

## ARTICLE XX

### AMENDMENTS

#### **Section 15-320 Amendments in General**

(a) Amendments to the text of this chapter or to the zoning map or to the comprehensive plan may be made in accordance with the provisions of this article, or in the case of non-substantive editorial changes, may be made administratively by the planning director, as described in Section 15-38 of this ordinance. **(AMENDED 09/01/87)**

(b) The term “major map amendment” shall refer to an amendment that addresses the zoning district classification of five or more tracts of land in separate ownership or any parcel of land (regardless of the number of lots or owners) in excess of fifty acres. All other amendments to the zoning district map shall be referred to as “minor map amendments.”

(c) All properties within the University Lake Watershed are zoned WR, B-5, WM-3 or C. As provided in Subsection 15-137(b), no additional areas may be rezoned WM-3 or B-5, and no areas within the University Lake Watershed may be rezoned to any classification other than WR, or C. **(AMENDED 10/15/96)**

(d) The regulations applicable to the watershed districts do, and all amendments to these regulations shall, comply with the water supply watershed protection rules promulgated by the State pursuant to G.S. [section 143-214.5](#). Copies of all amendments to Sections 15-265 or 15-266 shall be sent to the Division of Community Assistance, Division of Environmental Health, and Division of Water Quality. **(AMENDED 10/15/96)**

#### **Section 15-321 Initiation of Amendments**

(a) Whenever a request to amend this chapter is initiated by the ~~Town Council~~Board of Aldermen, the planning board, the board of adjustment, other town advisory board, ~~the appearance commission~~, or the town administration, the town attorney in consultation with the planning staff shall draft an appropriate ordinance and present that ordinance to the ~~Town Council~~Board of Aldermen so that a date for a public hearing may be set.

(b) Any other person may also petition the ~~Council~~Board to amend this chapter. The petition shall be filed with the planning department and shall include, among the information deemed relevant by the planning department:

- (1) The name, address, and phone number of the applicant. If a change in zoning district classification to a less dense development density is proposed, the name, address, phone number and signature of all property owners consent to the application is required.<sup>1</sup> Applications for down-zoning shall not be considered unless all the property owners consent to the application.

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<sup>1</sup> N.C. Gen. Stat. §160D-601 (d) June 2020

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- (2) A description of the land affected by the amendment if a change in zoning district classification is proposed.
  - (3) Stamped envelopes containing the names and addresses of all those to whom notice of the public hearing must be sent as provided in Section 15-323.
  - (4) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this chapter.
  - (5) A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest.
- (c) Upon receipt of a petition as provided in (b), the planning staff shall either:
- (1) Treat the proposed amendment as one initiated by the town administration and proceed in accordance with subsection (a) if it believes that the proposed amendment has significant merit and would benefit the general public interest; or
  - (2) Forward the petition to the ~~CouncilBoard~~ with or without written comment for a determination of whether an ordinance should be drafted and a public hearing set in accordance with subsection (d).
- (d) Upon receipt of a proposed ordinance as provided in subsection (a), the ~~CouncilBoard~~ may establish a date for a public hearing on it. Upon receipt of a petition for an ordinance amendment as provided in subsection (b), the ~~CouncilBoard~~ may summarily deny the petition or set a date for a public hearing on the requested amendment and order the attorney, in consultation with the planning staff, to draft an appropriate ordinance. In accordance with G.S. 160D-60 (d), petitions for proposed map changes that would result in a downzoning of property shall only be initiated by the owners of the property or the Town. (See subsection (b)(1) above.)

**Section 15-322 Planning Board and Other Advisory Consideration of Proposed Amendments**

(a) If the ~~CouncilBoard~~ sets a date for a public hearing on a proposed amendment, it shall also refer the proposed amendment to the planning board for its consideration and may refer the amendment to the appearance commission if community appearance is involved, and may refer the amendment to the transportation advisory board if the amendment involves community transportation issues, and may refer the amendment to the environmental advisory board if the amendment involves community environment issues, and may refer the amendment to the affordable housing advisory commission if the amendment involves an affordable housing issue, and may refer the amendment to the Economic Sustainability Commission if the amendment involves an economic development issue. (AMENDED 09/19/95, REWRITTEN 02/25/14, AMENDED 06/25/19).

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(b) The planning board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan, Land Use Plan, long-range transportation plans~~Thoroughfare Plan~~, or other applicable plans officially adopted by the Town Council~~Board of Aldermen~~. The planning board shall provide a written recommendation to the Town Council~~Board of Aldermen~~ that addresses plan consistency and other matters as deemed appropriate by the planning board. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the Town Council~~Board of Aldermen~~ may proceed in its consideration of the amendment without the planning board report. (AMENDED 10/24/06)

(c) A comment by the planning board that a proposed amendment is inconsistent with the Comprehensive Plan, Land Use Plan, long-range transportation plans~~Thoroughfare Plan~~ or other officially adopted plan shall not preclude consideration or approval of the proposed amendment by the Town Council~~Board of Aldermen~~, and the Town Council~~Board of Aldermen~~ is not bound by the recommendations of the planning board. (AMENDED 10/24/06)

(d) A member of the planning board and any other advisory committee that provides direct advice to the Town Council~~Board of Aldermen~~ (i.e. it does not report to the planning board) shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter ~~recommendations regarding any zoning map or text amendment~~ where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. (AMENDED 10/24/06)

### **Section 15-323 Legislative Hearing Required: Notice**

(a) No ordinance that amends any of the provisions of this chapter may be adopted until a legislative public hearing has been held on such ordinance.

(b) The planning staff shall publish a notice of the public hearing on any ordinance that amends the provisions of this chapter once a week for two successive weeks in a newspaper having general circulation in the Carrboro area. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the hearing. This period is to be computed in accordance with G.S. section 160D-601 (a) ~~G.S. 160A-364~~, which provides that the date of publication is not counted but the date of the hearing is.

(c) With respect to all map amendments, the planning staff shall mail, by first class mail, written notice of the public hearing to the record owners of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties any portion of which is abutting the property rezoned by the amendment, including property separated by a street right of way, railroad or other transportation corridor and any other property that is within 1000 feet of the property rezoned by the amendment. For purposes of this section the term “owners” shall mean the persons shown as owners on Orange County’s computerized land records system. The planning staff shall also make reasonable efforts to mail a similar written notice to the non-owner occupants of

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residential rental property located within 1,000 feet of the lot that is the subject of the rezoning. The notices required by this subsection shall be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The staff member mailing such notices shall certify to the board that the notices have been mailed, and such certificate shall be deemed conclusive in the absence of fraud. **(AMENDED 10/12/82; 1/22/85; 10/1/85; 04/15/97; 3/26/02)**

(d) The first class mail notice required under subsection (c) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to either make the mailed notice provided for in subsection (c) of this section or may, as an alternative, elect to publish notice of the hearing as required by G.S. [section 160D-602 \(b\)4](#), but provided that each advertisement shall not be less than one-half (1/2) of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Orange County property tax listing for the affected property, shall be notified according to the provisions of subsection (c) of this section. **(AMENDED 10/24/06)**

(e) For proposed zoning map amendments, the planning staff shall prominently post a notice of the public hearing on the site proposed for a rezoning or an adjacent public street or highway right-of-way at least 10 but not more than 25 days prior to the date of the public hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the planning staff shall post sufficient notices to provide reasonable notice to interested persons.

(f) The planning staff shall take any other action deemed by the Planning Department to be useful or appropriate to give notice of the public hearing on any proposed amendment.

(g) The notice required or authorized by this section (other than the posted notice required by subsection (e)) shall: **(AMENDED 11/24/09)**

- (1) State the date, time, and place of the public hearing.
- (2) Summarize the nature and character of the proposed change.
- (3) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment.
- (4) State that the full text of the amendment can be obtained from the town clerk.
- (5) State that substantial changes in the proposed amendment may be made following the public hearing.

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(h) The planning staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the ~~CouncilBoard~~'s intention that the notice requirements set forth in this section that are not required by state law shall not be regarded as mandatory, and therefore a failure to comply with such requirements shall not render any amendment invalid. (AMENDED 11/24/09)

(i) Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply (regardless of how the staff treats the proposed amendment under subsection 15-321(c)), the applicant shall certify to the ~~Town CouncilBoard of Aldermen~~ that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the ~~Town CouncilBoard of Aldermen~~ that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. (AMENDED 11/24/09)

(j) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection 15-323(i) of this section shall be by any manner permitted under G.S. [section](#) 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. [section](#) 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment. (AMENDED 11/24/09)

#### **Section 15-324 ~~CouncilBoard~~ Action on Amendments** (AMENDED 10/24/06)

(a) At the conclusion of the public hearing on a proposed amendment, the ~~CouncilBoard~~ may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

(b) The ~~CouncilBoard~~ is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.

(c) Voting on amendments to this chapter shall proceed in the same manner as on other ordinances, subject to ~~Section 15-326 of the Land Use Ordinance and~~ Section 2-15 of the Town Code.

(d) ~~When Prior to~~ adopting or rejecting any zoning amendment, the ~~CouncilBoard~~ shall adopt ~~a one of the following~~ statements describing whether the action is consistent with an adopted comprehensive plan, which shall not be subject to judicial review (AMENDED 2/6/2018).÷

(1) If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan, and no additional

request or application for a plan amendment shall be required.

(2) A plan amendment and zoning amendment may be considered concurrently.

(3) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. section 160D-602(b), the Council's statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(d1) When adopting or rejecting any petition for a zoning text or map amendment the Council shall adopt a statement explaining the reasonableness of the proposed rezoning. The statement of reasonableness may consider, among other factors: (i) the size, physical conditions, and other attributes of any area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development and the development permissible under the proposed amendment, (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. section 160D-602(b), the statement on reasonableness may address the overall rezoning.

- ~~(1) — A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~
- ~~(2) — A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~
- ~~(3) — A statement approving the zoning amendment and containing at least all of the following:
 
  - ~~a. — A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.~~
  - ~~b. — An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.~~
  - ~~c. — Why the action was reasonable and in the public interest.~~~~
- ~~(4) — The Board retains the right to find a zoning amendment to be consistent with any duly adopted plan, but to deny the zoning amendment request~~
- ~~(5) — For the purposes of this section, "comprehensive plan" includes a unified development ordinance and any other officially adopted plan that is applicable.~~

(e) A Board-Council member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter zoning map or text amendment where

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the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. (See also Carrboro Town Code Section 2-35).

### **Section 15-325 Ultimate Issue Before ~~CouncilBoard~~ on Amendments**

In deciding whether to adopt a proposed amendment to this chapter, the central issue before the ~~CouncilBoard~~ is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the mayor and excluded. In particular, when considering proposed minor map amendments:

- (1) Except when the request is to rezone property to a ~~conditional use district or~~ conditional zoning district, the Council shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the ~~CouncilBoard~~ shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification. (AMENDED 05/25/99; 05/27/08)
- (2) The ~~CouncilBoard~~ shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

### **Section 15-326 Citizen Comments on Zoning Map and Text Amendments (AMENDED 10/24/06, REWRITTEN 12/6/16).**

The Town of Carrboro Land Use Ordinance may from time to time be amended, supplemented, changed, modified or repealed. If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification or repeal to a zoning regulation (including a text or map amendment) ~~this Ordinance~~ to the Clerk of the ~~Town CouncilBoard of Aldermen~~ at least two (2) business days prior to the proposed vote on such change, the Clerk to the ~~CouncilBoard~~ shall deliver such written statement to the ~~CouncilBoard~~. If the proposed change is the subject of a quasi-judicial proceeding under North Carolina General Statutes Section 160D-70-5 or any other statute, 160A-388 ~~(such as conditional use rezoning in which the legislative rezoning is accompanied by or followed by a quasi-judicial conditional use permit process)~~, the Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the ~~CouncilBoard~~ shall not disqualify any member of the ~~CouncilBoard~~ from voting. Written statements submitted in connection with a quasi-judicial proceeding may be admitted into evidence at such a proceeding if the ~~CouncilBoard~~ determines that such statements are admissible under the N.C. Rules of Evidence in the proceeding. (Amended 12-6-16; and enacted pursuant to a Resolution in Opposition to the General Assembly's Repeal of Statutory Authority for Qualified Protest Petitions to Trigger a Super Majority Vote for Certain Zoning Map Amendments, dated 12-6-16).