

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: APRIL 15, 2021 AGENDA ITEM NUMBER: 7A-7C

- SUBJECT:**
- A. PUBLIC HEARING ON AN ORDINANCE AMENDMENT PROPOSED BY PLANNING AND DEVELOPMENT SERVICES STAFF TO AMEND SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCES TO ALIGN WITH THE NORTH CAROLINA GENERAL ASSEMBLY'S COMBINATION OF N.C.G.S. 153A AND N.C.G.S. 160A INTO N.C.G.S. 160D (UDO-CC10)**

 - B. ORDINANCE AMENDMENT TO AMEND SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCES TO ALIGN WITH THE NORTH CAROLINA GENERAL ASSEMBLY'S COMBINATION OF N.C.G.S. 153A AND N.C.G.S. 160A INTO N.C.G.S. 160D (UDO-CC10)**

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____ COUNTY MANAGER DATE: _____

UDO CC10
**AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE UNIFIED
DEVELOPMENT ORDINANCES TO ALIGN WITH THE GENERAL ASSEMBLY'S
COMBINATION OF CHAPTERS 153A AND 160A INTO CHAPTER 160D FOR LOCAL
PLANNING AND DEVELOPMENT REGULATION**

Be it ordained by the Board of Commissioners of Forsyth County, North Carolina that the Unified Development Ordinances is hereby amended as follows:

Section 1. All references to Chapters 153A and 160A throughout the Unified Development Ordinances (UDO) are amended to Chapter 160D with the appropriate corresponding section reference.

Section 2. Sections 3.2.2: Certificate of Appropriateness and 4.9.5: Historic (H) and Historic Overlay (HO) Districts are hereby amended by changing all references from Design Review Guideline or Guidelines to Design Review Standard or Standards consistent with NCGS 160D-947.

Section 3. Section 2.7: Vested Rights is amended to provide additional vesting options and clarification, consistent with NCGS 160D-108 and Article 10 of 160D, to read as follows:

2.7 VESTED RIGHTS

2.7.1 RIGHTS PERFECTED PRIOR TO THIS ORDINANCE

Development rights perfected prior to the effective date of this Ordinance shall be subject to the Zoning Ordinance or other legal requirements under which the rights were perfected, unless and until such vested rights are withdrawn or expire in accordance with law.

2.7.2 THE APPLICABLE GENERAL STATUTES

A. PURPOSE

1. The purpose of this section is to implement the provisions of **Section 160D of the North Carolina General Statutes related to the establishment of vested rights.** ~~the applicable Sections 160A-385.1 or 153A-344.1 of the North Carolina general Statutes pursuant to which a statutory vested right is established upon the approval of a site specific development plan. (F)~~
- ~~2. The purpose of this section is to implement the provisions of Section 160A-385.1 of the North Carolina General Statutes pursuant to which a statutory vested right is established upon the approval of a site specific development plan. (W)~~

B. DEFINITIONS

As used in this section, the following terms shall have the meaning indicated:

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

1. SITE SPECIFIC DEVELOPMENT PLAN

- a. A plan of land development submitted to the local jurisdiction for purposes of obtaining one of the following zoning or land use permits or approvals in accordance with **Section 3.2.13, Special Use Permit**, and **Section 3.2.19, Zoning Map Amendment**:
 - i. Approval of a use requiring a special use permit by the Board of Adjustment in accordance with **Section 3.2.13D, Special Use Permit Approval By Board of Adjustment Procedure**.
 - ii. Approval of a use requiring a special use permit by the Elected Body in accordance with **Section 3.2.13E, Special Use Permits Authorized By The Elected Body**.
 - iii. Approval of a one-phase special use district zoning petition or a site plan amendment to a one-phase special use district zoning petition by the Elected Body in accordance with **Section 3.2.19D, Special Use Districts**.
 - iv. Approval of a final development plan by the City-County Planning Board in accordance with **Section 3.2.19D.4, Planning Board Action**, pursuant to a two-phase special use district zoning petition approved by the Elected Body in accordance with **Section 3.2.19D.7, Decision Regarding Two-Phase Petition**.
- b. Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that does not describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

2. VESTED RIGHT

- a. A right pursuant to the applicable section of 160D of the North Carolina General Statutes related to the establishment of vested rights, ~~the applicable Sections 160A-385.1 or 153A-344.1 of the North Carolina General Statutes to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan. (F)~~
- ~~b. A right pursuant to Section 160A-385.1 of the North Carolina General Statutes to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan. (W)~~

C. ESTABLISHMENT OF VESTED RIGHT

1. A vested right shall be deemed established upon the valid approval or approval with conditions by the Elected Body in compliance with all provisions of this Ordinance or Subdivision Regulations, as applicable, of a site specific development plan, following notice and public hearing.
2. The Elected Body may approve a site specific development plan upon such terms and conditions as authorized in **Section 3.2.11, Site Plan**, **Section 3.2.15, UDO Text Amendment** and **Section 3.2.19, Zoning Map Amendment**, and upon making such findings as are required for approval by this Ordinance.
3. Notwithstanding **Section 2.7.2A, Purpose**, and **Section 2.7.2B, Definitions**, approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.
4. A site specific development plan shall be deemed approved upon the effective date of approval by the approving authority or ordinance relating thereto, and only to the extent of that approval.

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5. The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulation by the local jurisdiction, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.
6. A vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

D. APPROVAL PROCEDURES AND VESTED RIGHTS FOR SITE SPECIFIC DEVELOPMENT PLANS

1. Plans shall be submitted and processed in accordance with the procedures established by this Ordinance and shall be considered by the designated approving authority for the specific type of zoning or land use permit or approval for which application is made. A vested right is established once approval is granted by the approving authority following notice and public hearing.
2. The notice of public hearing required for vested rights shall follow the same advertisement procedure as is required by the approving authority for the specific type of zoning or land use permit or approval for which application is made.
3. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval by the approving authority or of this Ordinance.

E. DURATION

The establishment of a vested right under this section does not preclude the establishment of one or more other vested rights or vesting by common law principles. Vested rights are established as follows:

1. BUILDING PERMITS

Pursuant to G.S. 160D-1109, a building permit expires six (6) months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of twelve (12) months after work has commenced.

2. OTHER LOCAL DEVELOPMENT APPROVALS

Pursuant to G.S. 160D-403(c), unless otherwise specified by statute or local ordinance, all other local development approvals expire one (1) year after issuance unless work has substantially commenced. Expiration of a local development approval shall not affect the duration of a vested right established under this section or vested rights established under common law.

3. SITE-SPECIFIC VESTING PLANS

a. DURATION

A vested right for a site-specific vesting plan shall remain vested for a period of two (2) years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the local government. A local

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government may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding two (2) years, but not exceeding five (5) years, if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions, or other considerations. This determination shall be in the discretion of the local government and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with sub-subdivision c. of this subdivision.

b. RELATION TO BUILDING PERMITS

A right vested as provided in this subsection shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of G.S. 160D-1109 and G.S. 160D-1113 shall apply, except that the permit shall not expire or be revoked because of the running of time while a vested right under this subsection exists.

c. REQUIREMENTS

For the purposes of this subsection, a "site-specific vesting plan" means a plan submitted to a local government pursuant to this section describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by a local government. Unless otherwise expressly provided by the local government, the plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan shall be defined by the relevant development regulation, and the development approval that triggers vesting shall be so identified at the time of its approval. At a minimum, the regulation shall designate a vesting point earlier than the issuance of a building permit. In the event a local government fails to adopt a regulation setting forth what constitutes a site-specific vesting plan, any development approval shall be considered to be a site-specific vesting plan. A variance shall not constitute a site-specific vesting plan and approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

d. PROCESS FOR APPROVAL AND AMENDMENT OF SITE-SPECIFIC VESTING PLANS

If a site-specific vesting plan is based on an approval required by a local development regulation, the local government shall provide whatever notice and hearing is required

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for that underlying approval. If the duration of the underlying approval is less than two (2) years, that shall not affect the duration of the site-specific vesting plan established under this provision. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by G.S. 160D-602 shall be held. A local government may approve a site-specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by its terms and conditions will result in a forfeiture of vested rights. A local government shall not require a landowner to waive vested rights as a condition of developmental approval. A site-specific vesting plan shall be deemed approved upon the effective date of the local government's decision approving the plan or such other date as determined by the governing board upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the local government as follows:

- i. Any substantial modification must be reviewed and approved in the same manner as the original approval.
- ii. Minor modifications may be approved by staff, if such are defined and authorized by local regulation.

3. MULTIPHASE DEVELOPMENTS

A multiphase development shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multiphase development. For purposes of this subsection, "multiphase development" means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

4. DEVELOPMENT AGREEMENTS

A vested right of reasonable duration may be specified in a development agreement approved under Article 10 of Chapter 160D of the North Carolina General Statutes.

- ~~1. A right which has been vested as provided for in this section shall remain vested for a period of two (2) years.~~
- ~~2. Reserved.~~
- ~~3. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approving authority at the time the amendment or modification is approved. Following approval or approval with conditions of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.~~

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- ~~4. Upon issuance of a building permit, the expiration provisions of the applicable Sections 160A-418 or 153A-358 of the North Carolina General Statutes and the revocation provision of Sections 160A-422 or 153A-362 of the North Carolina general Statutes shall apply, except that a building permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding. (F)~~
- ~~5. Upon issuance of a building permit, the expiration provisions of Section 160A-418 of the North Carolina General Statutes and the revocation provision of Section 160A-422 of the North Carolina General Statutes shall apply, except that a building permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding. (W)~~
6. Upon the expiration or termination of the vested right in accordance with this section, the site specific development plan shall be subject to all current Unified Development Ordinances (UDO) regulations or other applicable requirements of law relating to the development of the site.

F. TERMINATION

A right that has been vested as provided in this section shall terminate upon any of the following:

1. NO BUILDING PERMIT

Termination of the applicable vesting period with respect to buildings and uses for which no valid building permit has been issued;

2. WRITTEN CONSENT

Written consent of the affected landowner;

3. THREAT TO PUBLIC HEALTH OR SAFETY

Findings by the Elected Body, by ordinance, after notice and a public hearing, that natural or ~~constructed~~ **man-made** hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the ~~site specific development plan~~ **approved vested plan**;

4. COMPENSATION

Compensation to the affected landowner 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's fees incurred after approval by the local jurisdiction, together with interest as is **provided in G.S. 160D-106** ~~thereon at the legal rate until paid~~. Compensation shall not include any diminution in the value of the property which is caused by such action;

5. MISREPRESENTATION

Findings by the Elected Body, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Elected Body of the site specific development plan; or

6. STATE OR FEDERAL LAW

Enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the Elected Body may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance, after notice and a hearing.

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G. AMENDMENTS

1. Minor changes, consistent with **Section 3.2.11E.5, Minor Changes**, and pursuant to any related resolutions, may be approved by Planning Staff.
2. All other amendments to a site specific development plan may be approved by the Elected Body as provided in **Section 3.2.19D.11, Amendment**.
3. Prior to the issuance of a building permit for the subject site, the Elected Body in the case of amendments, or the Planning staff in the case of minor changes, must approve, with or without conditions, any amendments to the site specific development plan.

H. LIMITATIONS

1. Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to Sections ~~160A-385.1~~ or ~~153A-344.1~~ **160D-108** of the North Carolina General Statutes. (F)
2. *Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to Section ~~160A-385.1~~ **160D-108** of the North Carolina General Statutes. (W)*

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Section 4. Section 3.1.1: Application Submittal is hereby amended by adding a provision clarifying how development applications are to be submitted for pending jurisdiction changes, to read as follows:

3.1 STANDARD REVIEW PROCEDURES

3.1.1 APPLICATION SUBMITTAL

B. PENDING JURISDICTION

After consideration of a change in local government jurisdiction has been formally proposed, the local government that is potentially receiving jurisdiction may receive and process proposals to adopt development regulations and any application for development approvals that would be required in that local government if the jurisdiction is changed. No final decisions shall be made on any development approval prior to the actual transfer of jurisdiction. Acceptance of jurisdiction, adoption of development regulations, and decisions on development approvals may be made concurrently and may have a common effective date.

Section 5. Section 3.2.4: Exempt Plat is hereby amended to change the definition of Subdivision to be consistent with NCGS 160D-802.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.4 EXEMPT SUBDIVISION

A. DEFINITION

A subdivision exempted by State law or court judgments is a division of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of a gift, sale, or building development, whether immediate or future. All lots must comply with the size and area requirements of this Ordinance or any other applicable local or State land regulatory ordinances and meet any one of the following definitions:

1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased **and the resultant lots are equal to or exceed the standards of the local government subdivision regulations;**
2. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;
3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation corridors. ~~The transfer of pieces of property between developed lots where the transfer of property does not create a substandard lot or any setback violations on either lot. (These subdivisions are not required to comply with the size and area requirements in Chapter 4: Zoning Districts, nor the provisions in **Section 3.2.4B, Approval Process, and Section 3.2.4C, Application Requirements.**~~

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4. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no public or private street right-of-way dedication is involved **and the resultant lots are equal to or exceed the standards of the local government subdivision regulations**; or
5. ~~Lots are created by or pursuant to an order or judgment of a court of competent jurisdiction.~~ **The division of a tract into parcels in accordance with the terms of a probated will or in accordance with interstate succession under Chapter 29 of the General Statutes.**

Section 6. Section 3.2.5: Final Plat is hereby amended to change the maximum surety amount for final plat bonding.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.5 FINAL PLAT

6. SURETY BOND

- a. The developer or design engineer shall, based upon the approved infrastructure plans and in accordance with the Infrastructure Development Standards, prepare a detailed, unit price cost estimate to complete the approved infrastructure for submittal to the holder of the surety for review and approval.
- b. To this approved estimate shall be added a ~~minimum fifty percent (50%)~~ **maximum twenty-five percent (25%)** contingency plus an amount estimated by the City Engineer to reimburse the City for its administrative costs to process the completion of the approved infrastructure.
- c. The amount of surety posted shall not be less than the sum of the estimated infrastructure costs, the contingency amount, and the estimated administrative enumerated above.

Section 7. Section 3.2.8: Minor Subdivision is hereby amended to change the definition of Subdivision to be consistent with NCGS 160D-802.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.8 MINOR SUBDIVISION

A. DEFINITION

A minor subdivision shall mean all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of a gift, sale, or building development, whether immediate or future. All lots must comply with the lot size and area requirements of this Ordinance or any other applicable local or State land regulatory ordinances and meet any one of the following criteria:

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1. Is a division of land where the entire area is greater than two (2) acres into not more than a total of three (3) lots, where no street right-of-way dedication is involved (see exception for industrial and commercial subdivisions in **Section 7.3.3, Private Street Subdivisions**);
2. Is created by a private access easement established in compliance with this Ordinance and consists of no more than a total of three (3) lots per tract which do not front on a public street (see exception for industrial and commercial subdivisions in **Section 7.3.3, Private Street Subdivisions**); or
3. Is created by lots all of which front on an existing public street, provided that the subdivision would not impair ingress and egress to or from the rear or side of the subject tract or any adjacent property.
4. All lots which front on a public street shall not be included in the provisions of **Section 3.2.8A.2**.
5. Lots which are approved must front on a public street with right-of-way which meets the standards of the North Carolina Department of Transportation and/or the applicable jurisdiction.
6. Any portion of the lot lying within the required public street right-of-way must be quitclaimed, conveyed, and dedicated as public right-of-way before receiving Planning staff approval.
7. The Planning staff can only require the dedication of standard right-of-way. Additional right-of-way for future widening of roads cannot be required.
8. Only a plat is required for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:
 - a. The tract or parcel to be divided is/was not exempted under Section 3.2.4;
 - b. No part of the tract or parcel to be divided has been divided under this subsection in the ten (10) years prior to division;
 - c. The entire area of the tract or parcel to be divided is greater than five (5) acres;
 - d. After division, no more than three (3) lots result from the division; and
 - e. After division, all resultant lots comply with all of the following:
 - i. All lot dimension size requirements of the applicable land use regulations, if any.
 - ii. The use of the lots is in conformity with applicable zoning requirements, if any.
 - iii. A permanent means of ingress and egress is recorded for each lot through a private access easement in compliance with the Ordinance.

Section 8. Section 3.2.13: Special Use Permit is hereby amended to remove the Verified Motion procedure for the City and replace it with provisions that allow written comments to be submitted to the clerk to the City Council and Board of Commissioners for Elected Body Special Use Permits. The clerk may only forward the names and addresses of those making comments to the Elected Body.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

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3.2.13 SPECIAL USE PERMIT

E. SPECIAL USE PERMITS AUTHORIZED BY THE ELECTED BODY

4. ~~SUBMISSION OF A VERIFIED MOTION BY PROPONENTS AND OPPONENTS OF THE SPECIAL USE PERMIT (W)~~

- ~~a. At least seven (7) days before the Elected Body's consideration of a request for a special use permit, the proponents and the opponents may submit to the secretary's office a written verified motion setting forth the basis for supporting or objecting to the issuance of the requested special use permit, which basis must be germane to the four findings that the Elected Body must make in the affirmative before issuing a special use permit pursuant to **Section 3.2.13E.6, Required Findings**.~~
- ~~b. The verified motion will be included in the Elected Body's agenda package for the item. The person(s) submitting the motion must be present and available to answer questions at the public hearing scheduled for the consideration of the request for a special use permit. If the person(s) filing the verified motion does not appear at the scheduled hearing, the Elected Body may refrain from considering said verified motion, but in no case shall the Elected Body base its findings solely on the verified motion.~~
- ~~c. Any motion submitted after the seven (7) day time period will be returned to the person filing the same for presentation at the public hearing, if such is desired.~~

SUBMISSION OF WRITTEN COMMENTS

- a. At least two (2) days before the Elected Body's proposed vote on a request for a special use permit, any resident or property owner in the local government's jurisdiction may submit a written statement to the clerk's office regarding the proposed special use permit. The clerk shall provide only the names and addresses of the individuals providing written comment to the Elected Body, and the provision of such names and addresses to all members of the Elected Body shall not disqualify any member of the Elected Body from voting.

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Section 9. Section 3.2.15: UDO Text Amendment is hereby amended to clarify the newspaper notice requirement.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.15 UDO TEXT AMENDMENT

A. GENERAL PROCEDURES

3. NOTICE

- ~~a. A notice of each public hearing shall be given once in a newspaper of general circulation in the adopting jurisdiction, the publication of said notice being not less than ten (10) days prior to the date fixed for the hearing. (W)~~
- ~~b. A notice of each public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper of general circulation in the adopting jurisdiction, the first publication of said notice being not less than ten (10) days prior to the date fixed for the hearing. (F)~~
- a. A notice of each public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper of general circulation in the adopting jurisdiction, the first publication of said notice being not less than ten (10) days prior to the date fixed for the hearing.

Section 10. Section 3.2.15: Zoning Map Amendment is hereby amended to provide for written comments to be submitted to the Elected Body by creating a new subsection.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.15 UDO TEXT AMENDMENT

A. GENERAL PROCEDURES

~~11. SUBMISSION OF WRITTEN STATEMENTS (W)~~

~~The Unified Development Ordinances may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the City submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the City Secretary at least two (2) business days prior to the proposed vote on such change, the City Secretary shall deliver such written statement to the City Council.~~

11. SUBMISSION OF WRITTEN STATEMENTS

The Unified Development Ordinances may from time to time be amended, supplemented, changed, modified, or repealed. Any citizen may submit written comments on the proposed action. If the written comments are submitted to the clerk to the board at least two (2) business days prior to the proposed vote on such change/action, the clerk to the board shall deliver such written statement to the governing board prior to or at the hearing.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

Section 11. Section 3.2.19: Zoning Map Amendment is hereby amended to clarify the newspaper notice requirement.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.19 ZONING MAP AMENDMENT

A. GENERAL USE DISTRICTS

1. GENERAL PROCEDURES

c. NOTICE

- ~~(i) — A notice of each public hearing shall be given once in a newspaper of general circulation in the adopting jurisdiction, the publication of said notice being not less than ten (10) days prior to the date fixed for the hearing. (M)~~
- ~~(ii) — A notice of each public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper of general circulation in the adopting jurisdiction, the first publication of said notice being not less than ten (10) days prior to the date fixed for the hearing. (F)~~

A notice of each public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper of general circulation in the adopting jurisdiction, the first publication of said notice being not less than ten (10) days prior to the date fixed for the hearing.

Section 12. Section 3.2.19: Zoning Map Amendment is hereby amended to expand the conflict of interest provisions per NCGS 160D-109 for the Elected Body.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.19 ZONING MAP AMENDMENT

A. GENERAL USE DISTRICTS

13. ELECTED BODY PUBLIC HEARING

- c. Pursuant to the provisions of NCGS 160D-109, A a member of the Elected Body shall not vote on any zoning map amendment or development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Further, a member of the Elected Body shall not vote on any zoning map amendment or development regulation if the landowner of the property subject to the approval has a close familial, business or other associational relationship with the member.

Section 13. Section 3.2.19: Zoning Map Amendment is hereby amended to provide for written comments to be submitted to the Elected Body by creating a new subsection.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.19 ZONING MAP AMENDMENT

A. GENERAL USE DISTRICTS

17. WRITTEN COMMENTS

Any citizen may submit written comments on the proposed action. If the written comments are submitted to the clerk to the board at least two (2) business days prior to the proposed vote on such change/action, the clerk to the board shall deliver such written statement to the governing board prior to or at the hearing.

Section 14. Section 3.2.19: Zoning Map Amendment is hereby amended to codify the existing staff change authorization of the City and County into the ordinance.

3.2 SPECIFIC DEVELOPMENT APPLICATIONS

3.2.19 ZONING MAP AMENDMENT

D. SPECIAL USE DISTRICTS

12. MINOR CHANGES

- a. Each Elected Body may, by resolution, allow the Planning staff to grant minor changes to site plans and special use district permit conditions after the site plans and conditions have been approved by the Elected Body.
- b. Such resolution may include authority for staff to make minor changes as consistent with law and the intent of the original site plan or conditions and which were not the subject of controversy during any public hearing or meeting. In no case shall additional uses or additional density be granted through the minor change process.
- c. Planning staff shall be authorized to allow minor changes to approved site plans and special use conditions with regard to the following when, in its judgment, such changes are in keeping with the intent of the Board of Commissioners in approving the site plan and/or conditions:
 - (1) Location(s) of buildings, fences, walls, planting and outside lighting;
 - (2) Building orientation;
 - (3) Building internal offsets;
 - (4) The number of parking spaces, so long as the number of spaces is not less than required by the Ordinance;
 - (5) Internal driveway and street configuration; and
 - (6) The number of units per building, so long as the overall density of the project is not increased.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

In no case shall the location of external access points, the number or type of recreation facilities, the setbacks of buildings to external property lines, the location of bufferyards, or the number of overall buildings be changed except by amendment to the site plan by the Board of Commissioners. (F)

- d. *Planning staff shall be authorized to modify, amend or eliminate site plan elements and special use district permit conditions when, in its judgment, such amendment or elimination is consistent with the basic intent and concept of development exhibited in the site plan or special use permit conditions originally approved by City Council. (W)*

Section 15. Section 4.1.4: Dimensional Requirements is hereby amended by adding an additional height exemption for Amateur Radio Towers consistent with NCGS 160D-905, to read as follows:

4.1 INTRODUCTORY PROVISIONS

4.1.4 DIMENSIONAL REQUIREMENTS

C. ADDITIONAL STANDARDS

The general dimensional requirements for each zoning district cited in this section are subject to the following additional provisions.

1. STRUCTURES PERMITTED ABOVE HEIGHT LIMITS

Except as otherwise prohibited by the AO District (**Section 4.9.4, AO Airport Overlay District**), the height limitations for buildings in the zoning districts listed in **Section 4.4, General Zoning Districts Established**, shall not apply to the following structures:

- a. Buildings used in support of agricultural operations;
- b. Chimneys, unoccupiable steeples, spires, flagpoles, cupolas, roof venting pipes, and freestanding rooftop mechanical equipment (including unenclosed screening);
- c. Transmission towers;
- d. Water towers, observation towers, silos, and power transmission towers;
- e. Mixing plants, and screening or loading towers for sand or rock;~~and~~
- f. Derricks and conveyors; **and**
- g. **Amateur radio antennas (up to a maximum height of 90 feet).**

Section 16. Section 4.3.2: Interpretation is hereby amended by adding a provision clarifying potential remedies for property with split jurisdiction, to read as follows:

4.3 OFFICIAL ZONING MAP

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

4.3.2 INTERPRETATION

D. SPLIT JURISDICTION

If a parcel of land lies within the planning and development regulation jurisdiction of more than one local government, for the purposes of this Chapter, the local governments may, by mutual agreement pursuant to Article 20 of Chapter 160A of the General Statutes and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction under this Chapter for the entire parcel to any one of those local governments. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other nonregulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded with the register of deeds in the county where the property is located within 14 days of the adoption of the last required resolution.

Section 17. Section 4.9.2: Overlay and Special Purpose Districts is hereby amended to clarify that Neighborhood Conservation Overlay (NCO) conditions and standards are limited by NCGS 160D-702.

4.9 OVERLAY AND SPECIAL PURPOSE DISTRICTS

4.9.2 NCO NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT

4. STANDARDS FOR DEVELOPMENT WITHIN THE NCO DISTRICT

a. CONSERVATION STANDARDS

- i. All development within the NCO District shall be subject to the conservation standards contained in the applicable Neighborhood Conservation Overlay District.
- ii. These conservation standards may be more stringent or less stringent than the regulations of the underlying zone; in the event of any conflict, the neighborhood conservation standard shall apply.
- iii. The conservation standards shall be objective standards and may regulate only the following: Dimensional requirements;
 1. Parking requirements;
 2. Signage;
 3. Lighting;
 4. Vehicular access;
 5. Location of exterior entrances and stairways;
 6. Roof shape;
 7. Building orientation and scale;
 8. Outdoor storage; and
 9. Location and screening of utilities.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

iv. No proposed conservation standard shall conflict with the provisions of NCGS 160D-702.

Section 18. Section 5.2.92: Transmission Tower (W) is hereby amended by adding the NCGS reference for small wireless facility collocation allowances consistent with NCGS 160D-930-938, to read as follows:

5.2 USE-SPECIFIC STANDARDS

5.2.92 TRANSMISSION TOWER (W)

I. COLLOCATION

6. COLLOCATION OF SMALL WIRELESS FACILITIES

Collocation of small wireless facilities shall be defined in conformance with federal and state law, including the standards defined in Section 160D 930-938 of the North Carolina General Statutes.

Section 19. Section 5.2.93: Transmission Tower (F) is hereby amended by adding the NCGS reference for small wireless facility collocation allowances consistent with NCGS 160D-930-938, to read as follows:

5.2 USE-SPECIFIC STANDARDS

5.2.93 TRANSMISSION TOWER (F)

I. COLLOCATION

6. COLLOCATION OF SMALL WIRELESS FACILITIES

Collocation of small wireless facilities shall be defined in conformance with federal and state law, including the standards defined in Section 160D 930-938 of the North Carolina General Statutes.

Section 20. Section 5.4.2: Temporary Uses Permitted is hereby amended by adding an additional temporary use for health care structures consistent with NCGS 160D-915, to read as follows:

5.4 TEMPORARY USES AND STRUCTURES

5.4.2 TEMPORARY USES PERMITTED

If requirements of this Ordinance, the Public Health Department, and other applicable laws are met, customary temporary uses shall be permitted, including but not limited to the following:

N. TEMPORARY HEALTH CARE STRUCTURES

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

1. The following definitions apply in this section:
 - a. **ACTIVITIES OF DAILY LIVING**
Bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
 - b. **CAREGIVER**
An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first- or second-degree relative of the mentally or physically impaired person for whom the individual is caring.
 - c. **FIRST- OR SECOND-DEGREE RELATIVE**
A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.
 - d. **MENTALLY OR PHYSICALLY IMPAIRED PERSON**
A person who is a resident of this State and who requires assistance with two or more activities of daily living as certified in writing by a physician licensed to practice in this State.
 - e. **TEMPORARY HEALTH CARE STRUCTURE**
A transportable residential structure providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that
 - i. is primarily assembled at a location other than its site of installation;
 - ii. is limited to one occupant who shall be the mentally or physically impaired person;
 - iii. has no more than 300 gross square feet; and
 - iv. complies with applicable provisions of the State Building Code and G.S. 143-139.1(b).
2. Temporary health care structures occupied by a caregiver on property owned or occupied by a mentally or physically impaired person or a temporary health care structure occupied by a mentally or physically impaired person on property owned or occupied by the caregiver are permitted as a temporary use.
3. Only one (1) temporary health care structure shall be allowed on a zoning lot.
4. The temporary health care structures must be removed within sixty (60) days following the time the mentally or physically impaired person is no longer receiving or in need of assistance provided for in this subsection.
5. Placing the temporary health care structure on a permanent foundation shall not be required or permitted.

Section 21. Section 6.5.1: Winston-Salem Sign Regulations (W) is hereby amended by adding that fence wrap bearing the name of the construction company(ies) working on a construction project are exempt from signage regulations consistent with NCGS 160D-908, to read as follows:

6.5 SIGNAGE

E. SIGNS ALLOWED IN ANY DISTRICT WITHOUT A ZONING PERMIT

14. BUILDER SIGN

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

- a. *An on-premises sign indicating the builder(s) of individual residential units, either within the context of a larger development project or as an individually constructed unit, shall be permitted.*
- b. *A builder sign shall have a maximum area of six (6) square feet and a maximum height of six (6) feet in all zoning districts.*
- c. *A builder sign shall be removed upon sale of the property it is associated with.*
- d. **Fence wraps displaying the name(s) and logo(s) of the companies involved in the construction project affixed to the perimeter fencing at a construction site until the certificate of occupancy is issued for the final portion of any construction at that site.**

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

Section 22. Section 6.5.2: Forsyth County Signage Standards (F) is hereby amended by adding that fence wrap bearing the name of the construction company(ies) working on a construction project are exempt from signage regulations consistent with NCGS 160D-908, to read as follows:

6.5 SIGNAGE

B. PERMITTED SIGNS

m. BUILDER SIGN

- i. An on-premises sign indicating the builder(s) of individual residential units, either within the context of a larger development project or as an individually constructed unit, shall be permitted.
- ii. A builder sign shall have a maximum area of six (6) square feet and a maximum height of six (6) feet in all zoning districts.
- iii. A builder sign shall be removed upon sale of the property it is associated with.
- iv. Fence wraps displaying the name(s) and logo(s) of the companies involved in the construction project affixed to the perimeter fencing at a construction site until the certificate of occupancy is issued for the final portion of any construction at that site.

Section 23. Section 7.1.6: Penalties for Transferring Lots in Unapproved Subdivisions is hereby amended to add the withholding or building permits as an additional penalty.

7.1 GENERAL PROVISIONS AND ADMINISTRATION

7.1.6 PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS

- A.** Any owner or agent of any owner of land located within a subdivision controlled under any section of these regulations who transfers or sells land by reference to, or exhibition of, or by other use of a deeded parcel of land or parcel of land on a plat before the deed or plat has been approved by the Planning Board or Planning staff in accordance with these regulations, shall forfeit and pay a penalty as provided by law for each lot which has been duly recorded or filed in the office of the Register of Deeds.
- B.** The description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or remedies herein provided.
- C.** Any jurisdiction exercising subdivision authority may enjoin the transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover the penalty by civil action in any court of competent jurisdiction.
- D.** Building permits required pursuant to G.S. 160D-1110 may be denied for lots that have been illegally subdivided.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

Section 24. Section 7.2: Subdivisions Exempted by State Law or Court Judgments is hereby amended to make this section consistent with NCGS 160D-802.

7.2 SUBDIVISIONS EXEMPTED BY STATE LAW OR COURT JUDGEMENTS

7.2.1 DEFINITION

- A.** A subdivision exempted by State law or court judgments is a division of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of a gift, sale, or building development, whether immediate or future.
- B.** All lots must comply with the size and area requirements of this Ordinance or any other applicable local or State land regulatory ordinances and meet any one of the following definitions:
 - 1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased **and the resultant lots are equal to or exceed the standards of the local government subdivision regulations;**
 - 2. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;
 - 3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation corridors. The transfer of pieces of property between developed lots where the transfer of property does not create a substandard lot or any setback violations on either lot. (These subdivisions are not required to comply with the size and area requirements of Chapter 4: Zoning Districts, nor the provisions in **Section 3.2.4B, Approval Process**, and **Section 3.2.4C, Application Requirements**.)
 - 4. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no public or private street right-of-way dedication is involved **and the resultant lots are equal to or exceed the standards of the local government subdivision regulations;** or
 - 5. ~~The creation of lots by or pursuant to an order or judgment of a court of competent jurisdiction~~ **The division of a tract into parcels in accordance with the terms of a probated will or in accordance with interstate succession under Chapter 29 of the General Statutes.**

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

Section 25. Section 10.1.2: City-County Joint Planning Board is hereby amended to expand the conflict of interest provisions per NCGS 160D-109 for the Planning Board.

10.1 AUTHORITIES

10.1.2 CITY-COUNTY JOINT PLANNING BOARD

3. CONFLICT OF INTEREST

Pursuant to the provisions of NCGS 160D-109, Planning Board members shall not vote on items decided by the Planning Board or on zoning map and text amendment recommendations forwarded to the Elected Body where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member(s). Further, Planning Board members shall not vote on items decided by the Planning Board or any zoning map amendment recommendation forwarded to the Elected Body if the landowner of the property subject to the approval or rezoning petition recommendation has a close familial, business or other associational relationship with the Planning Board member.

Section 26. Section 10.1.3: Board of Adjustment is hereby amended to clarify that when the Board of Adjustment hears appeals of Housing Decisions and the Historic Resources Commission, among others, that all applicable application procedures and fees must be paid.

10.1 AUTHORITIES

10.1.3 BOARD OF ADJUSTMENT

3. APPEALS AND INTERPRETATIONS

a. GENERAL

- i. The Board of Adjustment shall hear and pass upon appeals from and shall review any decision made by the Director of Inspections or a designee.
- ii. The Board of Adjustment shall also hear and pass upon all other matters upon which it is required to act under this Ordinance, including but not limited to, decisions of the Housing Conservation Administrator, the Watershed Administrator, the Erosion and Sedimentation Control Administrator, the Subdivision Administrator and the Historic Resources Commission (HRC).
- iii. All matters that are considered under appeal by the Board of Adjustment shall follow all application procedures and pay all requisite fees prior to the appeal being accepted.

Section 27. Section 10.2: Enforcement is hereby amended to provide that permit revocation must follow the same approval process for the initial permit.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

10.2 ENFORCEMENT

10.2.3 SPECIAL USE DISTRICT PERMIT (W)

- A. Any violation of a condition or other provision shown on the face of a site plan adopted as part of a special use district permit issued by the Elected Body shall be a violation of this Ordinance.
- B. Where the Director of Inspections determines that any term or condition of a special use district permit is not adhered to, he shall notify the petitioner or successor in interest of his findings in writing.
- C. The petitioner shall have five (5) days unless the Director of Inspections determines that a longer period of time is reasonably necessary to correct the violation.
- D. In the event that any violation is not corrected or abated within the five (5) days or the specified period, all development shall cease and all government permits granted pursuant thereto, such as but not necessarily limited to, a building permit, shall be revoked.
- E. The Director of Planning shall determine the proper procedure to amend the site plan, including a formal site plan amendment or a staff change pursuant to **Section 3.2.15, UDO Text Amendment** and **Section 3.2.19, Zoning Map Amendment**.
- F. Revocation of the Special Use District Permit shall follow the same development review and approval process required for issuance of the initial development approval.

10.2.4 SPECIAL USE DISTRICT PERMIT (F)

- A. Any violation of a condition or other provision shown on the face of a site plan adopted as part of a special use district permit issued by the Elected Body shall be a violation of this Ordinance.
- B. Where the Director of Inspections determines that any term or condition of a special use district permit is not adhered to, he shall notify the petitioner or successor in interest of his findings in writing.
- C. The petitioner shall have ten (10) days unless the Director of Inspections determines that a longer period of time is reasonably necessary to correct the violation.
- D. In the event that any violation is not corrected or abated within the ten (10) days or the specified period, all development shall cease and all government permits granted pursuant thereto, such as but not necessarily limited to, a building permit, shall be revoked.
- E. The Director of Planning shall determine the proper procedure to amend the site plan, including a formal site plan amendment or a staff change pursuant to **Section 3.2.15, UDO Text Amendment** and **Section 3.2.19, Zoning Map Amendment**.
- F. Revocation of the Special Use District Permit shall follow the same development review and approval process required for issuance of the initial development approval.

Section 28. Section 11.2: Definitions, Table 11.2.2: Definitions is hereby amended to change the definition of Farm, Bona Fide (F) to be consistent with NCGS 160D-903.

11.2 DEFINITIONS

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

<p>FARM, BONA FIDE (F)</p>	<p>Any parcel of land which containing at least three (3) acres is used in the raising of agricultural, dairy, or forest products, or livestock, poultry, or fur-bearing animals <u>crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1.</u> For the purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:</p> <ul style="list-style-type: none"> <u>(1) A farm sales tax exemption certificate issued by the NC Department of Revenue;</u> <u>(2) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3;</u> <u>(3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return; and/or</u> <u>(4) a forest management plan.</u> <p><u>(Any farm use activities and structures of a bona fide farm are exempt from any local zoning regulations.)</u></p>
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Section 29. Section 11.2: Definitions, Table 11.2.2: Definitions is hereby amended to change the definition of Subdivision to be consistent with NCGS 160D-802.

11.2 DEFINITIONS

TABLE 11.2.2: DEFINITIONS

<p>SUBDIVISION</p>	<p>All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of a gift, sale, or building development (whether immediate or future), including all divisions of land involving the dedication of a new street or a change in existing streets. Included in this general definition are subdivisions exempt by State law or court judgments, industrial or commercial subdivisions, minor subdivisions, and major subdivisions, as defined below:</p> <p>(A) Subdivision Exempted by State Law or Court Judgment. A subdivision in which all lots must comply with the dimensional requirements of the Zoning Ordinance or any other applicable local or State land regulatory ordinances and meet any one of the following criteria:</p> <ul style="list-style-type: none"> <u>(1) The combination or recombination of portions of previously subdivided and recorded lots does not increase the total number of lots and the resultant lots are equal to or exceed the standards of the local government subdivision regulations;</u> <u>(2) Land is divided into parcels greater than ten (10) acres and no street right-of-way dedication is involved;</u> <u>(3) The public acquires by purchase strips of land for the widening or opening of streets or for public transportation system corridors</u> (these subdivisions are not required to comply with the dimensional requirements of the Zoning Ordinance); <u>(4) A tract in single ownership whose entire area is no greater than two (2) acres is divided into not more than three (3) lots, where no public or private street right-of-way dedication is involved and the resultant lots are equal to or exceed the standards of the local government subdivision regulations;</u> or,
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NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

	<p>(5) Lots are created by or pursuant to an order or judgment of a court of competent jurisdiction. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.</p> <p>(B) Subdivision, Industrial or Commercial. A subdivision primarily for the purpose of industrial or commercial building development.</p> <p>(C) Subdivision, Major. A subdivision out of a tract in single or multiple ownership for the purpose of gift, sale, or building development where new public streets will be constructed.</p> <p>(D) Subdivision, Minor. A subdivision out of a tract in single ownership in which the lots comply with the lot size and area requirements of the Zoning Ordinance , and which:</p> <ol style="list-style-type: none"> 1. Is a division of land where the entire area is greater than two (2) acres into not more than a total of three (3) lots, where no street right-of-way dedication is involved (see exception for industrial and commercial subdivisions in Section 7.3.3, Private Street Subdivisions); 2. Is created by a private access easement established in compliance with this Ordinance and consists of no more than a total of three (3) lots per tract which do not front on a public street (see exception for industrial and commercial subdivisions in Section 7.3.3, Private Street Subdivisions); or 3. Is created by lots all of which front on an existing public street, provided that the subdivision would not impair ingress and egress to or from the rear or side of the subject tract or any adjacent property. 4. All lots which front on a public street shall not be included in the provisions of Section 3.2.8A.2. 5. Lots which are approved must front on a public street with right-of-way which meets the standards of the North Carolina Department of Transportation and/or the applicable jurisdiction. 6. Any portion of the lot lying within the required public street right-of-way must be quitclaimed, conveyed, and dedicated as public right-of-way before receiving Planning staff approval. 7. The Planning staff can only require the dedication of standard right-of-way. Additional right-of-way for future widening of roads cannot be required. 8. Only a plat is required for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met: <ol style="list-style-type: none"> a. The tract or parcel to be divided is/was not exempted under Section 3.2.4; b. No part of the tract or parcel to be divided has been divided under this subsection in the ten (10) years prior to division; c. The entire area of the tract or parcel to be divided is greater than five (5) acres; d. After division, no more than three (3) lots result from the division; and e. After division, all resultant lots comply with all of the following: <ol style="list-style-type: none"> i. All lot dimension size requirements of the applicable land-use regulations, if any. ii. The use of the lots is in conformity with applicable zoning requirements, if any.
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NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

	iii. A permanent means of ingress and egress is recorded for each lot through a private access easement in compliance with the Ordinance.
<u>SUBDIVISION, MAJOR (F)</u>	All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of a gift, sale, or building development where new public streets will be constructed.
<u>SUBDIVISION, MINOR (F)</u>	All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of a gift, sale or building development and which meets one of the criteria of the minor subdivision section of the Subdivision Regulations.

Section 30. This Ordinance shall be effective on July 1, 2021.

NOTE: Items to be removed are indicated with a ~~striketrough~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

CITY-COUNTY PLANNING BOARD STAFF REPORT

DOCKET: UDO-CC10
STAFF: [Chris Murphy](#)

REQUEST

This text amendment is proposed by Planning and Development Services staff, in consultation with the City and County Attorney offices, to modify numerous sections of the *Unified Development Ordinances* (UDO) to align with the North Carolina General Assembly's combination of the Planning and Development statutes (NCGS 153A and NCGS 160A for counties and cities, respectively) into a combined NCGS 160D.

BACKGROUND

The creation of Chapter 160D is the first comprehensive recodification and modernization of city and county development regulations since 1905. This process began with the North Carolina Bar Association (NCBA) in 2013 – along the way, the North Carolina League of Municipalities (NCLM), the North Carolina Association of County Commissioners (NCACC), the North Carolina Homebuilders Association (NCHBA), and members of the North Carolina chapter of the American Planning Association (APA-NC) provided feedback on draft legislation. In 2015, the proposed changes passed the NC House but failed to achieve NC Senate approval; in 2017, the opposite occurred. Finally, in 2019, SB 355 was approved and signed into law on July 11. There have been a few changes since – the most important being the deadline for local adoption being pushed delayed to June 30, 2021 (from January 1, 2021) due to the pandemic.

Chapter 160D consolidates the previous county enabling statutes (153A) and city enabling statutes (160A) into a single, unified chapter. Further, related statutes for city and county development regulations spread throughout other General Statutes were relocated to Chapter 160D. The intent behind the consolidation is to have a uniform set of standards applicable to cities and counties that is common to all development regulations. Although not always intentional, over the years, the city and county regulations evolved differently. This consolidation should be more user-friendly and keep regulations consistent moving forward.

These changes are not optional. However, most of our UDO complies with the new provisions. The 122-page Chapter 160D and the associated guidebook published by the UNC School of Government (255 pages) translates to approximately 26 pages of text amendments in UDO CC10.

ANALYSIS

This analysis will examine each of the Sections of UDO CC10 individually, including the anticipated level of impact.

Section 1:

This section is a catch-all to correct the existing NCGS section references in the UDO to their new references. This assists in simplifying UDO CC10; instead of calling out each of these individual changes, these references will be changed administratively with approval of UDO CC10. **NO IMPACT**

Section 2:

This section is similar to Section 1 in that it seeks to simplify the process and methodology for making wholesale changes – this time, using “Design Review Standard or Standard(s)” in place of “Design Review Guideline or Guideline(s).” This is consistent with the changes made as part of NCGS 160D for uniformity across the various Historic (H) and Historic Overlay (HO) districts across the State. **NO IMPACT**

Section 3:

This section makes the vesting provisions in the UDO consistent with the revised statutes. Specifically, it clarifies the duration of various vesting provisions based on the type of approval: building permits (6 months); site-specific development plans (2-5 years); large, multi-phase development plans (7 years); and joint development agreements (negotiated). These changes provide a broader range of options – often necessary with larger projects – that may not have been included in our UDO. Internally, we have allowed projects, once started under the specified timeframe, to continue under the approved plan, regardless of the duration of construction, so long as work continues on the various phases at reasonable expediency. **MINIMAL IMPACT**

Section 4:

This section provides guidance/allows projects to be submitted and reviewed by the future governing body pending the transfer of jurisdiction (voluntary annexation), so long as the final decision on the approval isn’t made until the jurisdiction change becomes official. Both actions can be considered concurrently. **NO IMPACT**

Section 5:

This section amends the exempt subdivision provisions to match the language in NCGS 160D-802. This change simplifies and better explains some of the language pertaining to exempt subdivisions. **NO IMPACT**

Section 6:

This section caps the amount of contingency that can be required on a surety bond for a final plat at 25 percent. This reduces the amount of contingency locally from 50 percent to 25 percent. This makes our ordinance consistent with NCGS 160D, but it also requires Engineering staff to be diligent in its review of detailed cost estimates to ensure that there is adequate contingency in place to complete any outstanding work in the event of default by the developer. **MINIMAL IMPACT**

Section 7:

This section provides another category of minor subdivisions. If the stated criteria is met for this type of a minor subdivision, only a plat must be submitted for signature (similar to Exempt Subdivisions). **NO IMPACT**

Section 8:

This section removes the verified motion process for Elected Body Special Use Permits for the City. NCGS 160D-603 prohibits sending any information to the Elected Body except for names/addresses of those commenting. The revised language provides this process for both the City and County. **MINIMAL IMPACT**

Section 9:

This section clarifies the publication requirement for notices of public hearings for UDO text amendments. Published notice must be posted once a week for two (2) successive calendar weeks, the first notice not published less than ten (10) days prior to the date fixed for the hearing. The City and County already do this, but now the language is consistent in the UDO. **NO IMPACT**

Section 10:

This section provides that written statements may be submitted for UDO text amendments and that such comments must be forwarded to the governing board, either before its hearing or at the hearing, if received at least two (2) days prior to the hearing. **NO IMPACT**

Section 11:

This section clarifies the publication requirement for notices of public hearings for zoning map amendments. Published notice must be posted once a week for two (2) successive calendar weeks, the first notice not published less than ten (10) days prior to the date fixed for the hearing. The City and County already do this, but now the language is consistent in the UDO. **NO IMPACT**

Section 12:

This section updates the conflict of interest provision for the Elected Body when considering approvals by further specifying that an Elected Body member should not participate when they have a close familial, business, or other associational relationship with the petitioner. This has historically been the practice of our local governing boards, but the amendment provides further clarity. **NO IMPACT**

Section 13:

This section provides that written statements may be submitted for zoning map amendments and that such comments shall be forwarded to the governing board, either before its hearing or at the hearing, if received at least two (2) days prior to the hearing. **NO IMPACT**

Section 14:

This section provides for what can and cannot be approved through the staff change process. The new standards for the City and County are derived directly from their respective resolutions/memos authorizing staff changes, which we have used to process staff changes for the previous 42 years (they were adopted in 1979). NCGS 160D specifies that this information must be included in the UDO, not simply authorized via resolutions or memos. **NO IMPACT**

Section 15:

This section adds amateur radio antennas, up to a maximum height of 90 feet, as another element that may exceed the maximum height specified in any given zoning district. While not codified, this is something that we have allowed consistent with existing FCC policies. The FCC policy has now been incorporated into NCGS 160D-905, which states that the height of towers below 90 feet cannot be restricted unless there is a clearly defined health, safety, or aesthetic objective included as part of the more restrictive regulation. Planning and Development Services staff has received fewer than ten (10) inquiries for amateur radio antennas over the last decade. **NO IMPACT**

Section 16:

This section provides guidance to applicants and local governments regarding how properties with split jurisdiction can be treated for development approvals. Local governments **may**, by mutual agreement **AND** with permission of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to any of those local government entities. This is permissive and is **NOT** a requirement; rather, this provides an option. For example, instead of sending a rezoning request to the City and County for a project that split the jurisdictions, **IF** all parties agree, the development approval may be assigned to a single unit of government. **MINIMAL IMPACT**

Section 17:

This section further clarifies what can be regulated as it pertains to single- and two-family residences. NCGS 160D-703 sets forth that “building design elements,” such as exterior cladding type, color, or style; style or materials of exterior roofing and porches; exterior nonstructural architectural ornamentation; and the location and architectural stylings or locations of exterior doors and windows, including garage doors, can only be regulated if **ALL** property owners agree. We have added this NCGS 160D-703 reference to the Neighborhood Conservation Overlay (NCO) provisions to ensure that future NCOs are compliant, as most NCOs in the past have not had full participation, and some have had requirements that may conflict with this standard. **MINIMAL IMPACT**

Sections 18 and 19:

These sections (one for the City and one for the County) provide for and authorize small wireless facilities to be included as colocations, consistent with the provisions of NCGS 160D 930-938. These provisions prevent local governments from prohibiting the installation of small wireless facilities within public rights-of-way, so long as the poles installed are not taller than forty (40) feet in residential-zoned areas and no taller than fifty (50) feet in other areas. This is consistent with existing FCC policies and practices locally, but in reviewing our ordinances, we need to ensure that this is included. **MINIMAL IMPACT**

Section 20:

This section permits temporary health care structures as temporary uses – they **MUST** be allowed – consistent with NCGS 160D-915. The NCGS provisions, as well as the proposed UDO language, provide guidance on who/what qualifies and how and for how long these structures are permitted. **MINIMAL IMPACT**

Sections 21 and 22:

These sections outline an additional type of temporary fencing that is exempt from permitting for temporary construction activities. Fence wraps placed on site security fencing that displays the name(s) and logo(s) of the companies involved with the construction are permitted without regulations. The County provisions were expanded to match the City provisions – they have been viewed as exempt but the language needs to match. We have not been regulating fence wrapping, but these provisions provide additional clarity. **NO IMPACT**

Section 23:

This section provides an additional penalty for illegally transferring a lot in an unapproved subdivision; the new penalty is clear authorization to deny building permits for illegally subdivided lots. **NO IMPACT**

Section 24:

This is the companion change to the changes set forth in Section 5. This section amends the exempt subdivision provisions to match the language in NCGS 160D-802. This change simplifies and better explains some of the language pertaining to exempt subdivisions. **NO IMPACT**

Section 25:

This section updates the conflict of interest provision for the Planning Board when considering approvals by further specifying that a Planning Board member should not participate when they have a close familial, business, or other associational relationship with the petitioner. This has historically been the practice of our Planning Board, but the amendment provides further clarity. **NO IMPACT**

Section 26:

This section clearly lists the types of actions subject to review on appeal to the Zoning Boards of Adjustment. Further, it provides that any items appealed to the Zoning Boards of Adjustment are subject to the requisite fees and submittal requirements. **NO IMPACT**

Section 27:

This section provides an additional enforcement mechanism for Special Use District zoning; specifically, it provides that the revocation of a Special Use District permit is authorized, so long as such revocation goes through the same process as the initial approval (public hearing process). **NO IMPACT**

Section 28:

This section amends the current definition for a Bona Fide Farm to be consistent with the definition in state statutes; it eliminates the three (3) acre minimum and expands on the types of activities that qualify as agricultural uses. **NO IMPACT**

Section 29:

This section amends the current definition of Subdivision to be consistent with the definition in state statutes. It also eliminates the current County definitions of Major and Minor Subdivisions, which are covered in the definition of Subdivision. This section provides clarity for what constitutes an exempt and/or minor subdivision, in conjunction with the changes outlined in Sections 5, 7, and 24, which also change various subdivision provisions and definitions. **NO IMPACT**

RECOMMENDATION: Approval

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-CC10
MARCH 11, 2020**

Chris Murphy presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

MOTION: Clarence Lambe recommended approval of the ordinance amendment.

SECOND: Jack Steelman

VOTE:

FOR: Melynda Dunigan, Jason Grubbs, Clarence Lambe, Chris Leak, Mo McRae, Brenda Smith, Jack Steelman

AGAINST: None

EXCUSED: None

Aaron King
Director of Planning and Development Services

(For publication in the WS Journal Legal Section on
April 2 & 9, 2021)

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the Board of Commissioners will hold a public hearing in the Commissioners' Meeting Room on the fifth floor of the Forsyth County Government Center, 201 N. Chestnut Street, Winston-Salem, North Carolina at 2:00 p.m. on Thursday, April 15, 2021 on the following:

1. Ordinance amendment proposed by Planning and Development Services to revise sections of the Unified Development Ordinances to align with the North Carolina General Assembly's combination of NCGS 153A and NCGS 160A into NCGS 160D (UDO-CC10)
2. Zoning petition of CNKS, LLC from RS30 to RS20-S (Residential Building, Single Family): property is located on the east side of Twin Creek Road, north of Bunker Hill-Sandy Ridge Road; property consists of ± 26.47 acres and is a portion of PIN 6894-29-1955 as shown on the Forsyth County Tax Maps and on a site plan on file in the office of the City-County Planning Board (Zoning Docket F-1598)
3. Zoning petition of Dennis Weavil and Edna C. Edwards from AG to LI-L (Arts and Crafts Studio; Banking and Financial Services; Building Contractors, General; Building Material Supply; Child Care, Drop-in; College or University; Government Offices, Neighborhood Organization, or Post Office; Hospital or Health Center; Manufacturing A; Manufacturing B; Micro-Brewery or Micro Distillery; Offices; Park and Shuttle Lot; Parking, Commercial; Police or Fire Station; Postal Processing Facility; Recreation Facility, Public; School, Vocational or Professional; Services, A; Services, B; Storage Services, Retail; Testing and Research Lab; Transmission Tower; Warehousing; Wholesale Trade A; Wholesale Trade B; Adult Day Care; Child Care, Sick Children; and Child Day Care Center): property is located on the west side of Union Cross Road between Carl L. Clarke Road and Axle Drive; property consists of ± 70.5 acres and is PINs 6874-04-0097 and 6874-14-2630 as shown on the Forsyth County Tax Maps (Zoning Docket F-1599)

There will be no meeting place where members of the public can be physically present. The Meeting will be broadcast live at 2:00 p.m. on local cable channel WSTV 13- The Government Channel, http://winston-salem.granicus.com/MediaPlayer.php?publish_id=29 and <https://vimeo.com/forsythcountync>.

All persons interested in the proposed amendments are invited by the Board of Commissioners to present their views. If you wish to submit a written comment, please send an email to sloopam@forsyth.cc by Friday, April 16, 2021 at 4:00 p.m.

This notice shall be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days, or more than 25 days, before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

This the 2nd day of April, 2021.

FORSYTH COUNTY BOARD OF COMMISSIONERS
Ashleigh M. Sloop, Clerk to the Board