

**ARTICLE 9  
AMENDMENTS**

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## ARTICLE 9 AMENDMENTS

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### 9-1 Amendments in General

- A. Amendments to the text of this Ordinance or to the zoning map may be made in accordance with the provisions of this Article.
- B. Conditional zoning district requests shall be made in accordance with the provisions of Section 9-7.
- C. As provided in NCGS 160D-108(d), amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) a building permit has been issued pursuant to NCGS 160D-403 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired or (ii) a vested right has been established pursuant to NCGS 160D-108 and the provisions of Section 2-26, Zoning Vested Rights and such vested right remains valid and unexpired.

*Amended June 7, 2021*

- D. The review process for an amendment to the text of this Ordinance or to the zoning map shall include:
  - 1. Planning and Zoning Department staff review;
  - 2. Planning Board review and recommendation in accordance with Section 9-3; and
  - 3. City Council review and action.

### 9-2 Initiation of Amendments

- A. Any person or organization may petition the City Council to amend the text of this Ordinance. Amendments to the zoning map may be initiated by the City Council, Planning Board, Board of Adjustment, or owner (or owner's agent) of land for which the rezoning is requested. Petitions for text amendments and rezonings shall be filed with the Zoning Administrator and shall include, among the information deemed relevant by the Zoning Administrator:
  - 1. The name, address, and phone number of the applicant;
  - 2. A metes and bounds description and a scaled map of the land affected by the amendment if a change in zoning district classification is proposed; and

3. A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this Ordinance.
- B. Petitions for amendments shall be submitted to the Zoning Administrator in accordance with a filing and fee schedule available at the Planning and Zoning Department. Such petitions shall be presented to the Zoning Administrator at least fifteen working days prior to the Planning Board meeting at which it is to be heard, not to include the day of the meeting.

### **9-3 Planning Board Review and Recommendation**

- A. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. In accordance with the provisions of NCGS 160D-604 and 160D-605, the Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.

*Amended June 7, 2021*

- B. Upon receipt of a petition for an amendment, the Zoning Administrator shall forward the request to the Planning Board for its consideration. No ordinance that amends any of the provisions of this Ordinance may be adopted until it has been referred to the Planning Board for its recommendation. In accordance with the requirements of NCGS 160D-604, the Planning Board shall be given at least 30 days in which to make a recommendation.

*Amended June 7, 2021*

- C. The Planning Board shall review the proposed amendment and submit its recommendation to the City Council. Failure of the Planning Board to submit its recommendation within the 30-day time period shall constitute a favorable recommendation.
- D. In accordance with the requirements of NCGS 160D, members of Planning Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or if the applicant is a person with whom the member has a close familial, business, or other associational relationship.

### **9-4 City Council Review and Adoption**

- A. Prior to adopting or rejecting any zoning amendment, the City Council shall, in accordance with the provisions of NCGS 160D-605, adopt a

statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Board considers the action taken to be reasonable and in the public interest. This consistency statement is not subject to judicial review.

*Amended June 7, 2021*

- B. Upon receipt of a recommendation from the Planning Board, the City Council shall review the proposed amendment at a public hearing. The public notice required for the public hearing shall be in accordance with Section 9-5.
- C. At the conclusion of a public hearing on the proposed amendment, the City Council may proceed to vote on the proposed amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- D. If no written report is received from the Planning Board within 30 days of referral of the amendment to that board, the City Council may proceed in its consideration of the amendment without the Planning Board report. The City Council is not bound by the recommendations, if any, of the Planning Board that are before it at the time it takes action on a proposed amendment.
- E. The City Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- F. Voting on amendments to this Ordinance shall proceed in the same manner as other ordinances except that in the case of receipt of a qualified protest petition, a super majority vote is required in accordance with the provisions of Section 9-10.
- G. In accordance with the requirements of NCGS 160D, a member of the City Council shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member, or if the applicant is a person with whom the member has a close familial, business, or other associational relationship.

*Amended June 7, 2021*

## **9-5 Public Hearing Requirements**

- A. No ordinance that amends any of the provisions of this Ordinance may be adopted until a public hearing has been held on such ordinance.
- B. The Zoning Administrator shall publish a notice of the public hearing on any ordinance that amends the provisions of this Ordinance once a week for two successive weeks in a newspaper having general circulation in the city. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the public

hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be.

- C. With respect to map amendments, the Zoning Administrator shall provide first class mail notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties within 300 feet of the property rezoned by the amendment. The first-class mail notice shall be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The Zoning Administrator shall also post notices of the public hearing on the property proposed to be rezoned in accordance with subsection F and take any other action deemed by the Zoning Administrator to be useful or appropriate to give notice of the public hearing.

*Amended 06/05/2017*

- D. The notice required in subsection C. shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners. In this instance, the city may elect, in lieu of the mail notice specified in subsection C., to publish a notice of the hearing once a week for 2 consecutive weeks, published for the first time not less than ten days nor more than twenty-five days before the date fixed for the public hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be. Each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection C. of this section. The person or persons mailing the notices to adjoining property owners, as defined in NCGS 160D-602, shall certify to the City Council that fact, and the certificate shall be deemed conclusive in the absence of fraud.

*Amended June 7, 2021*

- E. The notice required or authorized by this Section shall:
  1. State the date, time, and place of the public hearing;
  2. Summarize the nature and character of the proposed change;
  3. If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment;
  4. State that the full text of the amendment and maps of the area proposed to be rezoned can be obtained from the Zoning Administrator; and

5. State that substantial changes in the proposed amendment may be made following the public hearing.
- F. When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons.

## **9-6 Ultimate Issue before City Council on Amendments**

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the City Council is whether the proposed amendment advances the public health, safety or welfare. All other issues, except those issues related to a conditional zoning as delineated in Section 9-7, are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Chairman and excluded.

When considering proposed map amendments:

- A. Except for conditional zoning requests submitted in accordance with Section 9-7, the City Council shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the City Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
- B. The City Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

## **9-7 Conditional Zoning**

- A. There are circumstances in which a general zoning district designation allowing a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of this Ordinance and adopted land development plan, comprehensive plan, corridor plans, small area plans, and other land use policy documents. The rezoning process established in this Section provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to additional conditions which ensure compatibility of the proposed use with the use and enjoyment of neighboring properties. A conditional zoning district allows a particular use or uses to be established only in accordance with specified standards and conditions tailored to each individual development project. This is a voluntary rezoning procedure that is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals that may not be undertaken for some time.

- B. The review and approval process for conditional zoning petitions involves a legislative hearing and legislative decision by the City Council. The review of conditional zoning petitions shall be undertaken in accordance with the provisions of Sections 9-3 through 9-5.
- C. Property may be placed in a conditional zoning district only in response to a petition by the owners of all the property to be included. A petition for conditional zoning shall include:
  - 1. A master site plan prepared in accordance with Appendix A;
  - 2. Written supporting documentation that specifies the actual use or uses proposed for the property,
  - 3. Proposed rules, regulations, and conditions that, in addition to all predetermined requirements of this Ordinance, will govern the development and use of the property; and
  - 4. A statement analyzing the reasonableness of the proposed rezoning.
- D. Conditional zoning districts, as established in Section 3-1, B, parallel general use zoning districts. Only those land uses (including uses by right, special uses, and conditional districts) permitted in a general use zoning district to which a conditional zoning district corresponds shall be allowed. All rules, regulations, and conditions of any corresponding general district and all other requirements of this Ordinance apply to a conditional zoning district except as specifically modified by the City Council.

*Amended November 5, 2018; June 7, 2021*

- E. Community Informational Meeting

During its initial review of a conditional zoning petition, the Planning Board shall consider whether or not a community informational meeting, to be organized and conducted by the petitioner, would be beneficial to make project information available to those most likely to be impacted by the proposed zoning change. If the Planning Board concludes that a community informational meeting should be held, the petitioner shall conduct such meeting in accordance with the following provisions:

  - 1. The community informational meeting shall be held prior to the date of the next Planning Board meeting at which the petition will be reviewed.
  - 2. Written notice of such a meeting shall be given to the property owners and organizations entitled to notice as determined by policies established by the city.
  - 3. The petitioner shall file a written report of the community informational meeting with the Zoning Administrator. The petitioner's report shall include, among other things, a listing of those persons and organizations contacted about the meeting and

the manner and date of contact; the date; time and location of the meeting; a roster of the names, mailing addresses, and telephone numbers of the persons in attendance at the meeting; a summary of issues discussed at the meeting; and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting.

4. The purpose of the community informational meeting is to (i) provide specific information regarding the proposed development including but not limited to a description of the proposed use(s) of the property, the proposed density and intensity of land uses, the location and arrangement of the proposed land use(s) on the property, the proposed development schedule, and proposed regulations or conditions, in addition to those required by this Ordinance, that will govern the development and use of the property and (ii) to receive comments and input from citizens likely to be impacted by the proposed zoning change and subsequent development of the property.
5. In the event the petitioner has not held at least one meeting pursuant to this subsection, the petitioner shall file a report with the Zoning Administrator documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held.
6. The adequacy of a meeting held or report filed pursuant to this section shall be considered by the City Council but shall not be subject to judicial review.

F. Review and Approval Process

The review and approval of a petition for a conditional zoning district shall follow the same process as outlined in Sections 9-3 through 9-5 for a general use rezoning.

1. In the course of evaluating the proposed use, the City Council may request additional information deemed appropriate to provide a complete analysis of the proposal.
2. Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review applicable to general use district zoning decisions.
3. Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, land development plans, comprehensive plans, strategic plans, district plans, small area plans, corridor plans, and other land development policy documents.

G. Conditions to Approval

Specific conditions applicable to the conditional zoning districts may be proposed by the petitioner or the city or its agencies, but only those



conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements.

1. Conditions and site-specific standards imposed in a conditional zoning district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.
2. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the City Council may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the city or state, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.
3. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the City Council.
4. If for any reason any condition for approval is found to be illegal or invalid or if the petitioner should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted by the City to rezone the property to its previous zoning classification or to another zoning district.

#### H. Effect of Approval

If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's classification, the approved site plan or master plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to this Ordinance and to the zoning map.

1. If a petition is approved, only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to subsection I, 1 below provided that such change in building layout does not result in an increase in the number of structures.
2. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning map by the appropriate district designation. A conditional zoning district

shall be identified by the same designation as the underlying general district followed by the letters 'CD' [for example 'R-15 (CD)'].

3. No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and site plan for the district
4. Any violation of the approved site plan or any rules, regulations and conditions for the district shall be treated the same as any other violation of this Ordinance and shall be subject to the same remedies and penalties as any such violation.

I. Alterations to Approval

Except as provided in subsection 1, below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to this Ordinance or to the zoning map and shall be processed in accordance with the procedures in this Ordinance.

1. The Planning Director shall have the delegated authority to approve an administrative amendment to an approved site plan. The Planning Director shall have no authority to amend the conditions of approval of a petition. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan and that the change does not have a significant impact upon abutting properties. Any decision by the Planning Director must be in writing stating the grounds for approval or denial.
2. The Planning Director, however, shall always have the discretion to decline to exercise the delegated authority either because of uncertainty about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and City Council consideration is deemed appropriate under the circumstances. If the Planning Director declines to exercise this authority, the applicant may file a rezoning petition for a public hearing and City Council decision in accordance with the provisions delineated in Sections 9-2 through 9-5.
3. Any request for an administrative amendment shall be pursuant to a written letter, signed by the owners of all of the property affected by the proposed change, detailing the requested change. Upon request, the applicant shall provide any additional information as deemed necessary by the Planning Director. Upon an approval of an administrative amendment, the applicant shall file a sufficient number of copies of the revised site plan as deemed necessary by the Planning Director.
4. If the Planning Director denies approval of the requested administrative amendment, the applicant may file a rezoning petition for a public hearing and City Council decision in accordance with the provisions delineated in Sections 9-2 through 9-5.

J. Review of Approved Conditional Zoning Districts

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than one year (or two years if a vested right has been established in accordance with the provisions of Section 2-28) after the date of approval of the petition, the Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval.

1. If the Planning Board determines that substantial progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the City Council a report which may recommend that the property be rezoned to its previous zoning classification or to another zoning district. If the City Council concurs with the Planning Board's recommendation, the City Council may initiate the rezoning of the property in accordance with the procedures delineated in Sections 9-3 through 9-5.
2. If the Planning Board determines that substantial progress has been made to develop the property, the Planning Board may recommend that an extension of time be granted. The City Council, after reviewing the recommendation of the Planning Board, may approve an extension of time not to exceed an additional 12 months. Approval of such a time extension by the City Council may be made without conducting a formal public hearing.
3. If, after the expiration of the extended time period, the Planning Board determines that no substantial progress has been made and the City Council concurs with that determination, the City Council shall proceed to (i) conduct a public hearing on the matter to evaluate whether or not another extension of time is warranted or (ii) initiate the rezoning of the property to its previous zoning classification or to another zoning classification using the procedures delineated in Sections 9-3 through 9-5.
4. For purposes of this Section, examples of substantial progress may include (i) the approval of construction plans for streets, utilities, and other infrastructure; (ii) the initiation of land preparation activities such as clearing and grading; (iii) the initiation of the construction of the principal building(s); and (iv) the initiation of the construction of streets, utilities, other infrastructure, or required site amenities.

**9-8 Amendments to Flood Hazard Zoning and Flood Hazard Boundary Map**

- A. All requests for revisions of areas of special flood hazard boundaries and base flood elevations shall be reviewed and approved by the Federal Emergency Management Agency (FEMA).
- B. The existing location of any area of special flood hazard as defined in Section 5-6 may be amended in cases where:

1. A flood control project of the federal, state, city or municipal government has substantially altered the flood hazard; or
  2. Flood data indicates that the boundaries of either of the areas as shown on the official flood boundary and floodway map are no longer correct; or
  3. A private individual, corporation, firm or municipal agency has submitted plans for a channel improvement or relocation requiring an amendment to the official flood hazard boundary map.
- C. Applications for an amendment to the official flood boundary and floodway map shall be processed in the same manner as an amendment to the official zoning map. The applicant shall be responsible for submitting the proposed amendment and supporting documentation to the FEMA for its approval. The application for flood zone map amendments shall be deemed incomplete if not accompanied by a letter of approval from FEMA.
- D. All amendments to the official flood boundary map and floodway map shall be filed in accordance with NCGS 143-215.56 (c).

#### **9-9 Amendments to Watershed Protection Provisions**

The Zoning Administrator shall keep a record of all text amendments to this Ordinance which involve regulations, standards, or procedures regarding public water supply watersheds as outlined in Section 5-3. Copies of all such amendments shall, upon adoption, be provided to the Supervisor of the Classification and Standards Group, Water Quality Section, N.C. Division of Environmental Management. Under no circumstances shall an amendment be adopted which would cause this Ordinance to violate the public water supply watershed rules as adopted by the NC Environmental Management Commission.

#### **9-10 Protests to Zoning District Changes**

- A. If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the membership of the City Council.
- B. To invoke the three-fourths vote requirement, the petition must:
1. Be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100 foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the

contrary, the city may rely on the city tax listing to determine the 'owners' of potentially qualifying areas.

2. Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
  3. Be received by the Zoning Administrator in sufficient time to allow the city at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
  4. Be on a form provided by the Zoning Administrator and contain all the information requested on this form.
- C. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.

#### **9-11 Withdrawal of Amendment Petition**

The petitioner shall have the right to withdraw, in writing, an amendment petition at any time prior to a final decision by the City Council. However, petitions that have been withdrawn shall be reconsidered only as a new petition and shall adhere to the submission and review requirements of Sections 9-2 through 9-5.

#### **9-12 Petition Resubmittal**

If an amendment petition is denied by the City Council, the Zoning Administrator shall not accept a rezoning petition similar to that denied for the same property or a portion of the property within one year of the Board's action, except that the Zoning Administrator may accept a new rezoning petition within the one-year period if the Zoning Administrator determines that:

- A. There has been a significant change in the zoning district classification of an adjacent property;
- B. A new or updated land use plan that changes public policy regarding the property is adopted by the city;
- C. Public facilities such as roads, water lines, sewer lines, or other infrastructure are constructed or expanded to serve the property and enable the proposed development to be accommodated; or
- D. There has been some other significant change, other than a change in ownership of the property, which might justify waiving the one-year restriction on submitting a new petition.

#### **9-13 Notification of Decision**

Within five working days of any action by the City Council on an amendment petition, notice of such action shall be sent by first-class mail to the petitioner and

any other persons who have indicated to the Zoning Administrator, in writing, that they would like the decision mailed to them. Additionally, within 15 days after the effective date of a zoning change to commercial or industrial zones within 660 feet of the right-of-way of an interstate or primary highway, written notice by registered mail shall be sent to the Raleigh offices of the North Carolina Department of Transportation in accordance with NCGS 136-136 and 136-153.

