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DURHAM COUNTY

**Date:** February 15, 2016

**To:** Thomas J. Bonfield, City Manager
**Through:** Keith Chadwell, Deputy City Manager
**From:** Steven L. Medlin, AICP, Planning Director
**Subject:** *Unified Development Ordinance* Text Amendment, Omnibus Changes 9 (TC1500001)

**Summary.** Text amendment TC1500001 proposes necessary technical revisions and minor policy changes to various provisions of the *Unified Development Ordinance* (UDO). The amendments are grouped into five categories:

- Amendments necessary to reflect a change to the name of the State Division of Water Quality;
- Amendments to Section 2.5, Historic Preservation Commission, to remove duplicative standards with the rules of procedure or interlocal agreement as similarly done with the Board of Adjustment and Planning Commission, and Sec. 3.16, Historic District or Landmark Designation, to revise the district initiation process and remove unnecessary plan requirements;
- Amendments identified as necessary corrections, clarifications, re-organization, or other minor changes to more accurately comply with the intent of the regulations or codify interpretations of regulations;
- Amendments that reflect minor policy changes and are not solely technical in nature; and
- Additional changes to the standards for wireless communication facilities (WCFs) (paragraph 5.3.3N) as discussed through the adoption process of text amendment TC1200013.

**Recommendation.** Staff recommends approval of the attached Ordinance to amend Article 1, General; Article 2, Review Authority; Article 3, Applications and Permits; Article 4, Zoning Districts; Article 5, Use Regulations; Article 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; Article 10, Parking and Loading; Article 11, Sign Standards; Article 12, Infrastructure and Public Improvements; Article 14, Nonconformities; Article 15, Enforcement; and Article 16, Definitions, of the Unified Development Ordinance (TC1500001); and recommends approval of a consistency statement declaring the request consistent with the Durham *Comprehensive Plan* and that the request is reasonable and in the public interest. Information supporting

these recommendations is found within this memo, attached documents, and any information provided through the public hearing.

**Background.** The JCCPC has recommended that staff initiate eight comprehensive technical and minor policy change text amendments since the UDO took effect on January 1, 2006. In each case, both governing bodies adopted the proposed text amendment. This text amendment would continue the practice of making comprehensive technical and other minor policy revisions to the UDO as necessary.

On August 5, 2015 and September 2, 2015, the JCCPC provided comments and suggested minor changes to certain proposed revisions. The draft presented to the Planning Commission reflected the draft reviewed by the JCCPC at its September meeting plus any changes staff deemed necessary based upon comments and direction received by the JCCPC.

In keeping with precedent for similar text amendments and other substantial items requiring action by the Planning Commission, staff provided the draft text amendment as an informational item at the Planning Commission's October 13, 2015, meeting in order to provide commissioners adequate time to review the document for its hearing on November 10th.

The Planning Commission recommended approval, 10-1, of the text amendment on November 10, 2015. The Planning Commission determined that the Ordinance request is consistent with the adopted *Comprehensive Plan* and that the request is reasonable and in the public interest based on comments received at the public hearing and the information in the staff report. The recommendation also included some minor corrections, and the request to add specific text to the UDO regarding equitable and affordable development standards.

The Durham City Council reviewed this amendment as an information item at its January 21, 2016, work session. The Durham County Board of Commissioners will consider this amendment at its March 14, 2016, meeting.

**Issues.** The proposed amendments are listed in Attachment A to this document. Two technical corrections were made as a result of comments raised by the Planning Commission, specifically deleting the terms "metes and bounds" in paragraph 3.16.4E, Adoption of an Ordinance of Designation (page 7); and changing the term "setback" to "yards" in paragraph 5.3.3C, Clubs and Lodges (Non-profit)(page 17).

Regarding the additional request for text specifically addressing equitable and affordable development as proposed by the Coalition for Affordable Housing and Transit (CAHT) through Planning Commissioner Winders, staff has held that unless specific direction is provided by the elected officials to add this item to the current

work program, it would not be included within this set of text amendments. The Planning Department has not been directed to act upon this additional text at this time, but will consider the text when developing next year's work program.

Contrary to comments made about the simplicity of adding the proposed text (Attachment D), adding text such as this is not straight forward. Although the policies raise valid concerns, they are not technical or minor in nature, and thus require more critical review. The UDO is a regulatory document and the proposed text by CAHT is policy, not regulatory. Therefore, the UDO may not be the appropriate vehicle for the proposed text. Furthermore, the City Attorney's office has indicated that regulatory measures based upon these policies are potentially illegal and would require legislative action to enforce these policies through land use controls.

The ordinance for text amendment TC1500001 is included as Attachment A, and the amendments are grouped into the following categories:

**Part 1: Amendments necessary to reflect a change to the name of the State Division of Water Quality.** The new name is the Division of Water Resources.

**Part 2: Amendments to Section 2.5, Historic Preservation Commission, and Sec. 3.16, Historic District or Landmark Designation.** These changes are to remove duplicative standards found within the rules of procedure and interlocal agreement as similarly done with the Board of Adjustment and Planning Commission. Amendments to Sec. 3.16 are to revise the district initiation process, remove unnecessary plan requirements, and clarify landmark designation regarding property subdivision and recombination.

**Part 3: General corrections, re-organization, clarifications, and other minor changes**: These amendments are a result of routine monitoring and evaluation of current regulations and responses to issues raised by staff, the development community, or the public that do not result in any substantial change in policy. These amendments consist of:

- Technical corrections to Articles 1 and 2 regarding documents adopted by reference, zoning district transitional table, and powers and duties regarding sign permits;
- Technical corrections to Article 3 regarding notification procedures, types of site plans, and requirements for sign permits, common signage plans, temporary use permits, and certificates of appropriateness;
- Technical corrections and clarifications to Articles 4 and 5 regarding the historic district overlay and various use standards;
- Clarifications to Articles 6 and 7 regarding various district and development standards and infill standards for corner lots;

- Clarifications to tree coverage requirements in Article 8;
- Clarifications to landscape and buffer standards in Article 9;
- Clarifications to parking standards and design in Article 10;
- Clarifications to certain signage requirements in Article 11;
- Corrections to nonconforming use provisions in Article 14; and
- New or corrected definitions in Article 16.

**Part 4: Amendments that reflect minor policy changes:** These amendments have some policy implications and are not solely technical in nature. These amendments propose to:

- Develop a separate process for applications to amend the text of the Comprehensive Plan (versus the future land use map);
- No longer prohibit development agreements otherwise authorized through state statute;
- Clarify the meaning of the stacked addition symbol in planned districts in the use table;
- Allow additional density for congregate living facilities through a minor special use permit.
- Include an additional specification to home occupations regarding instructional classes;
- Include additional requirements for temporary use permits;
- Revise open space requirements;
- Revise design standards and requirements for bicycle parking;
- Revise standards for moveable signs on sidewalks;
- Revise sidewalk requirements; and
- Exempt single-family residences from nonconforming use regulations that were conforming uses prior to the adoption of the UDO.

**Part 5: WCF regulations:** During the public hearings for text amendment TC1200013, elected officials asked staff to consider some of the issues raised by citizens at the hearings. Staff has reviewed the issues raised and has proposed the following:

- Additional text regarding structural requirements, including a self-reporting structural certification requirement; and
- Clarification of unipole approval requirements.

At its September meeting, the JCCPC discussed the ability to apply the proposed five-year structural certification requirement to existing WCF towers. The current proposed text would only apply to new WCF tower applications. Staff indicated text could be added to apply the certification requirement to existing towers;

however, an amortization program would need to be initiated, and therefore additional staff and financial resources would be required. Additional concerns also arose regarding retroactively applying new requirements to facilities that have already received all necessary entitlements, and whether there would be a legal basis to support an amortization program. The JCCPC declined to direct staff to apply the five-year certification requirement to existing WCF towers.

Subsequent to the Planning Commission meeting, text regarding the proposed structural certification program has been modified since the Planning Commission to provide more clarity. The phrase "pursuant to the applicable building and safety codes" was added to provide needed specificity while maintaining the intent of the proposed requirement.

Additionally, the Durham Bicycle and Pedestrian Advisory Commission (BPAC) issued comments regard the proposed text for bicycle parking requirements (Attachment E). Specifically, BPAC requests the following:

1. "Sec. 10.4.4.D.2: Eliminate this section entirely as bicycle parking in individual dwellings is not an adequate or appropriate substitute for publicly accessible bicycle parking. Further, this provision does not guarantee accessibility to bicycle parking inside units, as it does not specify requirements for elevators, or minimum elevator size."

   *Analysis:* Allowing bicycle parking within individual dwelling units is currently allowed with no specific standards associated with it. This provision has been used in past projects and the lack of specific requirements became an issue. The proposed text provides more specific requirements if an applicant wishes to provide bicycle parking within dwelling units. The topic of removing this requirement was discussed with the JCCPC and the Planning Department was given no direction to remove the allowance. The overall bicycle parking provisions are being reconsidered through the design district updates currently underway, including this provision. Although the City Council and/or the Board of Commissioners can remove this provision now, this would be a significant policy change at this time and may be worthwhile to provide the development community with more notice and opportunity to comment.

2. "Sec. 10.4.4.D.3: Eliminate this section also, since the minimum outdoor parking requirements, as a proportion of total required bicycle parking, is grossly low. Under this provision, for instance, a 200-unit apartment complex would only have to provide 10 exterior bicycle parking spaces (5 bike racks). As the attached photographs of the current use of publicly available bicycle parking in residential developments shows, this

provision severely underestimates the current and future needs for accessible bicycle parking."

*Analysis:* Eliminating this proposed provision at this time means keeping the status quo. Current standards do not mandate a minimum amount of required bicycle parking to be publically accessible outdoors- all parking could be indoors, outdoors, or a combination of the two. The proposed text is intended to establish minimum requirements to provide some outdoor parking, similar to "short term" parking requirements other municipalities use within their development regulations. The Planning Department believes this is a good starting point and can revisit the minimum requirements if deemed necessary. No concerns from the development community have been raised by this new minimum requirement. As previously mentioned, the design district update is reconsidering many of the current parking requirements and may develop new strategies for bicycle parking in the downtown or compact design districts, and then possibly employed throughout Durham. The Planning Department will also look to re-visit the overall parking requirements within the UDO in future discussions about work plan priorities.

**Consistency with the *Comprehensive Plan*; Reasonable and in the Public Interest.**
The purpose of this and similar text amendments that have preceded this one is to update, clarify, and implement minor changes to a significant regulatory tool (the UDO) that implements various development policies found within the *Comprehensive Plan*; a reasonable undertaking and in the public interest. Although the *Comprehensive Plan* does not specifically address these omnibus text amendments, it is consistent with the Durham Comprehensive Plan Vision, which states:

- "Promote the creation, enhancement and sustainability of a healthy, livable, safe and beautiful community for all Durham citizens.
- Promote a range of choices in transportation, education, housing and economic opportunities to effectively serve a diverse community.
- Promote the identity of our distinct neighborhoods by encouraging design elements and public facilities appropriate to the character of each area.
- Protect our historic heritage, open spaces and natural resources.
- Provide opportunities for high quality growth and development."

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**Attachments:**

**Attachment A,** An Ordinance to Amend Provisions of the Unified Development Ordinance (TC1500001)
**Attachment B:** Statement of Consistency Pursuant to NCGS § 160A-383
**Attachment C:** Planning Commission Comments
**Attachment D:** CAHT Proposed Text
**Attachment E:** BPAC letter City Council and Board of Commissioners