⁴ This section replaces Section 9-3-18 in the current ordinance. It is intended to allow site plans and plats that constitute site specific development plans or phased development plans to establish vested rights after a public hearing. This procedure is included since site plans or preliminary plats must undergo a public hearing to be vested, and the city's draft regulations do not require a public hearing for these kinds of development approvals.

application for a site plan, preliminary plat, or variance in accordance with Section 2.3.4.A, Authority to File Applications.

- (b) An application for a vested rights certificate may be processed concurrently with an application for a site plan, preliminary plat, or variance.

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and 2.4.12.D, Vested Rights Certificate Review Standards.

4. Public Notification

Applicable (See Section 2.3.6).

5. PZC Review and Recommendation

- (a) Applicable (see Section 2.3.7).
- (b) The PZC, following a public meeting, shall make a recommendation on an application in accordance with Section 2.3.7, Review by PZC or HPC, and Section 2.4.12.D, Vested Rights Certificate Review Standards.

6. City Council Review and Decision

- (a) Applicable. (See Section 2.3.8).
- (b) The City Council, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and 2.4.12.D, Vested Rights Certificate Review Standards.
- (c) The City Council shall approve the site plan, preliminary plat, or variance, as appropriate, with its site specific or phased development plan before approval of a vested rights certificate.

D. Vested Rights Certificate Review Standards

A vested rights certificate shall be approved if the applicant demonstrates:

- 1. The vested rights certificate is for an approved site plan, preliminary plat, or variance which includes a site specific or phased development plan;
- 2. The development is valid and unexpired; and
- 3. Any variance required as a condition of approval for a site plan or preliminary plat has been obtained.

E. Effect

Applicable (see Section 2.3.11).

F. Amendment

Applicable (see Section 2.3.12).

G. Expiration

- 1. A vested right certificate shall expire and become null and void:
 - (a) If a building permit application for the development subject to the certificate is not submitted within two years of the approval of the vested rights certificate.
 - (b) Upon a finding by the City Council after notice and a public hearing, that:
 - (1) Natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public

Subsection 2.4.13 Beneficial Use Determination

- health, safety, and welfare if the project were to proceed as contemplated; or
- (2) The landowner or landowner's representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval of the site plan, preliminary plat, variance, or vested right certificate; or
 - (3) The landowner failed to comply with any condition imposed upon the establishment of the site plan, preliminary plat, variance, or vested right certificate.
- (c) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant fees incurred after approval of the certificate by the city, together with interest at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action.
 - (d) With the written consent of the affected landowner.
2. Upon enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site plan, preliminary plat, or variance, the City Council may modify the affected provisions of the certificate by ordinance, if after conducting a hearing, it finds the changed conditions created by the change in the state or federal law have a fundamental effect on the site plan, preliminary plat, or variance.

2.4.13. BENEFICIAL USE DETERMINATION⁶⁵

A. Purpose

The intent of the City Council is that all landowners in the city's jurisdiction have the opportunity to enjoy an economically beneficial use of their land, and that this ordinance not prevent that opportunity. The purpose of this section is to provide a non-judicial mechanism for landowners who believe application of this Ordinance has deprived them of economically beneficial use of their land to apply to the City Council for relief sufficient to provide an economically beneficial use of the land.

B. Applicability

If after a decision on an application for development approval, a landowner is of the opinion that application of this Ordinance has denied an economically beneficial use of the land, the procedures of this section shall be used before seeking relief from the courts in order that any denial of economically beneficial use of land may be remedied through a non-judicial forum.

C. Beneficial Use Determination Procedure

1. Pre-Application Conference

Optional (see Section [2.3.2](#)).

2. Application Submittal and Acceptance

⁶⁵ This is a new procedure described on Page 2-18 of the Code Assessment that is consistent with United States Supreme Court decisions which provide for non-judicial relief to a property owner who believes the application of the ordinance results in a taking of his or her property. Members of the Advisory Committee have inquired about how this procedure supports private property rights. One change from the Code assessment is the review body. The Code Assessment listed the PZC as the review body, but we suggest the city consider a hearing officer instead.

- (a) Applicable (see Section 2.3.4).
- (b) An application for beneficial use determination may be submitted by a landowner at any time to the Planning and Development Director, along with an application fee.
- (c) The application shall include the following: ⁶⁶
 - (1) The landowner's name and address;
 - (2) A legal description and the street address (when a street address is available) of the land;
 - (3) Documentation of the date of purchase and the purchase price of the land, and any offers to purchase the land made by any person, corporation, or association, within the last three years;
 - (4) A description of the physical features present on the land, its total acreage, the present use, the use of the land on *(insert the effective date of this Ordinance)* and the current use of the land;
 - (5) Evidence of any investments made by the landowner to improve the land, the date the improvements were made, and the costs of the improvements;
 - (6) A description of what uses of land were available when the land was purchased by the landowner;
 - (7) A description of the regulations and uses permitted which are alleged to result in an elimination of economically beneficial use of the land;
 - (8) All appraisals, studies, and any other supporting evidence, and any actions taken by the city related to the land; and
 - (9) A description of the use which the landowner believes represents the minimum legally required economically beneficial use of the land and all documentation, studies, and other supporting evidence thereof.

3. Staff Review and Action

Not applicable.

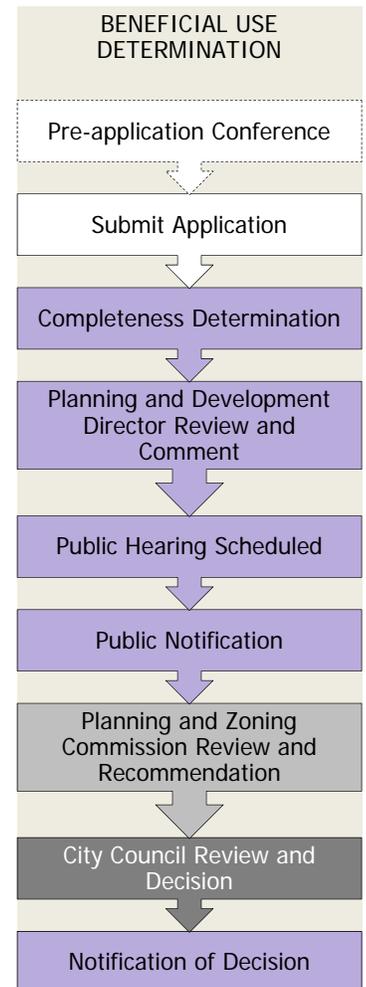
4. Public Notification

Applicable (see Section 2.3.6).

5. Hearing Officer Review and Recommendation

(a) City Council Appointment of Hearing Officer

Within a reasonable time after the date the application is determined complete the City



⁶⁶ These submittal requirements are provided for context, and will be relocated to the Procedures Manual.

Subsection 2.4.13 Beneficial Use Determination

Council shall appoint a Hearing Officer to schedule and conduct a hearing on the application in accordance with this section. The Hearing Officer shall be a licensed attorney with expertise in land use and takings claims.

(b) Hearing by Hearing Officer

At the hearing conducted by the Hearing Officer, the applicant or the applicant's representative shall present the applicant's case and the City Attorney shall represent the city. All evidence presented shall be under oath, and the parties involved shall be permitted to cross-examine witnesses. The sworn testimony and evidence shall pertain to the standards set forth in Section 2.4.13.D, Beneficial Use Determination Review Standards, as to whether the applicant is deprived of an economically beneficial use of the land and the standards in Section 2.4.13.D.2, Relief, pertaining to the degree of relief needed to provide the landowner with an economically beneficial use of the land.

(c) Findings of the Hearing Officer

Within a reasonable period of time following the closing of the hearing, the Hearing Officer shall prepare recommended findings of fact and a proposed order for the consideration of the City Council. The findings and recommendations of the Hearing Officer as to whether the land is provided economically beneficial use shall be based on the evidence submitted and the standards in Section 2.4.13.D, Beneficial Use Determination Review Standards. If the Hearing Officer finds that the applicant has been denied economically beneficial use of the subject land, then the Hearing Officer shall recommend a use that permits an economically beneficial use and results in a minimum change of this Ordinance as it applies to the subject land, in accordance with the standards set forth in Section 2.4.13.D, Beneficial Use Determination Review Standards, or other relief as is determined appropriate. The Hearing Officer's recommended findings of fact and proposed order shall be in writing and shall detail the basis of the conclusions from the record of the hearing.

6. City Council Review and Decision

(a) Applicable (see Section 2.3.8).

(b) After the conclusion of the public hearing, the City Council shall approve the findings of fact and proposed order of the Hearing Officer, or may attach conditions, modify, or reverse the findings of fact or proposed order of the Hearing Officer, based on the standards of Section 2.4.13, Beneficial Use Determination Review Standards. If the City Council attaches conditions, modifies or reverses the findings of fact or proposed order, it shall do so only where the record of the hearing indicates that the Hearing Officer is unsupported by the record, or that the proposed order is not in conformance with the standards of Section 2.4.13.D, Beneficial Use Determination Review Standards.

D. Beneficial Use Determination Review Standards**1. General**

In determining if a landowner has been deprived of an economically beneficial use of land, City Council shall take into account the following factors:

(a) Economically Viable Use

In making the determination of whether the land is provided an economically viable use, the City Council shall first evaluate the uses of the land as provided by this Ordinance, and the uses of land in relation to the uses provided similarly situated lands. For the purposes of this section, “economically viable use” means the opportunity to make a return equivalent to that which would have been received from a conservative financial investment. Transitory economic issues shall not be relevant to this determination.

(b) Diminution in Value

The market value of the land, as established by the comparable sales approach, prior to adoption of this Ordinance, or a relevant amendment thereto, which caused the landowner to apply for relief shall be compared to the market value of the land, as established by the comparable sales approach, with the regulations as applied. Market value of the land prior to the adoption of this Ordinance, or a relevant amendment, shall constitute its highest and best use on (one day prior to the effective date of this Ordinance) of the relevant amendment thereto or the date of purchase of the land, whichever is later, and any other land value/appraisal information that the applicant would like to be considered. All appraisals shall be proposed by qualified licensed appraisers, and shall follow the best professional practices as established by the profession. A mere diminution in market value is not sufficient to support a determination of denial of economically beneficial use.

(c) Subsidy

The amount or nature of any subsidy that may be required by the city, neighbors, purchasers, tenants, or the public if the uses allowed under this Ordinance are modified.

(d) Other Adverse Effects

Any other adverse effects on the city and its residents.

(e) Current State of the Law

The state of the law established by the United States Supreme Court, the federal Circuit Courts of Appeals, and the North Carolina Supreme Court, relevant to these standards.

2. Relief

If the finding is that a landowner has been deprived economically beneficial use of land, or is otherwise entitled to relief in accordance with to the standards of this section, relief shall be granted.

(a) General

In granting relief, the Planning and Development Director may recommend and the City Council may adopt any legally available incentive or measure reasonably necessary to offset any substantial economic hardship, and may condition such incentives upon approval of specific development plans. If there is a finding that the denial of the application would create a substantial economic hardship, the Planning and Development Director may recommend and the City Council may consider additional relief to provide an appropriate increase in market value or other benefit or return to the applicant sufficient to offset the substantial economic hardship. The types

Subsection 2.4.13 Beneficial Use Determination

of incentives that the Planning and Development Director may recommend and the City Council may consider include, but are not limited to, the following:

- (1) A rezoning of the land to a more appropriate classification, issuance of a variance, approval of a site plan, or other appropriate land use regulatory action that will enable the applicant to realize a reasonable return on the property;
- (2) An opportunity to transfer density or cluster development on other property;
- (3) A waiver of permit fees;
- (4) Development finance assistance;
- (5) Approval of development on some portion of the property; or
- (6) Acquisition of all or a portion of the property at market value.

(b) Minimum Increase

In granting relief, the landowner shall be given the minimum increase in use or density/intensity or other possible concessions from this Ordinance and Section 2.4.13.D.2(a) above, in order to permit an economically viable use of the land or a use that is determined to be required by law. The highest use, or even an average or generally reasonable expectation, is not required or intended as the appropriate remedy. The following guidelines shall be used for determining the minimum economically viable use of land and, therefore, the amount of relief to be granted a landowner in order to reach that minimum.

- (1) A minimum economically viable use of the land should be one that does not have any governmental subsidy attached to the long-term safe occupation of the land. If such a subsidy is needed, then that should be reflected by lowering the use intensity that is considered a minimum economically viable use on a market valuation basis.
- (2) A use common to the city, although it may not involve further development of the land, is considered an economically viable use. Attention shall also be given to land uses that are considered to be the lowest intensity in the city but which still provide for occupation and living within the city. These land uses, as well, shall be considered economically viable uses.
- (3) The actual condition of the land shall be considered. The reality of limited development potential, given the natural condition of the land, shall not be attributed to the regulations applied to the land. If the land is such that it cannot safely accommodate development with normal grading and clearing practices, this fact shall lower the intensity of use that is considered a minimum economically viable use.
- (4) The potential for damages to either residents or land shall be assessed in determining economically viable use. The need for a governmental subsidy to future landowners shall be considered, and the cost of such subsidies shall be deducted from the otherwise established minimum economically viable use.
- (5) Expectations shall, in general, not be considered. Only reasonable expectations backed by investments as required by the current state of the law shall be considered.
- (6) The current state of law established by the United States Supreme Court, the federal Circuit Court of Appeals, and the North Carolina Supreme Court, relevant to the granting of relief.

E. Effect

Not applicable.

F. Amendment

Not applicable.

G. Expiration

Not applicable.

2.4.14. VARIANCE⁶⁷

A. Purpose

This procedure includes two types of variances.

1. Zoning

The purpose of a zoning variance is to allow deviations from the dimensional standards of this Ordinance (height, yard setback, lot coverage, or similar numerical standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

2. Flood Damage Prevention

The purpose of a flood damage prevention variance is to allow for deviations from flood damage prevention provisions to facilitate maintenance or redevelopment of historic structures located within a special flood hazard area, maintenance and redevelopment of water-dependent facilities within a special flood hazard area, or allow some economic use of lands located within a special flood hazard area, subject to safeguards related to maintaining the flood water carrying capacity of the special flood hazard area.

B. Applicability

1. The zoning variance procedure may be used to seek hardship relief from the dimensional standards in this Ordinance. A variance shall not be requested to:

- (a)** Vary from density or intensity beyond that allowed in a base zoning district;
- (b)** Permit a use not allowed in a zoning district; or
- (c)** Allow a prohibited use.

2. The flood damage prevention variance may be used to request relief from the standards in Section 6.4, Flood Damage Prevention, for:

- (a)** The repair or rehabilitation of historic structures when the proposed repair or rehabilitation will not affect the structure's designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
- (b)** A functionally dependent facility, provided it is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety; and

⁶⁷ This section replaces the standards in Section 9-9-6(j) of the current ordinance, and includes new review criteria and clarifications that financial hardship or the need to accommodate a prohibited use are not a valid use of a variance. This section also consolidates the standards for flood damage prevention variances from Section 9-9-6(l) from the current ordinance.

- (c) Any other type of development, provided it meets the standards of this section for a flood damage prevention variance.

C. Variance Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.14.D, Variance Review Standards.

4. Public Notification

Applicable (see Section 2.3.6).

5. HPC Review and Recommendation

(a) Applicable (see Section 2.3.7).

(b) If the application is located within a LHO district, the HPC, following a public meeting, shall provide a recommendation on the application to the BOA, in accordance with the standards in Section 3.<>, Local Historic Overlay District.

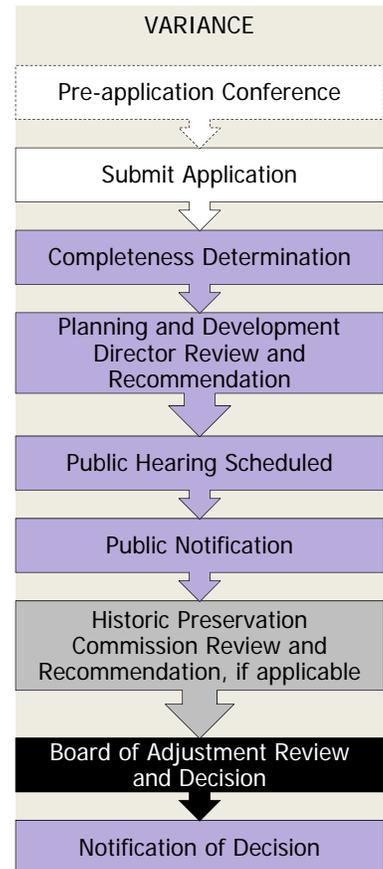
6. BOA Review and Decision

(a) Applicable (see Section 2.3.8).

(b) The BOA, after the conclusion of a quasi-judicial public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.14.D, Variance Review Standards.

(c) The action taken shall be one of the following:

- (1) Approval of the variance as submitted;
- (2) Approval of the variance with a modification in the amount of relief requested; or
- (3) Denial of the variance.



D. Variance Review Standards

1. Zoning Variance Standards

(a) General

A zoning variance shall be approved on a finding the applicant demonstrates all of the following standards are met:

- (1)** There are practical difficulties or unnecessary hardships that would result from the strict application of this Ordinance. The BOA shall reach this conclusion if it finds that:
 - (i)** The applicant can make no reasonable use of the land upon compliance with the provisions of this Ordinance;
 - (ii)** The hardship results from unique circumstances related to the applicant's property;
 - (iii)** The hardship results from the application of this Ordinance to the property; and
 - (iv)** The hardship is not the result of the applicant's own actions.
- (2)** The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.
- (3)** The granting of the variance assures the public safety and welfare and does substantial justice.
- (4)** Neither the nonconforming use of lands, buildings, or structures in the same zoning district, or the permitted use of lands, buildings, or structures in other zoning districts, or personal circumstances, are considered as grounds for issuance of the variance.
- (5)** The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

(b) Not Grounds for a Variance

The following factors are not used as a basis for approval of the variance:

- (1)** A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- (2)** Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- (3)** The fact that land or a structure may be utilized more profitably or be more marketable with a variance;
- (4)** The citing of other conforming uses of land or structures in the same or other zoning districts; or
- (5)** Financial hardship.

2. Flood Damage Prevention Variance Standards⁶⁸

(a) Standards

A flood damage prevention variance shall be approved on a finding the applicant demonstrates all of the following standards are met:

- (1)** There is a good and sufficient cause to grant the variance.
- (2)** Failure to grant the variance would result in exceptional hardship to the property owner.
- (3)** The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4)** Approval of the variance will not render the building in violation of applicable federal, state, or local requirements.
- (5)** Granting the variance will not result in increased flood heights,

⁶⁸ These standards are taken from the new North Carolina Model Flood Damage Prevention Ordinance prepared by the NC Division of Emergency Management.

additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with this Ordinance.

- (6) Approval of the variance will not result in any increase in flood levels within any designated floodway or non-encroachment area during the base flood discharge.
- (7) The variance is issued prior to any other prerequisite permit or development approvals.

(b) Grounds for Denial

In addition, all of the following factors shall be considered by the BOA if a application for a flood damage prevention variance is denied:

- (1) The danger that materials may be swept onto other lands and injure others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location as a functionally-dependent facility;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the Land Use Plan and the city's floodplain management program;
- (9) The safety of access to the use in times of flood for ordinary emergency vehicles;
- (10) The expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

E. Conditions of Approval

In granting a variance the BOA may prescribe conditions of approval to assure that the use of the land to which the variance applies will be compatible with surrounding lands and will not alter the essential character of the neighborhood.

- 1. A variance granted subject to a condition of approval shall be permitted as long as there is compliance with the condition.
- 2. Violation of a condition of approval shall be deemed a violation of this Ordinance.
- 3. In the event a condition of approval is determined to be invalid for any reason, the determination shall invalidate the variance and render it null and void.
- 4. If a violation or invalidation of a condition of approval occurs, the Planning and Development Director may revoke the certificate of occupancy for the development subject to the variance.

F. Effect

1. General

Approval of a zoning variance or flood damage prevention variance authorizes only the particular regulatory relief approved by the BOA. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

2. Notification Regarding Flood Insurance Costs

- (a)** An applicant for whom a flood damage prevention variance is approved shall be provided written notice by the Planning and Development Director specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is built. The notice shall inform the applicant about the risks to life and property from construction below the BFE and that issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance.
- (b)** The notification shall be maintained by the Director of Engineering Services with the record of the flood damage prevention variance action.

3. Records

Upon request, the Engineering Services Director shall report all flood damage prevention variances approved in accordance with this section to the Federal Emergency Management Agency and the State of North Carolina.

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

If the BOA does not include a time period by which development subject to a zoning variance or a flood damage prevention variance expires, development shall commence within 12 months of the date of issuance of the variance or the variance shall expire and become null and void.

2.4.15. WATERSHED VARIANCE⁶⁹

A. Purpose

The purpose of a watershed variance is to provide relief from the application of certain watershed protection standards when the application of these standards results in undue hardship to a landowner.

B. Applicability

There are two types of watershed variance:

1. Major Watershed Variances

A major watershed variance is a variance from the minimum statewide watershed protection rules that result in the relaxation by a factor greater than five percent of any buffer, density, or built-upon area requirement under the high density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent of any management requirement under the low density option.

⁶⁹ This section carries forward Section 9-9-11 of the current ordinance and conforms it to the format used in this draft ordinance.

2. Minor Watershed Variances

A minor watershed variance is a variance from the minimum citywide and statewide watershed protection rules that result in the relaxation by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option; or relaxation by a factor up to 10 percent of any management requirement under the low density option.

C. Major Watershed Variance Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.6).

(b) The TRC shall review the application and the associated watershed development plan, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.15.E, Watershed Variance Review Standards.

(c) In the case of water supply watersheds, the city shall notify and allow a reasonable comment period for all local governments having jurisdiction in the applicable designated watershed and any entity using the water supply for consumption where the major watershed variance is being considered.

4. Public Notification

Not applicable.

5. City Council Review and Decision

(a) Applicable (see Section 2.3.8).

(b) The City Council, after the conclusion of a public meeting, shall review and make a recommendation on the application in accordance with Section 2.4.15.E, Watershed Variance Review Standards. In making a watershed variance recommendation, the City Council may suggest conditions to assure that the use of the land will be compatible with surrounding properties and will not alter the essential character of the neighborhood.

(c) If a major watershed variance is recommended for approval, the favorable recommendation shall be recorded within a reasonable period of time after the recommendation is made by the Planning and Development Director in the office of the Register of Deeds in the county where the land subject to the variance is located.



- (d) The application is then forwarded to the North Carolina Environmental Management Commission (EMC) with a report containing the findings of fact for City Council's favorable recommendation, conclusions of law, a recommended decision, recommended conditions and a record of the Council's hearing of the request.
- (e) If the City Council does not recommend approval of a major watershed variance, it shall be deemed disapproved and shall not be forwarded to the EMC.

D. Minor Watershed Variance Procedure

1. Pre-Application Conference

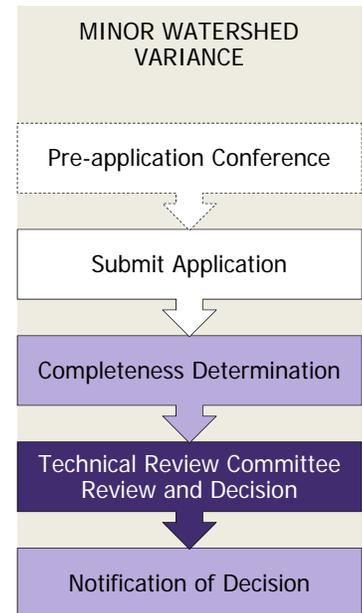
Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The TRC shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.15.E, Watershed Variance Review Standards.
- (c) In approving a watershed variance, the TRC may apply conditions to assure that the use of the land will be compatible with surrounding properties and will not alter the essential character of the neighborhood.



E. Watershed Variance Review Standards

A watershed variance (major or minor) shall be approved upon a finding the applicant demonstrates all of the following:

- 1. There are practical difficulties or unnecessary hardships that would result from carrying out the strict letter of the standards in Section 6.2, Watershed Protection;
- 2. The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
- 3. The granting of the variance assures the public safety and welfare and does substantial justice.

F. Effect

Applicable (see Section 2.3.11). The Planning and Development Director shall keep a record of all watershed variances (major and minor). The record shall be submitted, on an annual basis, to the North Carolina Division of Water Quality.

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

An approved watershed variance is part of an approved plan and shall have the same duration as the original plan approval.

2.4.16. STREET NAME CHANGE⁷⁰

A. Purpose

The purpose of this section is to create a uniform street name change procedure in the interest of the public health, safety, and welfare of city residents and visitors by improving emergency response times and ease of locating destinations.

B. Street Name Change Procedure

1. Pre-Application Conference

Optional (see Section [2.3.2](#)).

2. Application Submittal and Acceptance

(a) Applicable (see Section [2.3.4](#)).

(b) The City Council or any governmental department of the city, the PZC, or any owner of land along the street where a name change is proposed may initiate a request to change the name of a street.

(c) An application for a street name change submitted by landowners along the street shall include a petition of support for the name change signed by at least 66.67 percent of the persons owning land along the street affected by the renaming. The petition shall indicate the desired new street name. No petition shall be required for city-initiated applications.

(d) The application shall not be accepted until the Planning and Development Director confirms the availability of the proposed new street name.

3. Staff Review and Action

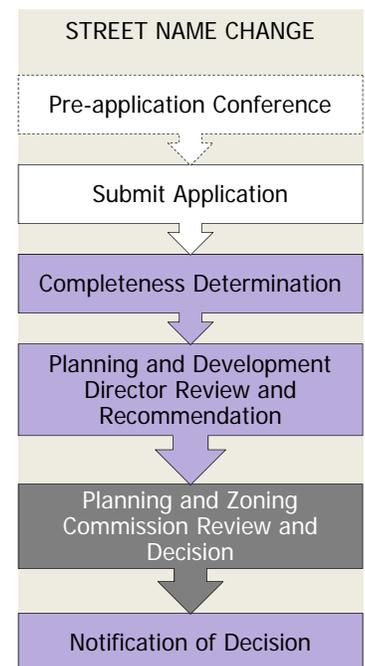
(a) Applicable (see Section [2.3.5](#)).

(b) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section [2.3.5.B](#), [Staff Report and Recommendation](#), and Section [2.4.16.C](#), [Street Name Change Review Standards](#).

(c) Each street name change shall be forwarded to the PZC and placed on the next scheduled regular meeting agenda to determine whether the request should be granted a public hearing. When a change is initiated due to public safety or emergency service delivery issues, the request shall proceed to public hearing subject to the public notification requirements in Section [2.3.6](#), [Public Notification](#).

(d) If the PZC decides that the application should be heard, or if a public hearing is required in accordance with these standards, the PZC shall set the date, time, and place for a public hearing.

(e) If the PZC decides not to conduct a hearing on the street name change



⁷⁰ This section carries forward Section 9-3-20 Street Name Change Requests, from the current ordinance and conforms it to the format used in this draft ordinance.

request, it shall be considered a disapproval of the request.

4. Public Notification

Applicable (see Section 2.3.6). If the street name change is initiated due to public safety or emergency service delivery issues, or if the PZC decides to conduct a hearing on a street name change request.

5. PZC Review and Decision

- (a) Applicable (see Section 2.3.8) if a public hearing is conducted.
- (b) If a public hearing is conducted, the PZC, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.16.C, Street Name Change Review Standards.
- (c) The decision shall be one of the following:
 - (1) Approval of the application as submitted;
 - (2) Approval of the application subject to modifications; or
 - (3) Denial of the application.
- (d) The PZC may consider and approve a name change for a portion of the request or a change of prefix or suffix without a new submittal or additional hearing. The PZC shall not approve alterations to the primary name requested, nor approve the application of the name to a street or segment thereof not included in the original request, without re-notification and re-hearing.

C. Street Name Change Review Standards

In deciding to approve a street name change, the PZC shall consider the city's *Street Name and Address Assignment Guidelines and Policies* and shall make each of the following findings:

- 1. The street name change will result in an overall public good that generally cannot be measured in monetary terms, but is found to outweigh known or perceived economic interests and costs; or
- 2. The street name change is in accordance with the city's street name guidelines and policies; and
- 3. The street name change will serve the public interest by enhancing public safety and will do no harm; and
- 4. The street name change will not adversely affect property values or cause excessive economic impact to property owners or the city.

D. Effect

Not applicable.

E. Amendment

Following approval of a street name change request, no additional name change requests may be filed for the same street or street segment for a period of at least two years, unless the PZC determines that a subsequent street name change is merited.

F. Expiration

Not applicable.

2.4.17. STREET ABANDONMENT⁷¹

A. Purpose

The purpose of this section is to establish a uniform mechanism for the abandonment of platted or dedicated public street or alley rights-of-way (or portions thereof) in accordance with Section 160A-299 of the North Carolina General Statutes.

B. Applicability

This section applies to requests to abandon any platted or dedicated street or alley rights-of-way determined to be unnecessary for the movement of vehicles in the city.

C. Street Abandonment Procedure

1. Pre-Application Conference

Optional (See Section 2.3.2).

2. Application Submittal and Acceptance

(a) Applicable (see Section 2.3.6).

(b) Landowners abutting an un-built street may also submit an application.

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The TRC shall review the application and comment on municipal service and infrastructure issues associated with the abandonment.

(c) The Planning and Development Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 2.3.5.B, Staff Report and Recommendation, and Section 2.4.17.D, Street Abandonment Review Standards.

4. Public Notification

Applicable (see Section 2.3.6).

5. PZC Review and Recommendation

(a) Applicable (see Section 2.3.7).

(b) The PZC, following a public meeting, shall make a recommendation on the application in accordance with Section 2.3.7, Review, and Section 2.4.17.D, Street Abandonment Review Standards.

6. City Council Review and Decision

(a) Applicable (see Section 2.3.8).

(b) The City Council, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.17.D, Street Abandonment Review Standards.



⁷¹ This is a new procedure setting out how the city will address abandonment of a platted or dedicated street right-of-way.

- (c) The action taken shall be one of the following:
 - (1) Abandonment of all of the street or alley right-of-way;
 - (2) Abandonment of a portion of the street or alley right-of-way;
 - (3) Retention of the existing street or alley right-of-way with no changes; or
 - (4) Abandonment of the right-of-way, but retention of a utility or other easement.

D. Street Abandonment Review Standards

An application for abandonment of a platted or dedicated public street or alley right-of-way shall be approved only on a finding that:

- 1. Closing of the street or alley is in the best interest of the public; and
- 2. A landowner in the vicinity of the street or alley would not be deprived of reasonable ingress or egress to their land.

E. Recordation

The Planning and Development Director shall file a certified copy of the street abandonment approval in the office of the Register of Deeds in the county where the subject street is located within a reasonable period of time after the approval.

F. Effect

Not applicable.

G. Amendment

Not applicable.

H. Expiration

Not applicable.



2.4.18. RIGHT-OF-WAY ENCROACHMENT⁷²

A. Purpose

The purpose of this section is to establish a uniform mechanism for reviewing a request to allow above-ground and below-ground encroachments of a building, a building appurtenance, fences, signs, conduits, utilities, or other features into city-maintained rights-of-way.

B. Applicability

Development proposing to encroach, either above or below ground, into a city-maintained right-of-way shall gain approval of a right-of-way encroachment in accordance with the procedures and standards of this section, prior to encroachment.

C. Above-Ground Encroachment Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

⁷² This is a new procedure that codifies existing practice proposed for the city's consideration.

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The TRC shall review and comment on the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.18.E, Right-of-Way Encroachment Review Standards.

4. City Council Review and Decision

(a) Applicable (see Section 2.3.8).

(b) The City Council, after conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.3.8, Action by Decision-Making Body, and Section 2.4.18.E, Right-of-Way Encroachment Review Standards.

(c) The action taken shall be one of the following:

(1) Approval of the application as submitted; or

(2) Disapproval of the application.

D. Below-Ground Encroachment Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Decision

(a) Applicable (see Section 2.3.5).

(b) The TRC shall review and decide the application in accordance with Section 2.3.5, Staff Review and Action, and Section 2.4.18.E, Right-of-Way Encroachment Review Standards.

E. Right-of-Way Encroachment Review Standards

A right-of-way encroachment shall be approved upon a finding the applicant demonstrates:

- 1.** The right-of-way encroachment is in harmony with the general purpose and intent of this Ordinance;
- 2.** The city is properly indemnified by the applicant against liability arising from the placement of structures within the right-of-way;
- 3.** Evidence is furnished of insurance covering liability arising from the proposed encroachment, if any; and
- 4.** Any above-ground encroachment is outside sight triangles or areas needed for pedestrian or vehicular safety, or the visual obstruction has been properly mitigated.

F. Effect

Applicable (see Section 2.3.11).

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

Applicable (see Section 2.3.13).

2.4.19. APPEAL⁷³

A. Purpose

The purpose of this section is to establish a procedure and standards for an aggrieved party, officer, department, or board of the city affected by any decision or determination by a city official (including appeals of soil erosion and sediment control plans) to determine if the decision or interpretation complies with the requirements of this Ordinance.

B. Initiation

1. An appeal shall be initiated by filing a written notice of appeal with the Planning and Development Director within:
 - (a) 30 days of the date the determination or decision being appealed is filed in the Planning and Development Department (except where otherwise specified in this Ordinance); or
 - (b) 15 days of the date the notice of violation being appealed is issued.
2. In the event that a soil erosion and sedimentation control plan is denied in accordance with Section 6.3, Soil Erosion and Sedimentation, the applicant may appeal the denial directly to the North Carolina Sedimentation Control Commission.

C. Appeal Procedure

1. Pre-Application Conference

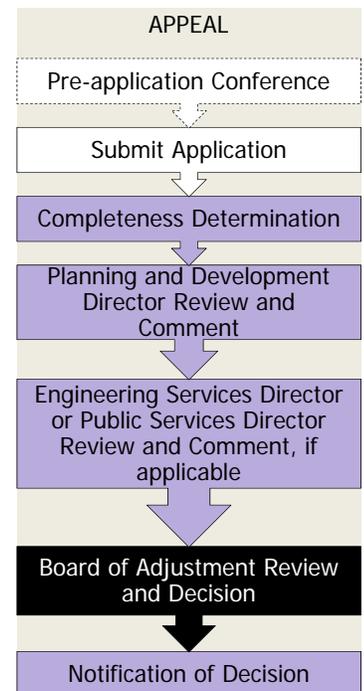
Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4).
- (b) The written notice of appeal shall include a statement of the error or improper decision or determination, the date of the decision or determination, the grounds for the appeal, and all related support materials.

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) On accepting a notice of appeal, the Planning and Development Director shall transmit the appeal and the record of material considered by the decision-maker in making the decision or determination (including but not limited to, for example, the application and support materials, staff report, other plans, documents, reports, and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision).
- (c) These materials, plus the city's adopted planning documents and this Ordinance shall constitute the record of the appeal.
- (d) The Director of Planning and Development, the



⁷³ This section carries forward the standards in Section 9-9-6(h) & (i) from the current ordinance but uses a new format and provides a set of review criteria for use by the Board of Adjustment.

Engineering Services Director, or the Public Services Director, as appropriate, shall review and comment on appeals related to the aspects of this Ordinance for which they are responsible for administering.

4. Public Notification

Applicable (see Section 2.3.6).

5. BOA Review and Decision

- (a) Applicable (see Section 2.3.8).
- (b) The Board of Adjustment, at the conclusion of a quasi-judicial public hearing, shall decide the application for the appeal.
- (c) The decision shall be based solely on the record of the appeal, as supplemented by arguments presented at the public hearing, and the standards in Section 2.4.19.D, Appeal Review Standards.
- (d) The decision shall be one of the following:
 - (1) Affirmation of the decision or interpretation (in whole or in part);
 - (2) Modification of the decision or interpretation (in whole or in part);
or
 - (3) Reversal of the decision or interpretation (in whole or in part).
- (e) A vote to reverse or modify a decision or interpretation shall require approval of four-fifths (4/5th) of BOA members at the hearing present and voting.

D. Appeal Review Standards⁷⁴

1. The BOA is limited to the following determinations in considering the appeal, which shall be based on clear and substantial evidence in the record:
 - (a) The decision-maker did not make an error or correctly applied the standards of this Ordinance in making the decision or interpretation;
 - (b) The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
 - (c) The decision-maker made an error because the decision was based on a standard not contained in this Ordinance or other appropriate city ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Ordinance was applied; or
 - (d) The decision-maker made an error in applying a standard or measuring a standard.
2. Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the determination.
3. The BOA shall not hear any evidence or make any decision based on hardships or special conditions. (Such matters may only be considered in the context of an application for a variance or special exception.)

E. Effect

1. An appeal stays all proceedings in furtherance of the action appealed from, unless the city official from whom the appeal is taken certifies to the BOA, after notice of appeal has been filed, that because of facts stated in the certificate a stay would, in

⁷⁴ These are new review standards for the city's consideration.

the city official's opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this Ordinance.

- 2. If certification by a city official is filed, administrative proceedings shall not be stayed except through issuance of a restraining order by the BOA or court of competent jurisdiction.
- 3. The filing of an appeal prevents the filing of an application for an zoning map amendment or special use for the same land subject to an appeal application, as well as the filing of a text amendment application by the same party filing the appeal until the appeal application is decided or appealed to the courts.

F. Amendment

Not applicable.

G. Expiration

Not applicable.

H. Appeal

Any decision by the BOA shall be subject to Superior Court review by proceedings in the nature of certiorari.

2.4.20. SITE PLAN⁷⁵

A. Purpose

The purpose of site plan review is to ensure the layout and general design of proposed development is compatible with surrounding uses and complies with all applicable standards in this Ordinance and all other city regulations.

B. Applicability

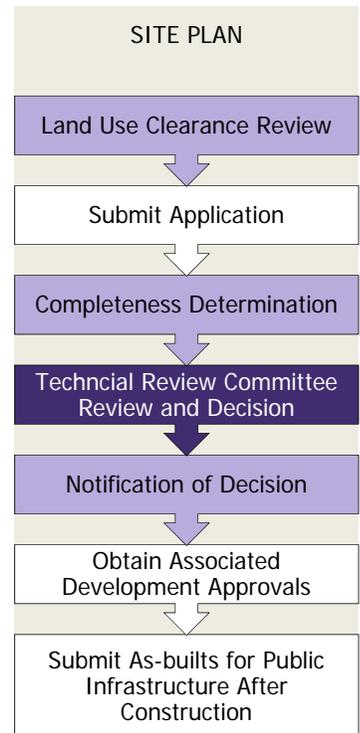
1. General

The following development shall be subject to the procedures and standards of this section:

- (a) Multi-family development;
- (b) Two-family dwellings on two different lots;
- (c) Accessory structures with a horizontal dimension greater than 12 feet;
- (d) Mixed-use development;
- (e) Nonresidential development; and
- (f) A change of use to a use identified in B. 1-5 above that results in additional parking or additional impervious surface coverage.

2. Exemptions

Group developments shall be exempt from the standards in this section, and shall be reviewed and



⁷⁵ This section carries forward the standards for site plan review from Section 9-3-11 of the current ordinance with some modifications. As described on pages 2-19 and 2-20 of the Code Assessment, the minor site plan process is being consolidated into the site plan review procedure. Additionally, the integrated multiple use development format is not carried forward in favor of new shopping center use standards and development standards that will address multi-building developments that will be further addressed in Modules 2 and 3. Members of the Advisory Committee have indicated a desire to retain the minor site plan procedure.

decided in accordance with the standards in Section 2.4.23, Group Development.

C. Site Plan Review Procedure

1. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4).
- (b) An application may be initiated by any person who may submit an application in accordance with Section 2.3.4.A, Authority to File Applications, following receipt of a land use clearance certificate, which is the initial step in the site plan approval process. It is intended to inform the applicant of the following aspects:
 - (1) Whether the proposed development is allowed in the zoning district where proposed;
 - (2) Any existing conditions of approval or overlay district limitations that may apply to the proposed development;
 - (3) The full range of anticipated reviews and approvals necessary to establish the proposed development;
 - (4) The necessary submittal requirements; and
 - (5) The schedule for review.
- (c) Once a land use clearance certificate is issued, a site plan application may be submitted to the Planning and Development Department.
- (d) When required by Section 5.<>, Traffic Impact Analysis, a traffic impact analysis shall also be submitted for review.
- (e) If a watershed development plan approval or land disturbance approval is required, they shall be obtained prior to site plan approval.

2. Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The TRC shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.20.D, Site Plan Review Standards.
- (c) The TRC may grant conditional approval of a site plan pending additional modification by the applicant. In the case of a conditional approval, the applicant shall revise the site plan to address all TRC comments and re-submit the revised plan to the Planning and Development Director, who shall convert the conditional site plan approval to an approval, upon finding the revised site plan complies with all TRC comments. Failure to submit a revised site plan shall render the conditional approval null and void.

D. Site Plan Review Standards

An application for a site plan shall be approved on a finding the applicant has demonstrated the proposed development complies with:

1. The applicable district, use-specific, development, environmental, and infrastructure design standards of this Ordinance;
2. The applicable standards of the Code of Ordinances;
3. The street and utility construction plan standards for streets, water, sanitary sewer, and storm sewer facilities, as appropriate; and
4. All conditions of approval of any prior applicable permits or development approvals.

E. Effect

1. General

Subsection 2.4.21 Preliminary Plat

- (a) Approval of a site plan authorizes the submittal of an application for a building permit or a zoning compliance permit in cases where no building permit is required.
- (b) No public improvements shall be constructed until the street and utility construction plans for such improvements are reviewed and approved by the city.
- (c) In the case of a multi-phase site plan, street and utility construction plans shall include all improvements lying within or adjacent to a phase as well as all infrastructure lying outside the phase but required in order to provide service to development within the phase.
- (d) Approved permanent runoff control structures and soil erosion and sedimentation control devices may be installed prior to the approval of the site plan.

2. Performance Guarantees

Development that includes modifications to public streets, utilities, sidewalks, or other public infrastructure shall comply with the requirements in Section 7.2, Performance Guarantees/Bonding.

3. As-Built Plans

As-built plans depicting all construction and modifications to streets, sidewalks, stormwater management facilities, utilities, or other public infrastructure shall be submitted prior to issuance of a certificate of occupancy.

F. Amendment

Applicable (see Section 2.3.12).

G. Expiration

Site plan approval shall expire and become null and void if:

- 1. The development approved in the site plan does not begin within 18 months of issuance of the site plan approval;
- 2. Development is begun and then discontinued for a period greater than 180 days.

2.4.21. PRELIMINARY PLAT⁷⁶

A. Purpose

The purpose of this section is to provide a uniform means for the review and approval of divisions of land to ensure, in conjunction with Chapter 7: Subdivision Standards, that subdivisions of land promote the health, safety, convenience, and welfare of city residents and business owners.

B. Applicability

Unless exempted in accordance with Section 2.4.23, Exclusion Map, all divisions of land (whether improved or otherwise) into two or more lots shall comply with the provisions of this section. Preliminary Plat Review Procedure

1. Application Submittal and Acceptance

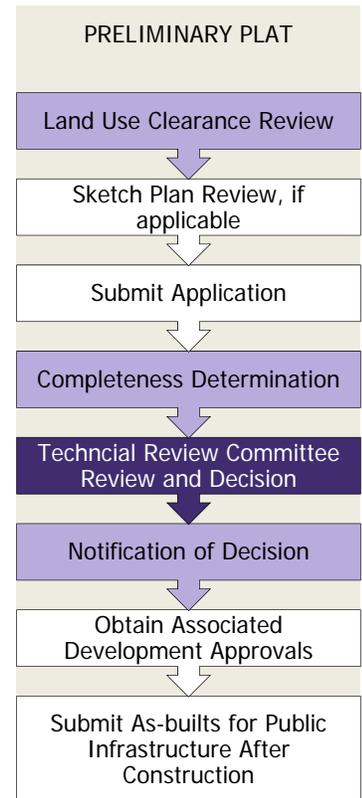
⁷⁶ This section carries forward the preliminary plat procedure in Section 9-6-7 of the current ordinance with several key modifications (as described on 2-19 and 2-20 of the Code Assessment). The current ordinance makes a distinction between major and minor subdivision review based on the number of lots and presence of public infrastructure. The distinction between major and minor subdivision procedure is not carried forward in this draft. All subdivisions (except exclusion maps) follow the same procedure regardless of the number of lots. Members of the Advisory Committee have indicated a desire to retain the minor subdivision procedure.

(a) Land Use Clearance

- (1) Applicable (see Section 2.3.4).
- (2) An application may be initiated by any person who may submit an application in accordance with Section 2.3.4.A, Authority to File Applications, following receipt of a land use clearance certificate, which is the initial step in the preliminary plat approval process. A land use clearance certificate is intended to inform the applicant of the following aspects:
 - (i) Whether the proposed development configuration is allowed in the location where proposed;
 - (ii) Any existing conditions of approval or overlay district limitations that may apply;
 - (iii) The full range of anticipated reviews and approvals necessary to establish the proposed development;
 - (iv) The necessary submittal requirements; and
 - (v) The schedule for review.
- (3) Issuance of a land use clearance certificate allows an applicant to file an application for a sketch plan (if required) or a preliminary plat (if a sketch plan is not required).

(b) Sketch Plan Review

- (1) A sketch plan for land subject to a preliminary plat shall be reviewed and approved by the TRC prior to submittal of an application for a preliminary plat in the following instances:
 - (i) The applicant for a preliminary plat owns land adjacent to the preliminary plat, but the land under common ownership is not included in the preliminary plat application; or
 - (ii) The preliminary plat includes more than fifty individual lots.
- (2) A sketch plan shall be prepared in accordance with the sketch plan submittal requirements in the Procedures Manual.
- (3) Following review and approval of a sketch plan by the TRC, an applicant may file an application for a preliminary plat.
- (4) Applicants are encouraged to file sketch plans, even when not required by this section.



(c) General

- (1) A preliminary plat shall be prepared by a registered land surveyor, registered landscape architect, or licensed engineer, and shall include all aspects identified in the Procedures Manual.
- (2) When required by Section 5.<>, Traffic Impact Analysis, a traffic impact analysis shall also be submitted for review with the application.

- (3) The developer shall also submit a statement of required improvements which specifies the length of streets to be constructed and the diameter and length of sanitary sewer and water lines and other required public improvements to be installed by the developer. The statement shall include all public improvements for which the developer is responsible and the date when said improvements shall be completed.

2. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The TRC shall decide an application for a preliminary plat in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.21.C, Preliminary Plat Review Standards.
- (c) The TRC may grant conditional approval of a preliminary plat pending additional modification by the applicant. In the case of a conditional approval, the applicant shall revise the preliminary plat to address all TRC comments and re-submit the revised plat to the Planning and Development Director, who shall convert the conditional approval to an approval upon finding the revised preliminary plat complies with all TRC comments. Failure to submit a revised preliminary plat shall render the conditional approval null and void.

C. Preliminary Plat Review Standards

- 1. An application for a preliminary plat shall be approved only upon a finding the applicant demonstrates the preliminary plat complies with:
 - (a) All applicable standards in Chapter 7: Subdivision Standards, and other applicable standards in this Ordinance;
 - (b) The street and utility construction plan standards for streets, water, sanitary sewer, and storm sewer facilities, as appropriate;
 - (c) All standards or conditions of any prior applicable permits and development approvals; and
 - (d) All other applicable requirements in the Code of Ordinances.

D. Effect

1. General

- (a) Approval of a preliminary plat authorizes construction of city streets or utilities for the preliminary plat of the subdivision or an approved phase of the subdivision.
- (b) Approved permanent runoff control structures and soil erosion and sedimentation control devices may be installed prior to the approval of street and utility construction plans.
- (c) Construction and inspection of city streets and city utilities authorizes application for a final plat.
- (d) In the case of a multi-phase preliminary plat, street and utility construction plans shall include all improvements lying within or adjacent to that phase as well as all infrastructure lying outside the phase but required in order to provide service to development within that phase.

2. Performance Guarantee

Construction that includes modifications to public streets, utilities, sidewalks, or other public infrastructure shall comply with the requirements in Section 7.2, Performance Guarantees/Bonding.

3. As-Built Plans

As-built plans depicting all construction and modifications to streets, sidewalks, stormwater management facilities, utilities, or other public infrastructure shall be submitted prior to issuance of a certificate of occupancy.

E. Amendment

Applicable (see Section 2.3.12).

F. Expiration

1. Approval of a preliminary plat shall be valid for two years unless extended by the TRC for good cause.
2. Approval of a preliminary plat shall expire and become null and void unless an application for of a final plat is submitted within two years after the date of approval of the preliminary plat.

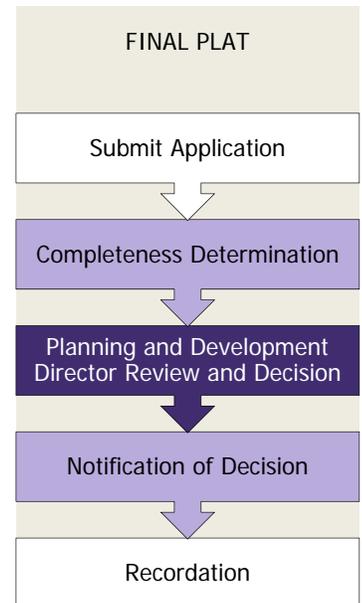
2.4.22. FINAL PLAT⁷⁷

A. Purpose

The purpose of a final plat is to ensure the final plat for subdivision conforms with the approved preliminary plat, the relevant construction plans, all other standards of this Ordinance, and all other relevant city requirements, prior to sale of lots or issuance of a building permit for development of the subdivision.

B. Applicability

1. A final plat for subdivision shall be required for all subdivisions of land required to obtain a preliminary plat under this Ordinance. A landowner shall not submit an application for final plat review until a preliminary plat is approved and all required public utilities serving the subdivision are installed and inspected by the city, or the developer provides a performance guarantee in accordance with Section 7.2, Performance Guarantees/Bonding.
2. Existing multi-family residential and nonresidential developments being converted to condominium unit ownership shall obtain final plat approval in accordance with this section. In cases where an expansion of the development is proposed concurrently with conversion to condominium unit ownership, the development is required to receive preliminary plat approval prior to review of a final plat.



C. Final Plat Review Procedure

1. Application Submittal and Acceptance

⁷⁷ This section carries forward Section 9-6-11 and conforms it to the format used in this draft ordinance.

Applicable (see Section 2.3.4).

2. Staff Review and Action

Applicable (see Section 2.3.5).

The Planning and Development Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.22.D, Final Plat Review Standards.

3. Recordation

(a) Once a final plat is approved, a signed statement by the Planning and Development Director shall be entered on the face of the plat. The final plat may not be recorded without this certification.

(b) A final plat shall be null and void unless it is recorded in the office of the Register of Deeds for the county where the development is located within 60 days of approval.

D. Final Plat Review Standards

A final plat shall be approved only on a finding the applicant demonstrates the following:

- 1.** The final plat is prepared and sealed by a professional land surveyor in accordance with the requirements in the Procedures Manual.
- 2.** The final plat is in substantial conformance with the preliminary plat, all applicable requirements in Chapter 7: Subdivision Standards, and all other applicable requirements in this Ordinance; and
- 3.** All required improvements depicted on the preliminary plat and final plat are installed and inspected by the city, or subject to a performance guarantee (see Section 7.2, Performance Guarantees/Bonding).

E. Effect

1. General

Approval of a final plat allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the final plat.

2. Acceptance of Public Infrastructure

(a) The subdivider shall retain responsibility for public infrastructure until maintenance responsibility is accepted by NCDOT, a homeowner or property owners association, or the city, as appropriate.

(b) Approval of a final plat shall not constitute acceptance by the city or other public agency of the offer of dedication of any streets, sidewalks, parks, or other public facilities shown on a plat. The city or other public agency may, to the extent of its statutory authority, accept such offer of dedication by resolution of the City Council or by actually exercising control over and maintaining such facilities.

F. Amendment

Applicable (see Section 2.3.12).

G. Expiration

If a final plat is not recorded within two years of the associated preliminary plat approval, or there is a lapse of two years or more between the recordation of different sections or phases in the subdivision, the preliminary plat shall be resubmitted to the TRC for review and approval in accordance with Section 2.4.21, Preliminary Plat.

2.4.23. GROUP DEVELOPMENT⁷⁸

A. Purpose

The purpose of group development review is to ensure the layout and general design of proposed group development is compatible with surrounding uses and complies with all applicable standards in this Ordinance and all other city regulations.

B. Applicability

All group development shall receive group development approval in accordance with the procedures and standards of this section prior to issuance of a building permit for development.

C. Group Development Review Procedure

1. Application Submittal and Acceptance

(a) Applicable (see Section 2.3.4).

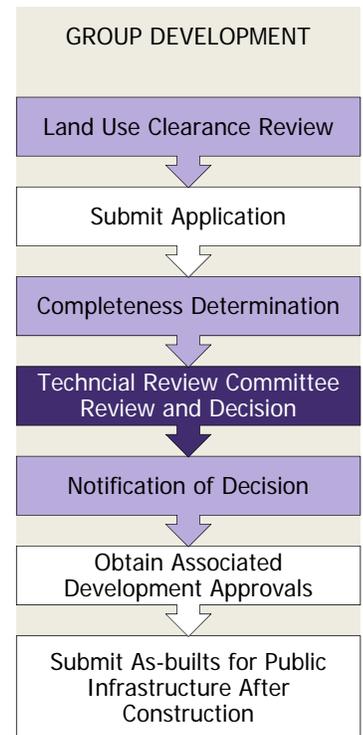
An application may be initiated by any person who may submit an application in accordance with Section 2.3.4.A, Authority to File Applications, following receipt of a land use clearance certificate, which is the initial step in the group development approval process. It is intended to inform the applicant of the following aspects:

- (1) Whether the proposed development is allowed in the zoning district where proposed;
- (2) Any existing conditions of approval or overlay district limitations that may apply to the proposed development;
- (3) The full range of anticipated reviews and approvals necessary to establish the proposed development;
- (4) The necessary submittal requirements; and
- (5) The schedule for review.

(b) Once a land use clearance certificate is issued, a group development application may be submitted to the Planning and Development Department.

(c) When required by Section 5.<>, Traffic Impact Analysis, a traffic impact analysis shall also be submitted for review.

(d) If a watershed development plan approval or land disturbance approval is required, they shall be obtained prior to group development approval.



2. Review and Action

⁷⁸ This is a new procedure for group developments. Group developments are defined as development in which, in-lieu of division of a tract of land into separate lots of record for separate principal buildings, land is divided into two or more individual building sites for the purpose of development and occupancy by separate families, businesses, or other enterprises. The review procedure for group development is similar to site plan review. Group developments are exempted from the site plan review procedure in favor of this review procedure. This procedure may evolve further as drafting continues.

- (a) Applicable (see Section 2.3.5).
- (b) The TRC shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.23D, Group Development Review Standards.
- (c) The TRC may grant conditional approval of a group development pending additional modification by the applicant. In the case of a conditional approval, the applicant shall revise the group development to address all TRC comments and re-submit the revised plan to the Planning and Development Director, who shall convert the conditional group development approval to an approval, upon finding the revised group development complies with all TRC comments. Failure to submit a revised group development shall render the conditional approval null and void.

D. Group Development Review Standards

An application for a group development shall be approved on a finding the applicant has demonstrated the proposed development complies with:

- 1. The applicable district, use-specific, development, environmental, and infrastructure design standards of this Ordinance;
- 2. The applicable standards of the Code of Ordinances;
- 3. The street and utility construction plan standards for streets, water, sanitary sewer, and storm sewer facilities, as appropriate; and
- 4. All conditions of approval of any prior applicable permits or development approvals.

E. Conditions of Approval

Applicable (see Section 2.3.12).

F. Effect

1. General

- (a) Approval of a group development authorizes the submittal of an application for a building permit for development.
- (b) No public improvements shall be constructed until the street and utility construction plans for such improvements are reviewed and approved by the city.
- (c) In the case of a multi-phase group development, street and utility construction plans shall include all improvements lying within or adjacent to a phase as well as all infrastructure lying outside the phase but required in order to provide service to development within the phase.
- (d) Approved permanent runoff control structures and soil erosion and sedimentation control devices may be installed prior to the approval of the group development.

2. Performance Guarantees

Development that includes modifications to public streets, utilities, sidewalks, or other public infrastructure shall comply with the requirements in Section 7.2, Performance Guarantees/Bonding.

3. As-Built Plans

As-built plans depicting all construction and modifications to streets, sidewalks, stormwater management facilities, utilities, or other public infrastructure shall be submitted prior to issuance of a certificate of occupancy.

G. Amendment

Applicable (see Section [2.3.12](#)).

H. Expiration

Applicable (see Section [2.3.12](#)).

2.4.24. EXCLUSION MAP⁷⁹

A. Purpose

The purpose of the exclusion map procedure is to determine if a proposed division of land is exempt from review as a subdivision (preliminary plat), and to provide a plan that records transactions of land exempted from preliminary plat review.

B. Applicability

Any person who believes a proposed division of land is exempt from the subdivision requirements in this Ordinance (see Section 2.4.21, Preliminary Plat) may apply for an exclusion map in accordance with the procedures and standards of this section.

C. Exclusion Map Review Procedure

1. Application Submittal and Acceptance

Applicable (see Section [2.3.4](#)).

2. Staff Review and Action

Applicable (see Section [2.3.5](#)).

The Planning and Development Director shall review and decide the application in accordance with Section [2.3.5.D](#), Applications Subject to Decision by Staff, and Section 2.4.24.D, Exclusion Map Review Standards.

D. Exclusion Map Review Standards

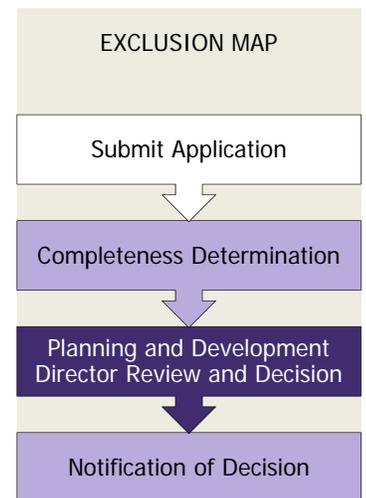
Development shall be considered an exclusion map and exempted from the subdivision requirements of this Ordinance (preliminary plat) if:

1. There is a combination or recombination of portions of previously subdivided lots that does not increase the total number of lots, and the resultant lots are equal to or exceed the standards of this Ordinance or lessen an existing nonconformity;
2. Land is divided into parcels greater than ten acres and no street right-of-way dedication is involved;
3. There is public acquisition that involves the purchase of strips of land for the widening or opening of streets; or
4. There is a division of a tract of land in single ownership which is no greater than two acres into no more than three lots, and no street right-of-way dedication is involved, and the resultant lots are equal to or exceed the standards of this Ordinance.

E. Effect

Applicable (see Section [2.3.11](#)).

F. Amendment



⁷⁹ This section carries forward Section 9-6-11 but codifies the exclusion map procedure for greater procedural efficiency and clarity.

Applicable (see Section 2.3.12).

G. Expiration

Not applicable.

2.4.25. LAND DISTURBING PERMIT⁸⁰

A. Purpose

The purpose for this section is to set out the requirements for a land disturbing permit to ensure that land-disturbing activities are conducted in accordance with an approved soil erosion and sedimentation control plan and in a manner that limits the potential for groundwater contamination, sediment accumulation in drainage conveyances and surface waters, and there is no unnecessary loss of erodible soils.

B. Applicability

The following activities, unless exempted in accordance with B.2 below, require approval of a land-disturbing permit in accordance with the procedures and standards of this section, prior to commencement:

1. Clearing, grubbing, trenching, or grading that exceeds one acre in area (lands under single ownership or diverse lands being developed as a unit shall be aggregated);
2. Land-disturbing activity taking place on highly erodible soils with a "k" factor greater than 0.36;
3. Land-disturbing activity taking place in Tier 1 or Tier 2 of a watershed critical area;
4. Land-disturbing activity located in an existing uncovered area requiring extensive soil erosion control measures;
5. Construction of a water quality pond or retention structure in a watershed, or conveyance structures that drain into a water quality pond or retention structure in any part of a watershed; or
6. Any other instance where extensive erosion control measures are required.

C. Exemptions

The following activities are exempt from the requirements of this section:

1. Land-disturbing activity which is essential to protect human life during an emergency or undertaken for the purpose of fighting fires;
2. Land-disturbing activities which take place within an area that does not exceed one acre in surface area (lands under one or diverse ownership being developed as a unit will be aggregated);
3. The stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided sediment control measures are utilized to protect against off-site damage;
4. Land-disturbing activity undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals; bees and aviary products; and fur animals;
5. Land-disturbing activity undertaken on forest land for the production and

⁸⁰ This section carries forward the procedure set out in Section 9-3-3(b) and Section 9-7-11 of the current ordinance and conforms it to the format used in this draft ordinance.

harvesting of timber and timber products, which are conducted in accordance with DENR's forest practice guidelines related to water quality (best management practices);

- 6. Land-disturbing activity undertaken by persons as defined in Section 113A-52(8) of the North Carolina General Statutes who are otherwise regulated by the provisions of The Mining Act of 1971 (Sections 74-46 through 74-68 of the North Carolina General Statutes); and
- 7. Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in Section 113A-56(a) of the North Carolina General Statutes.

D. Land Disturbing Permit Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

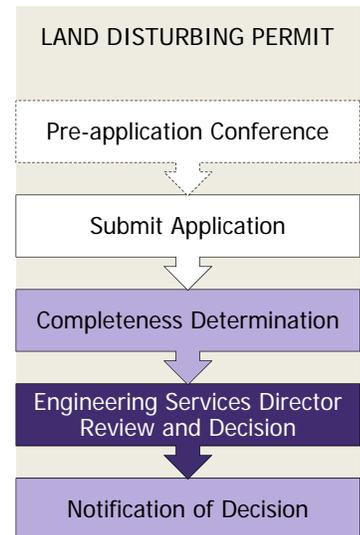
2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The Engineering Services Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.25.E, Land Disturbing Permit Review Standards.



E. Land Disturbing Permit Review Standards

A land disturbing permit shall be approved pursuant to a soil erosion and control plan developed in accordance with Section 6.3, Soil Erosion and Sedimentation.

F. Conditions of Approval

Applicable (see Section 2.3.9).

G. Effect

Applicable (see Section 2.3.11). The applicant shall post an approved land-disturbing permit in a prominent location on the site where the land disturbing activity is occurring at all times while it is in effect.

H. Amendment

Applicable (see Section 2.3.12).

I. Expiration

- 1. The land disturbing permit shall be null and void if work authorized is not completed within one year from the issuance of the permit.
- 2. The Engineering Services Director may, on receipt of a written request for an extension before the expiration date, renew a land-disturbing permit for an additional 180 days, for good cause.

2.4.26. BUILDING PERMIT

A. Purpose

The purpose of this section is to certify that the proposed construction, moving, alteration, or repair of a building or structure complies with the requirements of this Ordinance, the construction standards in the State Building Code and all other applicable state and local laws, including but not limited to Section 160A-417 of the North Carolina General Statutes and this Ordinance.

B. Applicability

Unless exempted in accordance with C. below, no construction, addition, alteration, repair, movement to another site, removal, or demolition of any building or structure may occur until a building permit is approved in accordance with the procedures and standards of this section.

C. Exemptions

A building permit is not required for the following developments:

1. Buildings listed under Section 101.4 of North Carolina State Building Code, including:
 - (a) Equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers;
 - (b) Equipment or facilities, other than buildings, of a public utility or of an electric or telephone membership corporation;
2. Accessory buildings with no horizontal dimension greater than 12 feet; and
3. Buildings owned by the federal government.

D. Building Permit Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

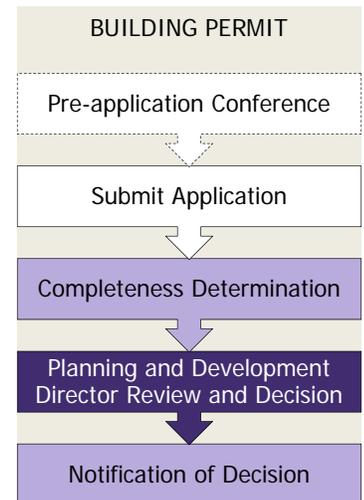
2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The Planning and Development Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.26.E, Building Permit Review Standards.



E. Building Permit Review Standards

A building permit shall be approved on a finding it complies with the State Building Code, all relevant standards of this Ordinance, and any conditions of approval of any applicable permits or development approvals.

F. Effect

Applicable (see Section 2.3.11).

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

1. A building permit shall expire and become null and void if the development it

authorizes is not commenced within six months of the permit issuance.

2. If development authorized by a building permit commences but is not discontinued for a continuous period of 12 months, the permit shall expire and become null and void.

I. Appeal

An appeal of a decision on a building permit may be filed with the North Carolina Commissioner of Insurance, in accordance with Section 160A-434 of the North Carolina General Statutes.

2.4.27. ZONING COMPLIANCE PERMIT⁸¹

A. Purpose

The purpose of a zoning compliance permit is to ensure no development occurs until there is assurance the development complies with the requirements of this Ordinance.

B. Applicability

Approval of a zoning compliance permit is required in advance of development that does not require approval of a site plan, subdivision (preliminary plat), or a building permit (such as changes of use with no modifications to the site).

C. Zoning Compliance Permit Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The Planning and Development Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.27.D, Zoning Compliance Permit Review Standards.

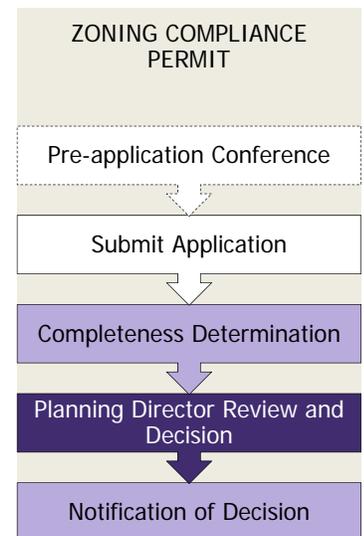
D. Zoning Compliance Permit Review Standards

A zoning compliance permit shall be approved upon a finding the applicant demonstrates the proposed development complies with all applicable standards in this Ordinance, the City Code of Ordinances, and all conditions of approval of applicable permits or development approvals.

E. Conditions of Approval

Applicable (see Section 2.3.9).

F. Effect



⁸¹ This is a new procedure described on Page 2-19 of the Code Assessment. It is used for review and approval of development that does not require approval of a site plan or issuance of a building permit. Members of the Advisory Committee mentioned that the inclusion of a zoning compliance permit procedure adds an additional (and unnecessary) step in the development review process.

Approval of a zoning compliance permit authorizes an applicant to commence construction or move forward with the approved development.

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

A zoning compliance permit shall expire and become null and void if development it authorizes is not commenced within six months of permit issuance.

2.4.28. CERTIFICATE OF OCCUPANCY⁸²

A. Purpose

The purpose of a certificate of occupancy is to ensure development complies with all of the applicable standards of the State Building Code and the requirements of this Ordinance prior to its occupation.

B. Applicability

No land, newly erected building or structure, or existing building or structure that has been built, moved, enlarged, or changed in use shall be occupied or used until a certificate of occupancy is approved in accordance with the procedures and standards of this section.

C. Certificate of Occupancy Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) Following completion of all required site inspections, the Planning and Development Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.28.D, Certificate of Occupancy Review Standards.

(c) A temporary certificate of occupancy may be issued by the Planning and Development Director prior to the completion of all construction, alterations, or changes, if occupancy will not violate any health or safety considerations of any applicable codes.

(d) In approving a temporary certificate of occupancy, the Planning and Development Director shall specify a maximum duration for the certificate that in no instance shall exceed 90 days.

(e) As part of the temporary certificate of occupancy the Planning and Development Director may require the applicant to file a



⁸² This section replaces the provisions for a Certificate of Compliance in Section 9-3-6 of the current ordinance.

performance guarantee (see Section 7.2, Performance Guarantees/Bonding) in an amount necessary to ensure that any missing elements specified in the development permit or approval will be completed within the specified timeframe.

- (f) If the work approved under the temporary certificate of occupancy is not completed within the authorized timeframe, the Planning and Development Director shall notify the applicant to cease occupancy immediately. Occupancy of the land or use shall not recommence until a certificate of occupancy is obtained in accordance with this section.

D. Certificate of Occupancy Review Standards

A certificate of occupancy shall be approved upon a finding the land, building, structure, or proposed use complies with all relevant standards of this Ordinance, the State Building Code, any other applicable requirements of the health, fire, and building codes, and any conditions applied to related permits or development approvals.

E. Effect

A building or structure is available for occupancy or human habitation following issuance of a certificate of occupancy.

F. Amendment

Applicable (see Section 2.3.12).

G. Expiration

Not applicable.

2.4.29. TEMPORARY USE PERMIT⁸³

A. Purpose

The purpose of this section is to authorize a specific temporary use and to ensure health, traffic, safety, and other potential impacts are addressed.

B. Applicability⁸⁴

The provisions of this section apply to all proposed temporary uses, temporary structures, and special events identified in Section 4.4, Temporary Uses.

C. Temporary Use Permit Procedure

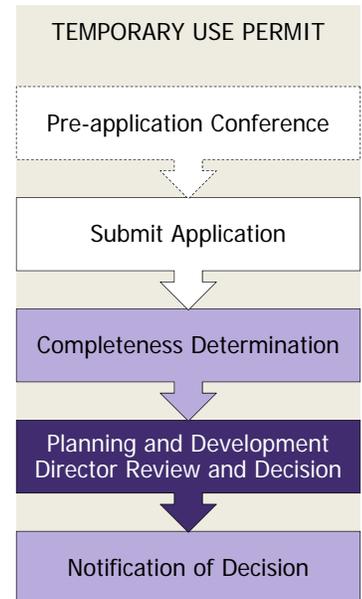
1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

- (a) Applicable (see Section 2.3.4).

- (b) An application for a temporary use permit for a special event shall be submitted to the Planning and Development Director at least three working days prior to the start of the event.



⁸³ This section carries forward Section 9-3-3(f) from the current ordinance, but uses the term temporary use instead of temporary event.

⁸⁴ Special event signage is not reviewed as a temporary use. It shall be reviewed in accordance with the procedures and standards for signage.

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, Section 2.4.29.D, Temporary Use Permit Review Standards, and all other applicable standards in this Ordinance and the Code of Ordinances.

D. Temporary Use Permit Review Standards

A temporary use permit shall be approved upon finding the applicant demonstrates:

- 1. The proposed temporary use complies with the standards in Section 4.<>, Temporary Use Standards;
- 2. The landowner of the land upon which the proposed temporary use is to occur provides written authorization for the use;
- 3. Ample parking is provided for the temporary use, in addition to required parking for the principal use (if one is present);
- 4. Noise is controlled so that no adjoining landowner or occupant is disturbed;
- 5. Adequate restroom facilities are provided on-site;
- 6. Outdoor aspects of the temporary use shall cease operation by 10:00 pm, if within 500 feet of a residential use;
- 7. Licenses and/or permits required by other agencies have been obtained prior to establishment of the use; and
- 8. No more than three temporary use permits for a special event are issued for a single property during a calendar year.

E. Conditions of Approval

Applicable (see Section 2.3.9).

F. Effect

Applicable (see Section 2.3.11).

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

A temporary use permit is effective on the date of approval and shall remain effective for the time period indicated in the permit.

2.4.30. PUBLIC TREE CERTIFICATE⁸⁵

A. Purpose

The purpose of this section is to establish a procedure for the review of planting, removal, trimming, or cutting of trees located within public rights-of-way, public parks, and other public areas owned or controlled by the city.

B. Applicability

1. General

⁸⁵ This is a new procedure proposed to codify the current practice of the Urban Forestry Commission and the Planning and Development Department. The intent of the procedure is to bring additional clarity and predictability to the development review process when street trees or other public trees are affected.

Unless exempted in accordance with section B.2 below, activity that involves the planting, removal, trimming, or below grade excavation within the dripline of trees within a public street right-of-way, park, or other city-controlled area shall be subject to the procedures and standards of this section.

2. Exemptions

The following development is exempt from this section:

- (a) Development proposed in accordance with an approved site plan or preliminary plat;
- (b) Actions of utility service providers within their easements;
- (c) Emergency trimming or removal when a tree represents an immediate safety hazard to structures, people, or automobiles traveling along a road; and
- (d) Removal of nuisance or diseased trees likely to spread disease or pests to neighboring trees.

C. Public Tree Certificate Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

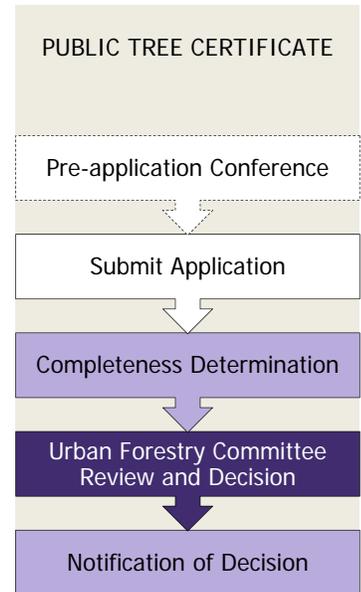
Applicable (see Section 2.3.5).

The Urban Forestry Committee shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.30.D, Public Tree Certificate Permit Review Standards.

D. Public Tree Certificate Permit Review Standards

A public tree certificate shall be approved upon a finding the applicant demonstrates the following:

- 1. Tree removal activities will take place in accordance with standard urban forestry management practices and the guidelines in the Procedures Manual.
- 2. Trees that are removed will be replaced with healthy trees of a species authorized in the Procedures Manual.
- 3. Newly planted trees shall:
 - (a) Maintain a minimum height of eight feet and minimum diameter at breast height of three inches.
 - (b) Be planted with an on-center spacing of between 30 and 40 feet.
 - (c) Be located in areas where sufficient root growth is possible.
- 4. Understory trees are planted in areas beneath overhead utilities or in locations where conflicts with underground utilities are located.
- 5. Proper clearance from overhead, underground, and surface obstructions is maintained by new trees and during pruning activities.
- 6. The drip lines of existing trees remain undisturbed or disturbance is mitigated in



accordance with the requirements in the Procedures Manual.

7. Pruning and trimming takes place in accordance with ANSI A300 standards for pruning.

E. Conditions of Approval

Applicable (see Section 2.3.9). A maintenance or access easement and agreement with the city may be required to ensure the long term care and survival of street trees.

F. Effect

Approval of a public tree certificate entitles the permit-holder to remove, prune, or plant trees within the public right-of-way, public parks, or other public areas controlled by the city, as set down in the public tree certificate.

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

A public tree certificate shall expire and become null and void if the activity it authorized is not commenced within six months of certificate issuance.

2.4.31. FLOODPLAIN DEVELOPMENT PERMIT⁸⁶

A. Purpose

The purpose of the floodplain development permit is to establish procedures and standards for the review of development located within the special flood hazard area to reduce the potential for damage to property and life from flooding or floodwaters.

B. Applicability

1. Development proposed on land in a special flood hazard areas within the city's planning jurisdiction shall obtain a floodplain development permit prior to or concurrent with an application for a site plan, building permit, or zoning compliance permit, as appropriate.
2. The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Guilford County dated March 16, 2009, Davidson County, dated March 16, 2009, Forsyth County, dated January 2, 2009, and Randolph County, dated January 8, 2008, along with its accompanying Flood Insurance Rate Map Panels (6789, 6798, 6799K, 6880, 6881, 6882K, 6890K, 6891K, 6892K, 6893K, 6894K, 7708, 7709K, 7719K, 7729K, 7739, 7800, 7801, 7802, 7803, 7804, 7805, 7810, 7811, 7812, 7813, 7814, 7815, 7820, 7821, 7822, 7823, 7824, and 7830), which are incorporated herein by reference.

C. Floodplain Development Permit Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

⁸⁶ This section replaces Section 9-7-16, Flood Damage Prevention Regulations, from the current ordinance.

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Engineering Services Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.31.D, Floodplain Development Permit Review Standards.

D. Floodplain Development Permit Review Standards

A floodplain development permit shall be approved only upon a finding all of the following standards are met:

1. The permit is issued prior to the commencement of development;
2. The proposed development will not result in a safety hazard during storm events;
3. The development will not impede the flood water carrying capacity of the special flood hazard area; and
4. The development proposed within the special flood hazard area complies with all other applicable standards in this Ordinance and the Code of Ordinances.

E. Conditions of Approval

Applicable (see Section 2.3.9).

F. Effect

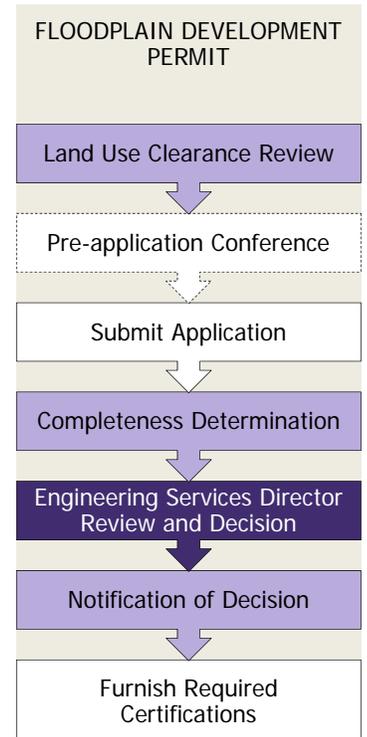
Approval of a floodplain development permit authorizes an applicant to obtain all required elevation certificates or other required certificates and proceed with development following issuance of a building permit.

G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

Applicable (see Section 2.3.13).



2.4.32. SIGN PERMIT

A. Purpose

The purpose of this section is to provide a uniform mechanism for reviewing applications for sign permits to ensure all signs comply with the standards of Section 5.<>, Signage.

B. Applicability

1. In General

All signs, unless exempted in accordance with subsection B.2 below, shall obtain a sign permit in accordance with the procedures and standards of this section before being erected, replaced, relocated, or altered.

2. Exemptions

- (a) Signs identified in Section 5.<>, Signs Exempt from Regulation, are exempt from the requirements of this section.
- (b) Signs identified in Section 5.<>, Signs That Do Not Require a Permit, are exempt from obtaining a sign permit, but are required to comply with all

other standards in Section 5.<>, Signage.

C. Sign Permit Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The Planning and Development Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.32.D, Sign Permit Review Standards.

D. Sign Permit Review Standards

A sign permit shall be approved only upon a finding the application complies with the standards in Section 5.<>, Signage, all relevant standards of this Ordinance, applicable standards from the North Carolina State Building Code, and any other applicable city requirements or applicable conditions of approval.

E. Conditions of Approval

Applicable (see Section 2.3.9).

F. Effect

Applicable (see Section 2.3.11).

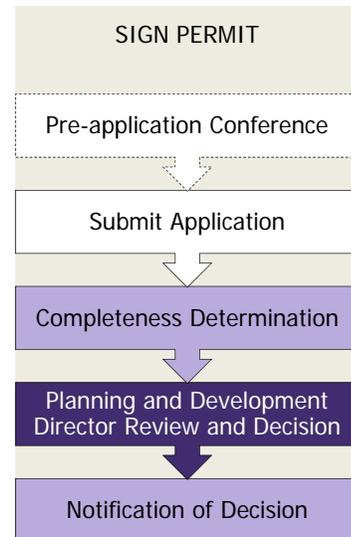
G. Amendment

Applicable (see Section 2.3.12).

H. Expiration

1. If the work authorized by a sign permit is not completed within 180 days from the date of issuance, the permit shall become null and void.

2. A sign permit shall lapse if the business activity on the premises is discontinued for a continuous period of 90 days or more.



2.4.33. TYPE I/TYPE II ADMINISTRATIVE ADJUSTMENT⁸⁷

A. Purpose

The purpose of this section is to provide an administrative mechanism for allowing minor variations, or adjustments, to certain numerical standards (e.g., setbacks) in this Ordinance, based on specific review criteria, with the intent of providing relief where application of a numeric standard creates practical difficulties in allowing development that

⁸⁷ This is a new procedure described on Pages 2-16 and 2-17 of the Code Assessment. It is proposed to replace the current modification procedure in Section 9-9-10 of the current ordinance. The procedure allows the Planning and Development Director to grant minor deviations to certain numeric standards in the Ordinance, and the TRC to grant larger deviations. Review and approval of an administrative adjustment is subject to specific new review criteria.

otherwise advances the purposes served by this Ordinance where the adjustment is compatible with the surrounding development.

B. Administrative Adjustments Distinguished

1. Type I Administrative Adjustments⁸⁸

A type I administrative adjustment allows an adjustment of the following standards by up to 10 percent throughout the city, as well as the ability to adjust them by up to 20 percent in the Core City area:

- (a) Building height, except where otherwise prohibited in this Ordinance;
- (b) Building setbacks;
- (c) Minimum spacing between buildings in the same development;
- (d) Required yard widths;
- (e) Minimum lot area; and
- (f) Minimum spacing between intersections on local streets.

2. Type II Administrative Adjustments

A type II administrative adjustment allows an adjustment to the following standards by up to 20 percent throughout the city:

- (a) Building height, except where otherwise prohibited in this Ordinance;
- (b) Building setbacks;
- (c) Minimum spacing between buildings in the same development;
- (d) Required yard widths;
- (e) Minimum lot area; and
- (f) Minimum spacing between intersections on local streets.
- (g) Grades at intersections of local streets;
- (h) Maximum cul-de-sac length;
- (i) Minimum sidewalk width; and
- (j) Minimum glazing percentages on front facades, except where otherwise prohibited.

C. Applicability

This section applies to development seeking a deviation from the numeric standards identified in B above.

D. Administrative Adjustment Procedure

1. Pre-Application Conference

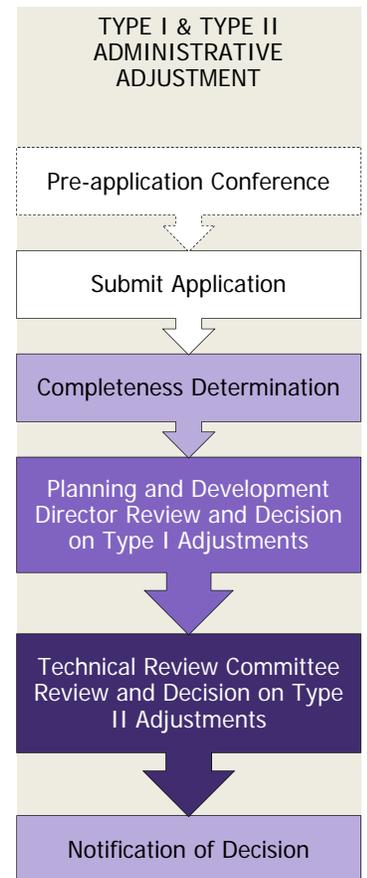
Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

Applicable (see Section 2.3.4).

3. Staff Review and Action

- (a) Applicable (see Section 2.3.5).
- (b) The Planning and Development Director shall review and decide applications for a Type I



⁸⁸ This list is developed from the list in Section 9-9-10(d) as modified during discussions with staff. This list is likely to change as the draft ordinance language evolves. It is typical to add additional flexibility in some design standards.

administrative adjustment in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.33.E, Administrative Adjustment Review Standards.

- (c) The TRC shall review and decide applications for a Type II administrative adjustment in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.33.E, Administrative Adjustment Review Standards.

E. Administrative Adjustment Review Standards

An application for an administrative adjustment shall be approved upon a finding the applicant demonstrates all of the following standards are met:

- 1. The administrative adjustment application is consistent with the thresholds for a Type I or Type II administrative adjustment established in this section;
- 2. The administrative adjustment is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;
- 3. The administrative adjustment is either:
 - (a) Required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general;
 - (b) Supports an objective or goal from the purpose and intent statements of the zoning district where it is located; or
 - (c) Saves healthy existing trees;
- 4. The administrative adjustment will not pose a danger to the public health or safety;
- 5. Any adverse impacts will be mitigated, to the maximum extent practicable; and
- 6. The site is not subject to a series of multiple, incremental administrative adjustments that result in a reduction in development standards by the maximum allowed.

F. Conditions of Approval

Applicable (see Section 2.3.9).

G. Effect

- 1. An administrative adjustment may be requested either as a stand-alone application or in conjunction with other application(s).
- 2. If an administrative adjustment is submitted in conjunction with another application, it shall be reviewed and decided prior to the other applications with which it is submitted. (For example, if an administrative adjustment application is submitted in conjunction with a site plan application because the administrative adjustment is needed to achieve the plan for development in the site plan, the administrative adjustment application shall be reviewed and decided prior to review of the site plan application.)

H. Amendment

Applicable (see Section 2.3.12).

I. Expiration

- 1. If an administrative adjustment is associated with another permit or development approval, the expiration for the administrative adjustment shall be the same as the permit or development approval with which it is associated.
- 2. In cases where the administrative adjustment is not associated with another permit or development approval, it shall expire if the development authorized by the administrative adjustment is not completed within one year from the date of

issuance

2.4.34. DETERMINATION⁸⁹

A. Purpose

The purpose of this section is to provide a uniform mechanism for rendering a formal written determination regarding the text of this Ordinance and the boundaries or classifications on the Official Zoning Map.

B. Applicability

The Planning and Development Director is responsible for determination of all provisions of this Ordinance, including, but not limited to:

1. Determinations of the meaning of the text;
2. Determinations of the zoning district boundaries;
3. Determinations of whether an unlisted use in Table 4.1, Use Table, is comparable to a listed use or not, and should be allowed in a zoning district or prohibited in that district; and
4. Determinations of compliance with a condition of approval.

C. Determination Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

(a) Applicable (see Section 2.3.4).

(b) An application for a formal written determination may be initiated by the City Council, the PZC, any resident or landowner in the city, or any person having a contractual interest in land in the city.

3. Staff Review and Action

(a) Applicable (see Section 2.3.5). The Planning and Development Director shall review the request and make determinations in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.34.D, Determination Review Standards.

(b) Prior to rendering a determination the Planning and Development Director may consult with the City Attorney and other affected city officials.



D. Determination Review Standards

1. Zoning District Map Boundaries

⁸⁹ This is a new procedure. Sections 9-1-7, 9-1-8, and 9-1-12 of the current ordinance address the interpretation of language in the ordinance and interpretation of boundaries on the Official Zoning Map. However, there is no existing procedure where an applicant can request a formal written determination of ordinance provisions.

Determination of zoning district boundaries on the Official Zoning Map shall be in accordance with the standards in Section 3.<>, Determination of Official Map Boundaries, and consistent with the Land Use Plan, Core City Plan, and other approved area plans.

2. Unspecified Uses

Determination of whether an unspecified use is similar to a use identified in Table 4.1, Use Table, or is prohibited in a zoning district shall be based on Section 10.<>, Determination of Unlisted Uses, and consistency with the Land Use Plan, the Core City Plan, and approved area plans.

3. Text Provisions

Determination of the text and its application shall be based on the standards in Section 10.1, General Rules for Interpretation, and the following considerations:

- (a) The clear and plain meaning of the provision's wording, as defined by the meaning and significance given specific terms used in the provision—as established in Section 10.5, Definitions, and by the common and accepted usage of the term;
- (b) The intended purpose of the provision, as indicated by purpose statements, its context and consistency with surrounding and related provisions, and any legislative history related to its adoption;
- (c) The general purposes served by this Ordinance, as set forth in Section 1.3, General Purpose and Intent; and
- (d) Consistency with the Land Use Plan, Core City Plan, and approved area plans.

E. Effect

- 1. A written determination shall be binding on subsequent decisions by the Planning and Development Director or other city administrative officials in applying the same provision of this Ordinance or the Official Zoning Map in the same circumstance, unless the determination is modified in accordance with this section, or the text of this Ordinance is modified.
- 2. The Planning and Development Director shall maintain a record of written determinations that shall be available in the Planning and Development Department for public inspection, on reasonable request, during normal business hours.⁹⁰

F. Amendment

Not applicable.

G. Expiration

Not applicable.

2.4.35. EASEMENT RECONVEYANCE⁹¹

A. Purpose

The purpose of this section is to establish the procedures and standards for review of easement reconveyances, or the transfer of a recorded access, utility, drainage, conservation, or other easement held by the city, back to one or more landowners.

⁹⁰ The city is considering maintaining written interpretations in the Procedures Manual.

⁹¹ This section includes a procedure that is regularly undertaken by the city, but which is not codified in the current ordinance.

B. Applicability

This section applies to an easement or portion of an easement, held by the city that is no longer needed.

C. Easement Reconveyance Procedure

1. Pre-Application Conference

Optional (see Section 2.3.2).

2. Application Submittal and Acceptance

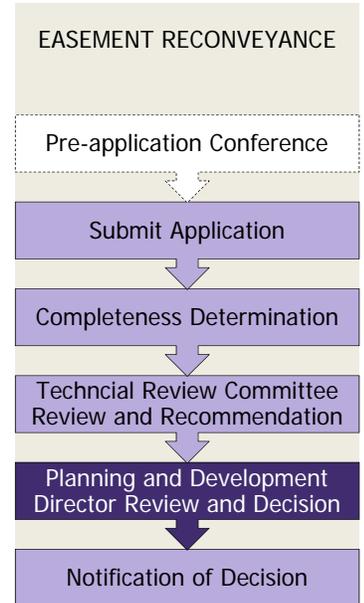
Applicable (see Section 2.3.4).

3. Staff Review and Action

(a) Applicable (see Section 2.3.5).

(b) The Planning and Development Director shall review and decide the application in accordance with Section 2.3.5.D, Applications Subject to Decision by Staff, and Section 2.4.35.D, Easement Reconveyance Review Standards.

(c) Following a decision on the reconveyance application by the Planning and Development Director, the City Attorney shall prepare a quitclaim deed that is signed by the Mayor.



D. Easement Reconveyance Review Standards

An application for an easement reconveyance shall be approved only on a finding that:

1. The easement being reconveyed is no longer required and is not likely to be needed in the future;
2. Reconveyance of all or a portion of an easement will not impair the city's ability to provide necessary public services;
3. Reconveyance will not convey a right or obligation to one landowner over another similarly situated landowner; and
4. The proposed reconveyance would be in the best interest of the public.

E. Conditions of Approval

Applicable (see Section 2.3.9).

F. Effect

Not applicable (see Section 2.3.11).

G. Amendment

Not applicable (see Section 2.3.12).

H. Expiration

Not applicable (see Section 2.3.13).

CHAPTER 8: NONCONFORMITIES

- 8.1. General Applicability8-1**
 - 8.1.1. Purpose and Scope 8-1
 - 8.1.2. Determination of Nonconformity Status 8-1
 - 8.1.3. Continuation and Minor Repairs and Maintenance Allowed 8-1
 - 8.1.4. Change of Tenancy or Ownership 8-1
- 8.2. Nonconforming Uses8-1**
 - 8.2.2. General Standards 8-1
 - 8.2.3. Standards Applied to Market Showrooms 8-3
 - 8.2.4. Standards Applied to Lands in the Main Street Zoning District 8-3
 - 8.2.5. Standards Applied to Sexually Oriented Businesses 8-3
 - 8.2.6. Standards Applied to Manufactured Dwellings 8-4
 - 8.2.7. Standards Applied to Single- and Two-family Dwellings 8-4
- 8.3. Nonconforming Structures8-5**
 - 8.3.1. Continuation and Replacement 8-5
 - 8.3.2. Expansion and Enlargement 8-6
- 8.4. Nonconforming Lots of Record8-6**
 - 8.4.1. Continuation 8-6
 - 8.4.2. Expansion or Enlargement 8-6
 - 8.4.3. Governmental Acquisition of Land 8-7
- 8.5. Nonconforming Signs8-7**
- 8.6. Nonconforming Sites8-7**

KEY CHANGES FROM CURRENT ORDINANCE:

- This Chapter largely carries forward the City's nonconforming provisions with respect to nonconforming structures, uses, lots, and signs, with minor additions such as the setback, relocation, and alteration provisions in the Nonconforming Structures Section (8.3.5 - 8.3.7) and new provisions addressing nonconforming lot area, width, or lot coverage on (pg. 8.6.)
- New sections have been added to address: general applicability, including purpose, minor repairs, authority and determination (pg. 8.1);
- Subsequent discussion is needed regarding the nonconformities in site e features section indicated with a placeholder. This section addresses the level of code conformity required during renovation and additions to existing structures with respect to site elements, such as landscaping, lighting, access and on-site circulation, parking areas, and screening of elements like outdoor storage. Additional discussion is needed regarding procedural mechanics and enforcement.

CHAPTER 8: NONCONFORMITIES⁹²

8.1. GENERAL APPLICABILITY⁹³

8.1.1. PURPOSE AND SCOPE

There exist uses of land, structures, lots of record, signs, and site features (e.g., off-street parking, landscaping, etc.) that were lawfully established before the effective date of this Ordinance or a subsequent amendment thereto, that now do not conform to standards and requirements of this Ordinance. Such uses, structures, lots, signs and site features are collectively referred to as “nonconformities.” The purpose and intent of this chapter is to allow nonconformities to continue to exist, but to regulate and limit their continued existence and expansion so as to bring them into conformity to the extent that is reasonably practicable.

8.1.2. DETERMINATION OF NONCONFORMITY STATUS

In all cases, the burden of establishing that a nonconformity lawfully exists shall be the responsibility of the owner of the land on which the alleged nonconformity is located.

8.1.3. CONTINUATION AND MINOR REPAIRS AND MAINTENANCE ALLOWED

Nonconformities are allowed to continue in accordance with the requirements of this chapter, and are encouraged to receive minor repairs and routine maintenance that are necessary to maintain the nonconformity and its surroundings in a safe condition and to protect against health hazards.

8.1.4. CHANGE OF TENANCY OR OWNERSHIP

No change of title or possession or right to possession of property involved with a nonconformity shall be construed to prevent the continuance of such nonconformity.

8.2. NONCONFORMING USES⁹⁴

- A. Nonconforming uses shall be subject to the standards in this subsection. The standards in this section are organized into provisions that apply generally to most nonconforming uses, and additional standards that apply to market showrooms, uses in the Main Street zoning district, sexually oriented businesses, manufactured dwellings, and single and two-family homes.
- B. All nonconforming uses are declared generally incompatible with the permitted uses in the district in which they are located and with the provisions of this Ordinance.

8.2.2. GENERAL STANDARDS

⁹² This chapter replaces the city's current nonconformity provisions in Section 9-4-17. These standards are organized into nonconforming lots of record, nonconforming use of land, nonconforming structures, and nonconforming signs. These draft provisions add a section on general applicability, a section on nonconforming site features, and modify the sequence of the standards.

⁹³ This is a new section that sets out the general applicability of the standards and allows for normal maintenance and repair.

⁹⁴ This section carries forward the standards in Section 9-4-17(b) with no substantive modifications.

The standards in this section shall apply to all nonconforming uses in the city except for market showrooms, uses in the Main Street zoning district, sexually oriented businesses, manufactured dwellings, and single and two-family homes.

A. Continuation

1. A nonconforming use may be continued and maintained in accordance with the standards of this section.
2. If a nonconforming use is replaced by a conforming use, the nonconforming use may not be re-established.

B. Conversion⁹⁵

1. No nonconforming use shall be changed to another nonconforming use unless the use is determined by the Planning and Development Director to be of equal or less intensity or density. In determining whether a nonconforming use is of equal or less intensity or density, the Planning and Development Director shall consider:
 - (a) Anticipated traffic of each use;
 - (b) Parking requirements of each use;
 - (c) Anticipated number of persons on the premises of each use at a time of peak demand;
 - (d) The number of dwelling units; and
 - (e) Off-site impacts of each use, such as noise, glare, dust, vibration, or smoke.
2. A nonconforming use must continue to occupy the same lot or plot of land.

C. Expansion or Enlargement

A nonconforming use may be enlarged or extended, upon approval of a special exception (see Section 2.4.8) by the BOA, to occupy a greater area of land or floor area, provided:

1. The additional square footage of the enlargement or extension does not exceed 25 percent of the square footage of the structure(s) that existed at the time the use became nonconforming;
2. The enlargement or extension occupies the same lot or plot of ground as occupied by the existing structure at the time the use became nonconforming; and
3. Neither the number of dwelling units or the intensity of the use is increased.

D. Cessation

1. Generally

- (a) If a nonconforming use of land ceases operation for a continuous period of more than 180 days, any subsequent use of the land shall be a use permitted in the district by right.
- (b) The property owner shall demonstrate that the nonconforming use has not ceased for a continuous period of more than 180 days, to maintain its nonconforming status.

2. Damage, Destruction, or Demolition

If a lawfully-established nonconforming use of land ceases because of damage, destruction, or demolition of the structure in which the use is located, the structure may be reconstructed or repaired and the use re-established within 180 days, but may not exceed the square footage existing prior to its damage or destruction.

⁹⁵ NOTE: This procedure is in the current ordinance. Does the city desire to continue to allow these kinds of conversions?

8.2.3. STANDARDS APPLIED TO MARKET SHOWROOMS

A. Continuation

A nonconforming market showroom may be continued in accordance with the standards in Section 8.2.2.A, Continuation.

B. Expansion or Enlargement

A nonconforming market showroom use may be enlarged or extended upon approval of a special exception by the BOA, to occupy a greater area of land or floor area than was occupied at the effective date of adoption or amendment of this Ordinance provided the enlargement or extension occupies the same zone lot or plot of land as occupied by the existing structure(s) at the time the use became nonconforming.

C. Cessation

1. General

- (a) If an nonconforming market showroom use of ceases for any reason for a continuous period of more than 365 days, any subsequent use of land shall be a use permitted in the district by right.
- (b) The property owner shall demonstrate that the nonconforming use has not ceased for a continuous period of more than 365 days to maintain its nonconforming status.

2. Damage, Destruction, or Demolition

If any nonconforming market showroom use ceases because of damage, destruction, or demolition of the structure in which the use is located, the structure may be reconstructed or repaired and the use re-established within 365 days, but may not exceed the square footage existing prior to its damage or destruction.

8.2.4. STANDARDS APPLIED TO LANDS IN THE MAIN STREET ZONING DISTRICT

A. Continuation

A nonconforming use located in the Main Street (MS) district may be continued in accordance with the standards in Section 8.2.2.A, Continuation.

B. Expansion or Enlargement

Nonconforming uses in the Main Street (MS) district shall not be expanded or enlarged.

C. Cessation

1. If a nonconforming use, other than a market showroom, sexually oriented business, or manufactured home, in the Main Street (MS) District ceases for any reason for a continuous period of more than 30 days, any subsequent use of land shall be a use permitted in the district by right.
2. The property owner shall demonstrate that the nonconforming use has not ceased for a continuous period of more than 365 days to maintain its nonconforming status.

8.2.5. STANDARDS APPLIED TO SEXUALLY ORIENTED BUSINESSES⁹⁶

⁹⁶ The separation requirements for these uses will be established in Chapter 4: Use Standards.

Subsection 8.2.6 Standards Applied to Manufactured Dwellings

A sexually oriented business that fails to comply with the locational requirements of this Ordinance but which was lawfully operating before September 20, 1991, shall not be in violation of this Ordinance, but shall be considered a nonconforming use subject to these standards.

A. Continuation

A nonconforming sexually oriented business may be continued in accordance with the standards in Section 8.2.2.A, Continuation.

B. Expansion or Enlargement

Nonconforming sexually oriented businesses shall not be expanded or enlarged.

C. Cessation

Any nonconforming sexually oriented business which ceases continuous operation for a period of 30 days for any reason shall be subject to all requirements of this Ordinance.

8.2.6. STANDARDS APPLIED TO MANUFACTURED DWELLINGS

A. Continuation and Replacement

1. A nonconforming manufactured dwelling that is the sole principal building on a lot, or is located within a manufactured dwelling park, may be continued or replaced, in accordance with the requirements of this section.
2. A replacement manufactured dwelling shall:
 - (a) Obtain site plan approval in accordance with Section 2.4.20, Site Plan.⁹⁷
 - (b) Meet or exceed the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction of the dwelling; and
 - (c) Meet the definition of either a Class AA or Class A manufactured dwelling as set forth in this Ordinance.
3. No manufactured dwelling constructed prior to July 1, 1976 may be used to replace a lawfully established nonconforming manufactured dwelling.

B. Expansion or Enlargement

A replacement manufactured dwelling may be larger than the existing manufactured dwelling being replaced, provided:

1. It is located in a residential or rural zoning district;
2. It is located on the same lot or space as the previous dwelling unit;
3. It meets all applicable setbacks for the district where it is located; and
4. The number of dwelling units is not increased.

C. Cessation

The rules regarding cessation of a nonconforming manufactured dwelling shall be in accordance with the standards in Section 8.2.2.D, Cessation.

8.2.7. STANDARDS APPLIED TO SINGLE- AND TWO-FAMILY DWELLINGS

A. Continuation

A lawfully-established nonconforming single- or two-family dwelling may be continued in accordance with the standards in Section 8.2.2.A, Continuation.

⁹⁷ This is a new requirement. The current ordinance is unclear on the procedure for establishment of a replacement manufactured dwelling.

B. Expansion or Enlargement

A lawfully-established single- or two-family dwelling may be enlarged or extended, subject to an approved site plan (see Section 2.4.20),⁹⁸ and compliance with the requirements in Section 8.2.2.C, Expansion and Enlargement.

C. Cessation

The rules regarding cessation of a nonconforming single-or two-family dwelling home shall be in accordance with the standards in Section 8.2.2.D, Cessation.

8.3. NONCONFORMING STRUCTURES⁹⁹

Nonconforming principal and accessory structures shall be subject to the standards in this section.

8.3.1. CONTINUATION AND REPLACEMENT¹⁰⁰**A. Continuation**

1. Normal repair and maintenance may be performed to allow the continued use of nonconforming principal and accessory structures.
2. Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building declared unsafe or unlawful by a duly authorized city official.

B. Replacement**1. After Damage in Excess of 50 Percent of Assessed Value**

In the event of damage by fire or other causes to an extent exceeding 50 percent of its assessed value prior to such damage, as established by the applicable county abstract, reconstruction of a nonconforming structure shall be permitted only in compliance with the applicable dimensional requirements of this Ordinance.

2. After Damage Less Than 50 Percent of Assessed Value

In the event of damage by fire or other causes to an extent not exceeding 50 percent of its assessed value prior to such damage, as established by the applicable county abstract, reconstruction of a nonconforming structure shall be permitted, provided it is constructed:

- (a) In accordance with an approved site plan;
- (b) In the same location and up to the same dimensions as originally existed; or
- (c) In compliance with the current dimensional requirements.

3. Relocation¹⁰¹

A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless upon relocation it conforms to the requirements of this Ordinance.

⁹⁸ NOTE: This is a new requirement. The current ordinance is unclear on the procedure for establishment of a replacement single- or two-family dwelling.

⁹⁹ This section establishes the key standards governing nonconforming structures, and carries forward the standards in Section 9-4-17C. of the current ordinance.

¹⁰⁰ This subsection carries forward Section 9-4-17(c) from the current ordinance.

¹⁰¹ This is a new section.

8.3.2. EXPANSION AND ENLARGEMENT

- A. No nonconforming structure may be enlarged or altered in any way which increases the nonconformity however, any nonconforming structure or portion thereof may be altered to decrease the degree of nonconformity.
- B. Any enlargement of a nonconforming structure shall conform to the dimensional requirements of the zoning district where it is located.

8.4. NONCONFORMING LOTS OF RECORD¹⁰²

Nonconforming lots of record shall comply with the standards in this section.

8.4.1. CONTINUATION

A. Lots with Contiguous Frontage in One Ownership

- 1. When two or more adjoining lots with contiguous frontage are under common ownership and the lots are nonconforming in terms of width or area, such lots shall be combined for development purposes to create one or more lots, each of which conforms to the applicable dimensional requirements of the district.
- 2. Groups of nonconforming lots under common ownership in an R-12 district may be recombined, but each lot proposed for development shall maintain a lot area equal to or greater than the lot area of other established lots on the same block face or in the same development.¹⁰³

B. Single Lot of Record in a Residential District

When a lot in a residential zoning district has an area or width which does not conform to the dimensional requirements of the district where it is located, but was of record on *(insert the effective date of this Ordinance)*, then a single-family dwelling may be built on the lot, subject to compliance with setback standards, to the maximum extent practicable.

C. Single Lot of Record in a Nonresidential District

When a lot in a nonresidential or mixed-use zoning district has an area or width which does not conform to the dimensional requirements of the district where it is located, but was of record on *(insert the effective date of this Ordinance)*, then development on the lot may be permitted, subject to compliance with all required setbacks, open space requirements, and all other applicable development and design standards.

D. Compliance with County Requirements

Nothing in this section shall exempt a lot from meeting the applicable County Board of Health regulations.

8.4.2. EXPANSION OR ENLARGEMENT

The boundaries, shape, or size of a nonconforming lot may be modified through a lot line adjustment, boundary adjustment, recombination, or consolidation provided it reduces the extent of the nonconformity.

¹⁰² This section carries forward the standards in Section 9-4-17(a) but does not carry forward the 80 percent lot area and lot width threshold requirements applied to development of vacant nonconforming lots. The prevailing lot width and minimum lot size standards by zoning districts will be replaced by contextual dimensional standards in Chapter 3: Zoning Districts.

¹⁰³ This is a new standard proposed for the city's consideration.

8.4.3. GOVERNMENTAL ACQUISITION OF LAND¹⁰⁴

Conforming lots subject to governmental acquisition of a portion of the lot for a public purpose that results in the lot becoming nonconforming because it no longer complies with lot area or width standards of the district shall be deemed conforming upon receipt of a zoning compliance permit (see Section 2.4.27), and compliance with the following:

- A. The development proposed complies with Table 4.1, Use Table.
- B. The development proposed complies with the dimensional standards of this Ordinance, to the maximum extent practicable;
- C. The development proposed is designed to comply with the off-street parking and landscaping standards of this Ordinance, to the maximum extent practicable;
- D. The development proposed complies with all other standards and requirements of this Ordinance; and
- E. The proposed development is designed and located in a way that is compatible with surrounding development.

8.5. NONCONFORMING SIGNS¹⁰⁵

Any sign legally in existence prior to (*insert the effective date of this Ordinance*) that does not satisfy the requirements of this Ordinance shall be deemed nonconforming and shall be subject to the standards in Section 5.<>, Nonconforming Signs.

8.6. NONCONFORMING SITES¹⁰⁶

[Placeholder]

¹⁰⁴ This section builds on Section 9-4-17(e), and specifies that governmental acquisition of a portion of a lot shall not render the lot nonconforming (even if it no longer meets the dimensional standards).

¹⁰⁵ This section carries forward the standards in Section 9-4-17(d) of the current ordinance.

¹⁰⁶ This concept was discussed in the Code Assessment, but additional discussion is needed regarding the name of the procedure, the actions subject to the requirements, the amount of activity that would trigger compliance, and the mechanics of enforcement. The city may also want to consider some of the new development standards and alternative equivalent compliance measures proposed in Module 3 before continuing with consideration of this section.

CHAPTER 9: ENFORCEMENT

9.1.	Purpose	9-1
9.2.	Compliance Required	9-1
9.3.	Violations	9-1
9.3.1.	Violations Generally	9-1
9.3.2.	Specific Violations	9-1
9.4.	Responsible Persons	9-2
9.5.	Enforcement Generally	9-2
9.5.1.	Generally	9-2
9.5.2.	Enforcement Procedure	9-4
9.6.	Remedies and Penalties	9-5
9.6.1.	Civil Penalties	9-5
9.6.2.	Denial of Permit or Certificate	9-8
9.6.3.	Conditional Permit or Temporary Certificate	9-8
9.6.4.	Stop Work Orders	9-8
9.6.5.	Revocation of Permits or Certificates	9-9
9.6.6.	Restoration of Areas Affected by Failure to Retain Sediment	9-9
9.6.7.	Criminal Penalties	9-9
9.6.8.	Injunctive Relief	9-9
9.6.9.	Order of Abatement	9-10
9.6.10.	Equitable Remedy.....	9-10
9.6.11.	Other Powers And Actions	9-10
9.6.12.	Remedies-Cumulative And Continuous.....	9-10

KEY CHANGES FROM CURRENT ORDINANCE:

This chapter incorporates the city's enforcement provisions with only minor changes:

- These provisions incorporate a new list of specific violations (pg. 9.1).
- There is a new section identifying the parties responsible for a violation of this Ordinance (pg. 9. 2).
- Enforcement provisions from the soil erosion and sedimentation control regulations are consolidated with those from the existing zoning ordinance to avoid duplication.

CHAPTER 9: ENFORCEMENT¹⁰⁷

9.1. PURPOSE¹⁰⁸

This chapter establishes procedures through which the city seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this chapter are intended to encourage the voluntary correction of violations, where possible.

9.2. COMPLIANCE REQUIRED¹⁰⁹

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the city.

9.3. VIOLATIONS¹¹⁰

9.3.1. VIOLATIONS GENERALLY

A. Failure to Comply with Ordinance or Term or Condition of Approval Constitutes Ordinance Violation

Failure to comply with a standard, requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other development approval or authorization granted in accordance with this Ordinance shall constitute a violation of this Ordinance punishable as provided in this chapter.

B. Permits or Permit Approvals only Authorize Development Approved

Permits or development approvals issued by a decision-making body or city staff authorize only the use, arrangement, location, design, density or intensity, and development set forth in such permits or development approvals.

9.3.2. SPECIFIC VIOLATIONS¹¹¹

It shall be a violation of this Ordinance to undertake any activity contrary to the provisions of this Ordinance, including but not limited to any of the following:

- A. Develop land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- B. Occupy or use land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- C. Subdivide land without first obtaining all appropriate permits or development approvals required to engage in subdivision, and complying with their terms and conditions.
- D. Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining all appropriate permits and development approvals, and complying with their terms and conditions.

¹⁰⁷ This section carries forward the provisions in Chapter 9-8, Enforcement, in the current ordinance with some minor reorganization and reformatting.

¹⁰⁸ This new section sets forth the purpose of the enforcement chapter.

¹⁰⁹ This new section states that compliance with all provisions of the Ordinance is required.

¹¹⁰ This is a new section.

¹¹¹ This section replaces and broadens the list of specific violations in Section 9-8-1 of the current ordinance.

Subsection 9.5.1 Generally

- E.** Disturb any landscaped area or vegetation required by this Ordinance.
- F.** Install, create, erect, alter, or maintain any sign without first obtaining the appropriate permits or development approvals, and complying with their terms and conditions.
- G.** Fail to remove any sign installed, created, erected, or maintained in violation of this Ordinance, or for which the permit has expired.
- H.** Fail to achieve compliance with the flood damage prevention standards in this Ordinance.
- I.** Create, expand, replace, or change any nonconformity except in compliance with this Ordinance.
- J.** Reduce or diminish the requirements for development, design, or dimensional standards below the minimum required by this Ordinance.
- K.** Increase the intensity or density of development, except in accordance with the standards of this Ordinance.
- L.** Through any act or omission, fail to comply with any other provisions, procedures, or standards as required by this Ordinance.
- M.** To continue any of the above violations, which is a separate and distinct offense.

9.4. RESPONSIBLE PERSONS¹¹²

- A.** The owner, tenant, or occupant of any land or structure, and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this chapter.
- B.** Failure of a city official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this Ordinance, or to deny the issuance of a development or land-disturbing permit, shall not relieve the property owner from responsibility for the condition or damages resulting therefrom and shall not result in the city, its officers, or agents being responsible for conditions or damages resulting therefrom.

9.5. ENFORCEMENT GENERALLY¹¹³

9.5.1. GENERALLY¹¹⁴

A. Responsibility for Enforcement

The Planning and Development Director, Engineering Services Director, and Public Services Director, as appropriate shall be responsible for enforcing the provisions of this Ordinance in accordance with the North Carolina General Statutes. Primary responsibility for enforcing the various provisions of this Ordinance is set out in in Table 9.5.1, Enforcement Responsibilities, below:

¹¹² This is a new section that states that any person who violates the ordinance shall be subject to the remedies and penalties set forth in this chapter. "Person" will be defined broadly to include both human beings and business entities (firms and corporations).

¹¹³ This section identifies those persons responsible for enforcement of the provisions of the ordinance, as well as the general enforcement procedure. It also describes the enforcement process and includes provisions for notice of violation, and procedures to deal with complaints filed by others regarding a perceived or potential violation.

¹¹⁴ This section carries forward provisions in Section 9-8-2(A) from the current ordinance, consolidating that section's provision with similar provisions carried forward from the soil erosion and sedimentation control regulations. It adds a table specifying those parts of the Ordinance for which the Planning and Development Director, Engineering Services Director, and Public Services Director are responsible for enforcing.

TABLE 9.5.1 ENFORCEMENT RESPONSIBILITIES

ACTION	PLANNING AND DEVELOPMENT DIRECTOR	ENGINEERING SERVICES DIRECTOR	PUBLIC SERVICE DIRECTOR
PERMITS			
Enforcement of Land Disturbing Permit	.	X	.
Enforcement of Flood Plain Development Permits	.	X	.
Enforcement of Certificate of Floor Elevation/Floodproofing	.	X	.
Enforcement of requirements and conditions of development approval for all other permits	X	.	.
USES			
Enforcement of spill containment for textile products	.	.	X
Enforcement of requirements and conditions of development approval for all other uses	X	.	.
DEVELOPMENT STANDARDS			
Fencing and Screening	X	.	.
Landscaping	X	.	.
Setbacks	X	.	.
Parking, Access, Stacking & Loading	X	.	.
Deviations and Modifications	X	.	.
Final Plats	.	X	.
Streets and Utilities	.	X	.
Right-of-Way, Easements, and Open Space	.	X	.
Performance Guarantees	.	X	.
Flood Damage Prevention Regulations	.	.	X
Soil Erosion and Sedimentation Control	.	.	X
Stormwater Management Inspection and Enforcement	.	.	X

B. Inspections

1. General Inspection Authority

The Planning Director Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.

2. Soil Erosion and Sedimentation Control Inspections

The Public Services Director shall periodically inspect the sites of land-disturbing activity to determine compliance with the North Carolina Sedimentation Pollution Control Act of 1973, Section 113A-50 of the North Carolina General Statutes and this Ordinance. The purpose of these inspections is to determine if development activity is being conducted in accordance with an approved plan and whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity.

3. No Interference with Authorized Inspections

No person shall refuse entry or access to any authorized representative or agent of the city who requests entry for purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties.

C. Investigations

The Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall have the power to conduct such investigations as may reasonably deemed necessary to carry out their duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity or development in response to complaints or alleged violations of this Ordinance.

D. Supporting Documentation

The Planning and Development Director, Engineering Services Director, and Public Services Director, as appropriate, shall have the power to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

9.5.2. ENFORCEMENT PROCEDURE¹¹⁵

A. Initial Notification

Upon determining that a violation of this Ordinance has occurred, the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation.

B. Notice of Violation

If the owner or occupant of the land, building, structure, sign, or use in violation fails to take prompt corrective action, the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall give the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- 1.** That the land, building, structure, sign, or use is in violation of this Ordinance;
- 2.** The nature of the violation, and citation of the section(s) of this Ordinance violated; and
- 3.** The measures necessary to remedy the violation.

C. Appeal

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, to the BOA (unless this Ordinance has specified that another board shall hear the appeal of the violation) within 15 days following the date of the Notice of Violation. The BOA, or other designated board, shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the notice of violation. In the absence of an appeal, the decision of the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall be final.

D. Notice of Decision

¹¹⁵ This section carries forward 9-8-3, Enforcement Procedure of the current ordinance.

The decision of the BOA may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

E. Failure to Comply with Order

If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law or by Section 9.6, Remedies and Penalties.

9.6. REMEDIES AND PENALTIES¹¹⁶

Any or all of the following procedures may be used to enforce the provisions of this Ordinance.

9.6.1. CIVIL PENALTIES¹¹⁷

A. General

Any person responsible under Section 9.4, Responsible Persons, for a violation of any provision of this Ordinance, the North Carolina Sedimentation Pollution Control Act of 1973, or any rule or order adopted or issued pursuant to this Ordinance, or who initiates or continues development or land-disturbing activity not in accordance with the terms, conditions, and provisions of a plan approved or required to be approved by this Ordinance (including any approved soil erosion and sedimentation control plan, where required), shall be subject to the assessment of a civil penalty under the procedures provided in this subsection.

B. Notice of Violation

- 1.** No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice.
- 2.** The notice shall describe the violation with reasonable particularity, set forth the measures necessary to achieve compliance with the subject standards or plans, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. However, no time period for compliance need be given for failure to submit a soil erosion and sedimentation control plan for approval or for obstructing, hampering, or interfering with an authorized representative while in the process of carrying out his official duties. The Notice of Violation generally required in Section 9.5.2.B, Notice of Violation, may also serve as the Notice of Violation required by this subsection if it contains the information described above.

C. Assessment of Civil Penalty

- 1.** If the violator has not completed corrective action within the time period specified in the Notice of Violation, a civil penalty may be assessed from the date of receipt of the notice of violation.
- 2.** Each day of continuing violation shall constitute a separate violation. Any person who fails to comply within the time specified, is subject to additional civil and

¹¹⁶ This section includes provisions identifying a range of penalties and remedies available to the city under North Carolina law. It carries forward Section 9-8-4, Remedies and Section 9-8-5, Civil Penalties Assessments and Procedures from the current code.

¹¹⁷ This carries forward provisions in Section 9-8-5 of the current ordinance, and consolidates similar provisions from the soil erosion and sedimentation control regulations. Some of the provisions are broken up into subsections of to make them easier to read.

criminal penalties for a continuing violation.

D. Notice of Assessment; Demand for Payment

1. Upon determining the amount of the civil penalty to be assessed under this subsection (see Section 9.6.1.F, Specific Civil Penalty Amounts), the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall make written demand for payment upon the person in violation, and shall set forth in detail a description of the violation for which the penalty has been imposed.
2. In determining the amount of the penalty, the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.
3. Notice of the assessment shall be by registered or certified mail or other means reasonably calculated to give actual notice.

E. Nonpayment

1. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the City Attorney to institute a civil action in the appropriate division of the court system for recovery of the penalty. Such civil actions must be filed within three years of the date the final decision was served on the violator.
2. If the civil penalty is not paid within the time prescribed, the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to North Carolina General Statutes Section 14-4.

F. Specific Civil Penalty Amounts

1. For Soil Erosion and Sedimentation Control Violations¹¹⁸

Civil penalties for specific violations of this section shall be assessed as follows:

(a) Grading Without Permit

\$5,000 per day for failure to secure a valid land-disturbing permit prior to conducting a land-disturbing activity for which a soil erosion and sedimentation control plan is required.

(b) Failure to Protect

\$500 per day for failure to take all reasonable measures to protect public property or private property, including lakes and/or natural watercourses, from damage caused by land-disturbing activities.

(c) Failure to Follow Plan

\$300 per day for failure to conduct a land-disturbing activity in accordance with the provisions of an approved soil erosion and sedimentation control plan.

(d) Failure to Install Devices

\$500 per day for failure, when more than one acre is disturbed (\$250 per day when less than one acre is disturbed), to install erosion and

¹¹⁸ This carries forward the civil penalties listed in the soil erosion and sedimentation control regulations.

sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.

(e) Failure to Maintain Measures

\$300 per day for failure to maintain satisfactory soil erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm.

(f) Failure to Maintain Temporary Measures

\$250 per day for failure to maintain temporary soil erosion and sedimentation control measures and facilities during the development of the site.

(g) Failure to Maintain Slopes

\$250 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate soil erosion and sedimentation control devices or structures.

(h) Failure to Cover Slopes

\$250 per day for failure, within 30 days of completion of any phase of grading, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.

(i) Failure to Plant Cover

\$250 per day for failure on a tract when more than one acre is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within 15 working days or 60 calendar days, whichever is the shorter, following completion of construction or development.

(j) Failure to Revise Plan

\$250 per day for failure to file an acceptable, revised soil erosion and sedimentation control plan after being notified of the need to do so.

(k) Failure to Maintain Buffer

\$250 per day for failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.

(l) Interference with Official Duties

\$500 per day for obstructing, hampering, or interfering with any authorized agent of the city or the Sedimentation Control Commission while in the process of carrying out his official duties.

2. For Violations of Other Parts of this Ordinance¹¹⁹

Any person who violates any provision of this Ordinance other than those in Section 9.<>, shall be subject to assessment of a civil penalty in the amount of \$25.00 for the first violation, \$50.00 for the second violation, \$100.00 for the third violation, and \$200.00 for the fourth and each succeeding violation.

¹¹⁹ NOTE: Additional discussion is needed regarding modifications to penalty amounts.

G. Appeals

An appeal of the assessment of a civil penalty may be taken to the City Council. Such appeal shall be filed in writing with the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, not more than 15 days after such receipt of written notice. The Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall forthwith transmit to the Council all records upon which the action appealed from was taken. The Council shall hold a hearing thereon and render a final decision on the penalty.

H. Use of Civil Penalties for Soil Erosion and Sedimentation Control Violations

Civil penalties collected for violations of Section 9.<> shall be used or disbursed in accordance with Section 113A-64(a) of the North Carolina General Statutes.

9.6.2. DENIAL OF PERMIT OR CERTIFICATE¹²⁰

The Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, may withhold or deny any permit, certificate, or other authorization on any land, subdivision, building, structure, sign, or use in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

9.6.3. CONDITIONAL PERMIT OR TEMPORARY CERTIFICATE¹²¹

The Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, shall condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.

9.6.4. STOP WORK ORDERS¹²²

- A.** Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate, may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with North Carolina General Statutes Section 160A-421 or the State Building Code.
- B.** Whenever there is a continuing violation of Section 6.3 Soil Erosion and Sedimentation, the Public Services Director may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Any sureties or improvement guarantees (cash, irrevocable letter of credit, bond, or equivalent surety) provided for the project may be used to stabilize the land-disturbance with ground cover in accordance with Section <>, Performance Guarantees.

¹²⁰ This details a remedy available to the city under the North Carolina statutes.

¹²¹ This details a remedy available to the city under the North Carolina statutes.

¹²² This details a remedy available to the city under the North Carolina statutes.

9.6.5. REVOCATION OF PERMITS OR CERTIFICATES¹²³

The Planning and Development Director, Engineering Services Director, or Public Services Director, as appropriate may revoke and require the return of a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

9.6.6. RESTORATION OF AREAS AFFECTED BY FAILURE TO RETAIN SEDIMENT¹²⁴

The Public Services Director may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by North Carolina General Statutes Section 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Ordinance.

9.6.7. CRIMINAL PENALTIES¹²⁵

A. Soil Erosion and Sedimentation Control Violations

Any person who knowingly or willfully violates any provision in Section 9.<> or any rule or order adopted or issued pursuant to those soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000, or both.

B. Violations of Other Parts of this Ordinance

Any violation of a provision of this Ordinance other than those in Section 9.<> shall be a misdemeanor or infraction as provided by North Carolina General Statutes Section 14-4, subject to a maximum fine of \$500.

9.6.8. INJUNCTIVE RELIEF¹²⁶

- A. Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved development plan or soil erosion and sedimentation control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the city, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation.

¹²³ This details a remedy available to the city under the North Carolina statutes.

¹²⁴ This carries forward a provision in the soil erosion and sedimentation control regulations.

¹²⁵ This carries forward provisions in Section 9-8-5 of the existing ordinance, consolidating a similar provision from the soil erosion and sedimentation control regulations

¹²⁶ This section carries forward Section 9-8-7. Expanding it to incorporate a similar, but fuller, provision in the soil erosion and sedimentation control regulations.

Subsection 9.6.9 Order of Abatement

- B.** The action shall be brought in the Superior Court of the appropriate county. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.
- C.** The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

9.6.9. ORDER OF ABATEMENT¹²⁷

- A.** In addition to an injunction, the city may apply for and the court may enter an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:
 - 1.** That buildings or other structures on the property be closed, demolished, or removed;
 - 2.** That fixtures, furniture, or other moveable property be moved or removed entirely;
 - 3.** That improvements, alterations, modifications, or repairs be made; or
 - 4.** That any other action be taken as necessary to bring the property into compliance with this Ordinance.
- B.** The City Manager may execute the Order of Abatement and will have a lien on the property in the nature of a mechanic's and material man's lien for the cost of executing the order.

9.6.10. EQUITABLE REMEDY¹²⁸

The city may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the City's application for equitable relief.

9.6.11. OTHER POWERS AND ACTIONS¹²⁹

- A. State and Common Law Remedies**

In addition to other enforcement provisions contained in this section, the City Council may exercise any and all enforcement powers granted to it by state law or common law.
- B. Previous Enforcement**

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

9.6.12. REMEDIES-CUMULATIVE AND CONTINUOUS¹³⁰

- A. Cumulative Violations**

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

¹²⁷ This states a remedy available to the city under the North Carolina statutes.

¹²⁸ This notes a general catch-all remedy available to the city.

¹²⁹ This carries forward Section 9-8-9, Other Powers and Actions from the current ordinance.

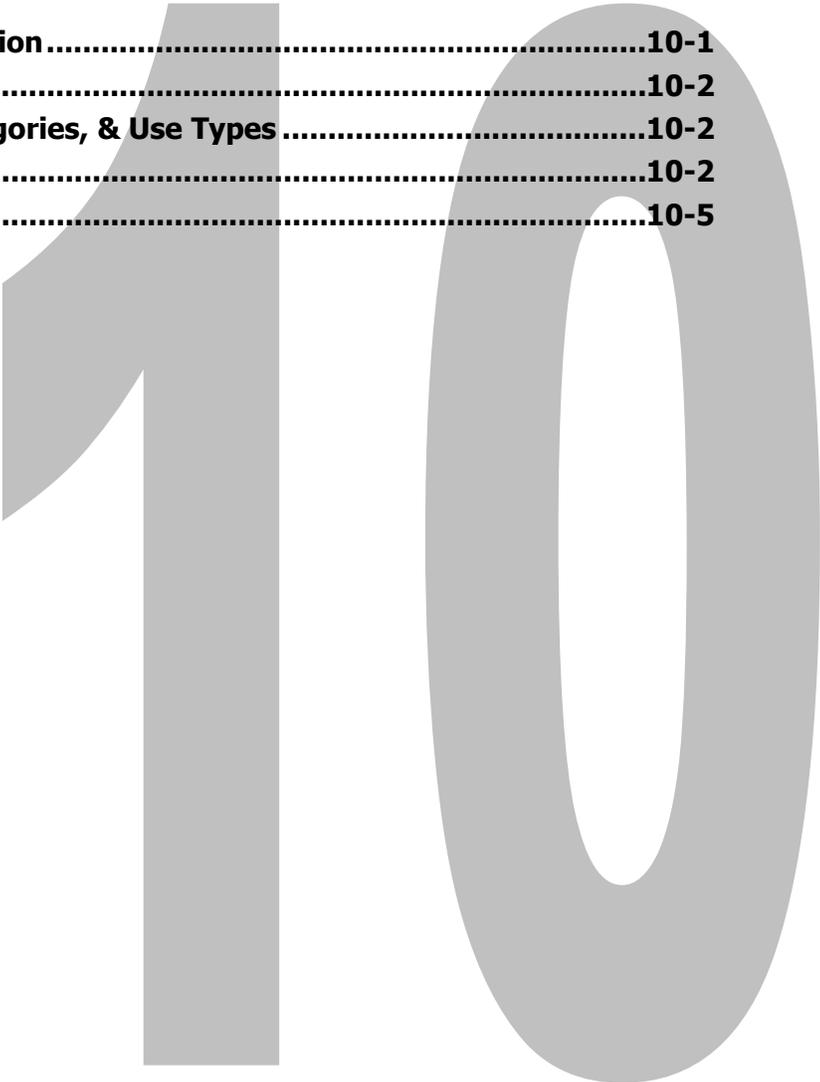
¹³⁰ This carries forward Section 9-9-10, from the current ordinance.

B. Repeat Violations

If an owner or occupant repeats the same violation within a two year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.

CHAPTER 10: DEFINITIONS AND MEASUREMENT

- 10.1. **General Rules for Interpretation.....10-1**
- 10.2. **Rules of Measurement.....10-2**
- 10.3. **Use Classifications, Use Categories, & Use Types10-2**
- 10.4. **Abbreviations.....10-2**
- 10.5. **Definitions10-5**



Commentary

This is only a portion of Chapter 10, and additional sections of the chapter will be added in subsequent modules. Current definitions are shown in yellow and new definitions are shown in white.

CHAPTER 10: DEFINITIONS AND MEASUREMENT

10.1. GENERAL RULES FOR INTERPRETATION¹³¹

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

A. Meanings and Intent

1. All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Section 1.3, General Purpose and Intent, and the specific purpose statements set forth throughout this Ordinance.
2. When a specific section of these regulations gives a different meaning than the general definition provided in Section 10.5, Definitions, the specific section's meaning and application of the term shall control.
3. Terms that are not defined are subject to their common or customary meaning.

B. Headings, Illustrations, and Text

In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

C. Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

D. Computation of Time

1. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the city, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the city. References to days are calendar days unless otherwise stated.
2. Whenever a person has the right or is required to do some act within a prescribed period of time following the service of a notice or other document via mailed delivery, three days shall be added to the prescribed period.

E. References to this Ordinance

A reference to a chapter, section, subsection, or paragraph means a chapter, section, subsection, or paragraph of this Ordinance, unless otherwise specified.

F. References to Other Regulations/Publications

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

G. Delegation of Authority

¹³¹ This section replaces Section 9-1-8 in the current ordinance.

Any act authorized by this Ordinance to be carried out by the Planning and Development Director may be delegated by the Planning and Development Director to a professional-level subordinate.

H. Technical and Non-Technical Terms

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

I. Public Officials and Agencies

All public officials, bodies, and agencies to which references are made are those of the City of High Point, unless otherwise indicated.

J. Mandatory and Discretionary Terms

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" or "should" are permissive in nature.

K. Conjunctions

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

1. "And" indicates that all connected items, conditions, provisions or events apply; and
2. "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

L. Tenses and Plurals

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

M. Term Not Defined

If a term used in any chapter of this Ordinance is not defined, the Planning and Development Director is authorized to provide a definition in accordance with Section **Error! Reference source not found.**, based upon the definitions used in accepted sources, including but not limited to, *A Planners Dictionary; A Glossary of Zoning, Development, and Planning Terms*; and *A Survey of Zoning Definitions*, published by the American Planning Association.

10.2. RULES OF MEASUREMENT

[Forthcoming in the next Module]¹³²

10.3. USE CLASSIFICATIONS, USE CATEGORIES, & USE TYPES

[Forthcoming in the next Module]

10.4. ABBREVIATIONS

¹³² Incorporate Section 9-1-7(c)&(d)

Table 10.2, Abbreviations, includes the abbreviations and their corresponding terms as used in this Ordinance.

TABLE 10.2: ABBREVIATIONS	
ABBREVIATION	ASSOCIATED TERM
BEF	Base Flood Elevation
BMP	Best Management Practice
BOA	Board of Adjustment
CTS	Cooperating Technical State
CUP	Conditional Use Permit
CZ	Conditional Rezoning
DENR	North Carolina Department of Environment and Natural Resources
DO	Development Ordinance
ETJ	Extraterritorial Jurisdiction
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
FBFM	Flood Boundary and Floodway Map
FHBM	Flood Hazard Boundary Map
FIRM	Flood Insurance Rate Map
FIS	Flood Insurance Study
FTA	Federal Telecommunications Act of 1996
HOA	Homeowners Association
HPC	Historic Preservation Commission
HPDOT	High Point Transportation Department
HQW	High Quality Water
HUD	Federal Department of Housing and Urban Development
kW	Kilowatt
LAG	Lowest Adjacent Grade
LEED	Leadership in Energy and Environmental Design
LHO	Local Historic Overlay
LOMA	Letter of Map Amendment
LOMR	Letter of Map Revision
LOMR-F	Letter of Map Revision Based on Fill
MW	Megawatt
NC	North Carolina
NCDOT	North Carolina Department of Transportation
NCGS	North Carolina General Statute
NFIP	National Flood Insurance Program
PD	Planned Development
PUD	Planned Unit Development
PZC or P & Z Commission	Planning and Zoning Commission

TABLE 10.2: ABBREVIATIONS

ABBREVIATION	ASSOCIATED TERM
ROW	Right-of-way
SFHA	Special Flood Hazard Area
SR	Secondary Road in the North Carolina Secondary Road System
SUP	Special Use Permit
TIA	Traffic Impact Analysis
TRC	Technical Review Committee
UFC	Urban Forestry Committee
US	United States of America
WSE	Water Surface Elevation

10.5. DEFINITIONS¹³³

The following are definitions for terms used in this Ordinance.

ABUTTING	The condition of two parcels of land having a common property line or boundary, including cases where two or more parcels of land adjoin at a corner, but not including cases where parcels of land are separated by a street or alley.
ACCESS	The right or ability of pedestrians, vehicles, and boats to enter and leave property.
ADJACENT	A parcel of land or development that shares all or part of a common lot line or boundary with another parcel of land, or a parcel of land that would abut another parcel of land, but for the fact a street or right-of-way divides the parcels.
AFFILIATE	A person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of another person.
APPEAL	An appeal of an administrative decision-maker's interpretation or decision reviewed and approved, approved with conditions, or denied in accordance with Section 2.4.19, Appeal.
APPLICANT	A person who has submitted a development application for review under applicable provisions of this Ordinance.
APPLICATION	The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the appropriate city department or board as part of the development review processes.
AUTHORIZED AGENT	A person with express written consent to act upon another's behalf.
BENEFICIAL USE	A type of determination made by the City Council in accordance with Section 2.4.13, Beneficial Use Determination.
BEST MANAGEMENT PRACTICE	A structural or non-structural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
BIKEWAY, GREENWAY, AND TRAILS MASTER PLAN	The Pedestrian Bikeway, Greenway, and Trails Master Plan for the City of High Point.
BUILDING PERMIT	A type of development permit reviewed and approved or denied by the Planning and Development Director issued in accordance with Section 2.4.26, Building Permit.
BY RIGHT	Land uses that are permitted in a zoning district without requiring a special use or special exception review.
CERTIFICATE OF APPROPRIATENESS	A statement issued by the city which states that the work proposed by the applicant is consistent with the architectural and historic guidelines for the historic district in which the property is located.
CERTIFICATE OF OCCUPANCY	A type of permit reviewed and approved or denied by the Building Inspector that allows occupancy of a habitable structure.
CHANGE OF USE	The change in the use of a structure or land. Change of use includes a change from one use type to another use type.
CITY	The City of High Point, North Carolina.
CLERK OF SUPERIOR COURT	Guilford County Clerk of Superior Court in High Point, North Carolina.
COMMUNITY GROWTH VISION	A document outlining the City's vision and guiding principles in order to provide an overall framework that supports the vision for the City's future.
COMPREHENSIVE TRANSPORTATION	A multimodal transportation plan adopted by the High Point Metropolitan Planning Organization that identifies transportation deficiencies and provides

¹³³ NOTE TO STAFF: Current definitions are in yellow. New definitions are in white. This is a partial list of defined terms that will evolve as additional chapters are added to the document.

Chapter 10: Definitions and Measurement**Comprehensive Transportation Plan**

PLAN	recommendations to be implemented within a 25-30 year timeframe.
CONDITIONAL ZONING	A land use tool that allows the applicant and City Council to agree on certain conditions as a pre-condition to a rezoning, in accordance with Section 2.4.5, Conditional Zoning.
CONSTRUCTION	The erection of any building or structure or any preparations (including land disturbing activities) for the same.
CONTIGUOUS	Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad, or public utility right-of-way.
CORE CITY PLAN	A land use plan that develops the vision for the city's future growth and guides development, redevelopment and revitalization of High Point's core area (defined as the downtown and surrounding neighborhoods, commercial/industrial areas and gateway corridors.)
DETERMINATION	A final decision by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals.
DEVELOPER	A person engaging in land, site, or building development.
DEVELOPMENT	Any manmade change to improved or unimproved real estate, including but not limited to: buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials.
DEVELOPMENT AGREEMENT	An agreement entered into between the city and a landowner in accordance with Section 2.4.11, Development Agreement.
DEVELOPMENT APPLICATION	The completed form or forms and all accompanying documents, exhibits, and fees required by this Ordinance to be submitted as part of the review of a request for a permit or development approval.
DWELLING, SINGLE FAMILY	A residential building containing not more than one dwelling unit to be occupied by one family. For regulatory purposes, this term does not include manufactured homes, recreational vehicles, or other forms of temporary or portable housing.
DWELLING, TWO FAMILY	A dwelling containing two individual dwelling units, sharing common vertical walls and/or horizontal floors and ceilings.
EASEMENT	A grant of one or more property rights by the property owner to, or for use by, the public, a corporation, or other entity.
EASEMENT RECONVEYANCE	A procedure by which the Planning and Development Director may approve or deny a request for an easement reconveyance in accordance with Section 2.4.35, Easement Reconveyance.
EXCLUSION MAP	A procedure by the Planning and Development Director to determine if a proposed subdivision of land is excluded from review as a preliminary plat, in accordance with Section 2.4.24, Exclusion Map.
EXPANSION	An increase in the floor area of an existing structure or building, or the increase of area of a use.
EXTRA-TERRITORIAL JURISDICTION	The legal ability of a government to exercise regulatory authority over subdivision and zoning outside the municipal limits.
FLOODPLAIN DEVELOPMENT PERMIT	A type of development permit for development within a special flood hazard area reviewed and approved or denied by the Planning Director in accordance with Section 2.4.31, Floodplain Development Permit
GATEWAY	Areas within a city that identify entrance points to the city, key destinations, and neighborhoods.
GENERAL WATERSHED AREA	All parts of a watershed, excluding the Watershed Critical Areas.
GOVERNING BODY	The City Council for the City of High Point.
GROUP DEVELOPMENT	Two or more buildings on a zone lot pursuant to a site plan approved by the Technical Review Committee, provided that an access driveway is maintained to each building in passable condition for service and emergency vehicles.
HIGH POINT LAND	The Land Use Plan for the City of High Point.

USE PLAN	
HISTORIC STRUCTURE	Any structure that is: 1) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; 2) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; 3) individually listed on a state inventory of historic places; 4) individually listed on a local inventory of historic places in communities with a Certified Local Government (CLG) Program; or 5) certified as contributing to the historic significance of a historic district designated by a community with a Certified Local Government (CLG) Program. Certified Local Government Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966.
IMPROVEMENT	The construction of buildings and the establishment of basic services and amenities associated with development, including, but not limited to streets and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, swimming pools, tennis courts, golf courses, riding stables, club houses, cabanas, marinas, docks and the like) and other similar construction or establishment.
INFILL	Development, redevelopment, and re-use of existing sites and buildings in the City's existing neighborhoods and commercial corridors.
JUST CAUSE	Legitimate cause; legal or lawful ground for action.
LAND	The earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.
LAND DISTURBING ACTIVITY	Any movement of earth or substrate, manually or mechanically, including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
LAND DISTURBING PERMIT	A type of development permit for development allows for the movement of earth or substrate, manually or mechanically, including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
LAND USE PLAN	The Land Use Plan for the High Point Planning Area.
LAND USE PLAN AMENDMENT	Amendments to the Land Use Plan for the High Point Planning Area, in accordance with the procedure set forth in Section 2.4.2, Land Use Plan Amendment.
LANDOWNER	Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner.
LOCAL GOVERNMENT	Any county, incorporated municipality, or any combination of counties and/or incorporated municipalities acting through a joint program pursuant to the provisions of this Ordinance.
LOT	A legally described piece of contiguous land that has been or may be developed as a unit. This term is synonymous with "parcel."
LOT OF RECORD	A lot that exists and is described and defined as part of a recorded subdivision or a lot otherwise recorded at the Register of Deeds before the date of the city's adoption of subdivision regulations or subsequent to that date and in accordance with city subdivision regulations applicable at the time of recordation.
MAJOR WATERSHED VARIANCE	A variance from the minimum statewide watershed protection rules that results in the relaxation by a factor greater than five percent of any density or built-upon area requirement under the high density option; any variation in the design, maintenance

	<p>or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent of any management requirement under the low density option.</p>
	<p>A dwelling that: 1) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis; 2) is a minimum of 40 feet in length and eight feet in width; 3) is constructed in accordance with the National Manufactured Home Construction and Safety Standards; and 4) is not constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One-and Two-Family Dwellings.</p> <p>a. Class AA: A manufactured home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U. S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:</p> <ol style="list-style-type: none"> 1. Is occupied only as a single family dwelling; 2. Is served by public water and sewer; 3. Has a minimum width of 16 feet; 4. Has the towing apparatus, wheels, axles, and transporting lights removed and not included in length and width measurements; 5. Has the longest axis oriented parallel to the lot frontage, unless other orientation is permitted as a Special Exception by the Board of Adjustment following a public hearing; 6. Is set up in accordance with the standards established by the North Carolina Department of Insurance and the most current version of the State of North Carolina Regulations for Manufactured/Mobile Homes. 7. Has a continuous, permanent masonry foundation or masonry curtain wall of solid brick or brick veneer, unpierced except for required ventilation and access, installed under the perimeter. 8. Has exterior siding comparable in compositions, appearance, and durability to the exterior siding commonly used in standard residential construction, consisting of one or more of the following: a) vinyl or aluminum lap siding (whose reflectivity does not exceed that of flat white paint); b) cedar or other wood siding; c) stucco siding; or d) brick or stone siding; 9. Has a roof pitch with a minimum vertical rise of three feet for each 12 feet of horizontal run; 10. Has a roof finished with a Class C or better roofing material that is commonly used in standard residential construction; 11. Has roof structures that provide an eave projection of no less than six inches, which may include a gutter; 12. Has stairs, porches, entrance platforms, ramps, and other means of entrance and exit that are installed or constructed in accordance with the standards set by the NC Building Code, attached firmly to the primary structure and anchored securely to the ground. 13. Wood stairs only in conjunction with a porch or entrance platform with a minimum of 24 square feet. 14. Do not use wood stairs at any entrance. <p>b. Class A: A manufactured home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, and that satisfies the following additional criteria:</p> <ol style="list-style-type: none"> 1. Is occupied only as a single family dwelling; 2. Is served by public water and sewer; 3. Has the towing apparatus, wheels, axles, and transporting lights removed; 4. Is set up in accordance with the standards established by the North

MANUFACTURED DWELLING

	<p>Carolina Department of Insurance and the most current version of the State of North Carolina Regulations for Manufactured/Mobile Homes; and</p> <p>5. Has stairs, porches, entrance platforms, ramps, and other means of entrance and exit that are installed or constructed in accordance with the standards set by the North Carolina Building Code.</p> <p>c. Other: Any manufactured home that does not meet the definitional criteria of a Class AA manufactured dwelling.</p>
MARKET SHOWROOM	A large space used for wholesale trade to display consumer products for sale, such as automobiles, furniture, appliances, carpet, or apparel. Showrooms are closed to the public, but open to qualified buyers and industry professionals.
MINOR WATERSHED VARIANCE	A variance from the minimum statewide watershed protection rules that results in the relaxation by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option; or relaxation by a factor up to 10 percent of any management requirement under the low density option.
MIXED-USE CENTER	A tract of land or structure developed for two or more different uses, such as, but not limited to, residential, office, retail, institutional, public, or entertainment. Such uses are functionally integrated and share vehicular use areas, ingress/egress, and pedestrian access.
NEIGHBORHOOD MEETING	A meeting conducted by an applicant on a proposed development before an application for the development permit or approval is submitted to the city.
NONCONFORMING LOT	A lot of record that that was lawful at the date on which it was established, but does not conform to the current dimensional requirements of the zoning district in which it is located.
NONCONFORMING SIGN	Any sign that was lawfully established, but does not meet the standards of this Ordinance.
NONCONFORMING SITE FEATURE	A site feature which was lawful at the date on which it was established, but does not conform to the current standards and regulations of this Ordinance.
NONCONFORMING STRUCTURE	A structure that was lawful at the date on which it was established, but does not conform to current dimensional, elevation, location, or other requirements of this Ordinance.
NONCONFORMING USE	A use which was lawful at the date on which it was established, but is now not a permitted use of that parcel or structure under this Ordinance.
NONCONFORMITY	Any land use, development, structure, or site, including any lot of record, that was legally established, but that is not presently in full compliance with the provisions of this Ordinance.
NOTICE OF VIOLATION	An initial notice indicating a violation of this Ordinance not associated with a fine.
OFFICIAL ZONING MAP	The Official Zoning Map upon which the boundaries of various zoning districts are drawn and which is an integral part of this Ordinance.
OPEN SPACE	Space suitable for passive recreation, gardens, or landscaping which may include areas left in their natural state, trails, ponds, stream banks, recreation areas, areas of excessive slopes, low-lying areas, marshland, environmentally-sensitive areas, required landscaping areas and some governmental facilities.
ORDINANCE	A legislative enactment of the City of High Point, North Carolina.
OWNER	A holder of any legal or equitable estate in the premises, whether alone or jointly with others, and whether in possession or not.
PARCEL	See "Lot."
PEDESTRIAN-ORIENTATION	Development elements, such as density, building placement, street and path connections, and mixture of uses designed with pedestrians in mind and intended to encourage and promote pedestrian activity.
PERSON	Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, or public or private institution, utility, cooperative, interstate body, or other legal entity.
PERSON	Any person who may be held responsible for a violation unless expressly provided

Chapter 10: Definitions and Measurement**Person Conducting Land Disturbing Activity**

CONDUCTING LAND DISTURBING ACTIVITY	otherwise by this Ordinance or any order adopted pursuant to this Ordinance or the Act.
PERSON RESPONSIBLE FOR LAND DISTURBING VIOLATION	As used in this Ordinance, and NCGS 113A-64, a developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity, the landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefited from it or he has failed to comply with any provision of this Ordinance or any order adopted pursuant to this Ordinance or the Act as imposes a duty upon him.
PHASED DEVELOPMENT PLAN	A plan submitted to the Planning and Development Department for the purpose of establishing a vested right for developments to be constructed in more than one phase and which contain less degree of certainty than a site specific development plan.
PLANNED UNIT DEVELOPMENT	An area of land under unified ownership or control to be developed and improved as a single entity under a Unified Development Plan in accordance with and subject to the requirements of this Ordinance.
PLANNING DIRECTOR	The Planning and Development Director of the City of High Point or a designee.
PLAT	A surveyed map or plan for a parcel of land which is to be, or has been, subdivided.
PLAT, FINAL	The final map of all or a portion of a subdivision or site, showing the boundaries and location of lots, streets, easements, and any other information required, presented for local government approval and subsequent recordation in the Office of the County Register of Deeds.
PLAT, PRELIMINARY	A map indicating the proposed layout of the subdivision showing lots, streets, water, sewer, storm drainage, and any other information required.
PRINCIPAL BUILDING FAÇADE	The entire exterior Wall of a building facing a lot line measured from the grade to the eave or the highest point of a flat or mansard roof. Facades may be on the front, side, or rear elevation of the building.
PROCEDURES MANUAL	An administrative manual, or "user's guide," that explains to development applicants and the public how the review of development applications is conducted in High Point.
PROPERTY OWNER	A person who holds legal title to land.
PUBLIC HEARING, LEGISLATIVE	A meeting open to and allowing participation and input from the public, which is advertised in advance as required by statute and concerns proposed ordinances, amendments, or other official city business.
PUBLIC HEARING, QUASI-JUDICIAL	A formal public hearing involving the legal rights of specific parties conducted by the City Council or the Board of Adjustment based on evidence and sworn testimony presented during the public hearing. Decisions made during such hearings are based upon and supported by the record developed at the hearing, and typically involve findings of fact made by the decision-making body.
PUBLIC INFRASTRUCTURE	Aspects of the public realm owned and maintained by the city or the state that serve the public at large, including streets, highways, sidewalks, curb and gutter, potable water distribution systems, sanitary sewer systems, stormwater drainage retention and conveyance features, street lights, on-street parking spaces, and similar aspects located within a public right-of-way or public easement.
PUBLIC MEETING	A meeting, open to the public and advertised as required by statute, concerning proposed city business.
PUBLIC TREE	A tree in the public right of way, in a park, or on land controlled by the city.
PUBLIC TREE CERTIFICATE	A type of permit approval by which the Urban Forestry Committee may approve or deny a request for the trimming, maintenance, planting, or removal of public trees in accordance with Section 2.4.30, Public Tree Certificate.
REDEVELOPMENT	Any proposed expansion, addition, reduction, or other alteration to an existing building, structure, or other constructed feature on a lot or site. Redevelopment also

	includes changes in use to existing buildings, as well as modifications to site features such as parking, signage, landscaping, grading, stormwater management devices, or changes to outdoor storage.
RIGHT OF WAY ENCROACHMENT	A procedure by which the City Council may approve or deny a request for a street name change in accordance with Section 2.4.18, Right-of-Way Encroachment.
RIGHT-OF-WAY	An area dedicated to public or private use for pedestrian and vehicular movement, which may also accommodate public utilities.
RURAL CHARACTER	Patterns of land use and development in which open space, the natural landscape, and vegetation predominate over the built environment.
SEXUALLY ORIENTED BUSINESS	<p>An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing. As used in this Ordinance the following definitions shall apply:</p> <ul style="list-style-type: none"> a. ADULT ARCADE (also known as "peep show") means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe "specified sexual activities" or "specified anatomical areas. b. ADULT BOOKSTORE OR ADULT VIDEO STORE means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following: <ul style="list-style-type: none"> 1. books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or 2. instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities." c. ADULT CABARET means a nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits or displays as one of its principal business purposes: <ul style="list-style-type: none"> 1. persons who appear nude or semi-nude; or 2. live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or 3. films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe "specified sexual activities "or" specified anatomical areas." d. ADULT MOTEL means a hotel, motel or similar commercial establishment that: <ul style="list-style-type: none"> 1. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities "or" specified anatomical areas" as one of its principal business purposes; or 2. offers a sleeping room for rent for a period of time that is less than 10 hours; or 3. allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours. e. ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video

	<p>cassettes, slides, or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe "specified sexual activities "or" specified anatomical areas."</p> <p>f. ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict "specified anatomical areas "or" specified sexual activities."</p> <p>g. ESCORT means a person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.</p> <p>h. ESCORT AGENCY means a person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.</p> <p>i. NUDE MODEL STUDIO means any place where a person who appears nude or semi-nude, or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the state of North Carolina or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:</p> <ol style="list-style-type: none"> 1. that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and 2. where in order to participate in a class a student must enroll at least three days in advance of the class; and 3. where no more than one nude or semi-nude model is on the premises at any one time. <p>j. NUDE or A STATE OF NUDITY means:</p> <ol style="list-style-type: none"> 1. the appearance of a human anus, male genitals, or female genitals; or 2. a state of dress which fails to opaquely cover a human anus, male genitals, or female genitals. <p>k. SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.</p> <p>l. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.</p> <p>m. SPECIFIED ANATOMICAL AREAS means human genitals in a state of sexual arousal.</p> <p>n. SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:</p> <ol style="list-style-type: none"> 1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or 2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or 3. masturbation, actual or simulated; or 4. excretory functions as part of or in connection with any of the activities
--	--

	set forth in 1. through 3. above.
SIGN PERMIT	A type of permit approval related to signage reviewed and approved or denied by the Planning and Development Director in accordance with Section 2.4.32, Sign Permit.
SITE	A lot or lots occupied or planned for occupation by a structure or a set of structures.
SITE SPECIFIC DEVELOPMENT PLAN	A plan submitted to the Department of Planning and Development for the purpose of establishing a vested right which describes with reasonable certainty the type and intensity of land use for a specific parcel or parcels of property.
SPECIAL EXCEPTION	A development use needing by the City Council in accordance with Section 2.4.8, Special Exception.
SPECIAL USE PERMIT	A permit for construction reviewed and approved, approved with conditions, or denied by the City Council in accordance with Section 2.4.7, Special Use.
STATE	The State of North Carolina.
STATE BUILDING CODE	The State Building Code for the State of North Carolina.
STATE HISTORIC PRESERVATION OFFICER	The State Historic Preservation Officer for the State of North Carolina.
STREET ABANDONMENT	A procedure by which the City Council may approve or deny a request for a street name change in accordance with Section 2.4.17, Street Abandonment.
STREET NAME AND ADDRESS ASSIGNMENT GUIDELINES AND POLICIES	A set of guidelines and policies to provide the Planning and Zoning Commission with direction when naming and assign street names and addresses.
STREET NAME CHANGE	A procedure by which the Planning and Zoning Commission may approve or deny a request for a street name change in accordance with Section 2.4.16, Street Name Change.
SUBSTANTIAL IMPROVEMENT	Any repair, reconstruction, expansion, or improvement of a structure, the cost of which exceeds 50 percent of the assessed value of a structure as determined either before the expansion or improvement begins or before the damage occurred giving rise to the repair or reconstruction. Substantial improvement does not include, however, any repair or improvement required to bring the structure into compliance with existing state or county health, sanitary, safety, or building ordinance specifications necessary to ensure safe habitation of the structure.
SUSTAINABLE DEVELOPMENT FEATURES	One or more development features voluntarily provided by an applicant or developer as a means of promoting sustainable development and/or taking advantage of available sustainable development practice incentives.
TEMPORARY USE	A use authorizing the operation of a temporary use approved, approved with conditions, or denied by the Planning and Development Director in accordance with Section 2.4.29, Temporary Use Permit.
TEXT AMENDMENT	An amendment to the language of this Ordinance approved, approved with conditions, or denied by the City Council in accordance with Section 2.4.3, Text Amendment.
TRAFFIC IMPACT ANALYSIS	A study conducted to evaluate the capacity and safety impacts on the transportation system from a proposed development and identify necessary improvements or management strategies to mitigate negative impacts. Such studies shall be performed by a licensed professional engineer in accordance with the Traffic Impact Analysis Policy adopted by the City of High Point in this ordinance.
TYPE I ADMINISTRATIVE ADJUSTMENT	A type of flexibility approval reviewed and approved or denied by the Planning and Development Director in accordance with Section 2.4.33, Type I/Type II Administrative Adjustment
TYPE II ADMINISTRATIVE	A type of flexibility permit approval reviewed and approved or denied by the Technical Review Committee in accordance with Section 2.4.33, Type I/Type II

Chapter 10: Definitions and Measurement

Type **Ii** Administrative Adjustment

ADJUSTMENT	Administrative Adjustment.
VARIANCE	Permission from the Board of Adjustment, based upon hardship or practical difficulty, to depart from the requirements of this Ordinance.
VESTED RIGHT	The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.
VOLUNTARY ANNEXATION	A procedure by which the City Council may approve or deny a petition by landowners for Annexation of their land in accordance with Section 2.4.10, Voluntary Annexation.
WATER SUPPLY WATERSHED	The entire land area contributing surface drainage to a specific point (e.g., the water supply intake.)
WATERSHED CRITICAL AREA	The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first).
WATERSHED VARIANCE	A development application reviewed and approved, approved with conditions, or denied by the Board of Adjustment in accordance with Section 2.4.15, Watershed Variance.
ZONING COMPLIANCE PERMIT	A permit reviewed and approved, approved with conditions, or denied by the Planning and Development Director in accordance with Section <u>2.4.27</u> , <u>Zoning Compliance Permit</u> .
ZONING MAP AMENDMENT	A change in the general zoning classification of land that is reviewed and approved, or denied by the City Council in accordance with Section 2.4.4, Zoning Map Amendment
ZONING MAP, OFFICIAL	The Official Zoning Map of the City of High Point, North Carolina, on which the boundaries of various zoning districts are drawn and which is an integral part of this Ordinance.

INDEX