

**DURHAM, NORTH CAROLINA  
MONDAY, MAY 3, 2021  
7:00 P.M.**

The Durham City Council met in a regular session on the above date and time virtually via Zoom with the following members present: Mayor Steve Schewel, Mayor Pro Tempore Jillian Johnson and Council Members Javiera Caballero, Pierce Freelon, DeDreana Freeman, Mark-Anthony Middleton and Charlie Reece. Absent: None

Also Present: City Manager Wanda Page, City Attorney Kim Rehberg, City Clerk Diana Schreiber, and Deputy City Clerk Ashley Wyatt.

Mayor Schewel called the meeting to order, welcomed everyone in attendance, asked for a moment of silent meditation and commemorated the lives of the wife of Deputy City Manager Keith Chadwell, Jocelyn Chadwell and the son of former Deputy Police Chief Anthony Marsh, A.J Marsh.

**[CEREMONIAL ITEMS]**

Mayor Schewel read into the record the Children's Mental Health Awareness Proclamation and presented it to Tika Dempson of Alliance Health.

Mayor Schewel read into the record the National Drinking Water Week Proclamation and presented it to the Water Department who accepted via a prerecorded video.

Council Member Reece read into the record the Better Hearing Month Proclamation and presented it to Dr. Shelly Cristibal who specialized in audiology.

**[ANNOUNCEMENTS BY COUNCIL]**

Council Member Reece recognized Asian American and Pacific Islander Heritage Month and Bike Month; congratulated Deputy Chief Montgomery for becoming the Interim Police Chief; spoke to vaccination equity regarding COVID-19; and highlighted a new music album released by Council Member Pierce Freelon.

Mayor Pro Tempore Johnson recalled a visit by recording artist John Legend to the City of Durham and how he was interested in different philanthropic endeavors and expressed interest in public policy.

Council Member Middleton thanked his Council colleagues for their announcements; spoke to ongoing gun violence in the city; read a letter from a resident that detailed gun violence in that particular neighborhood; and asked for Council to determine an opportunity to discuss the defund writing in front of the Police Headquarters. He cited employee

morale, fairness to staff, and staff being questioned about political decisions as the basis for his concerns.

Mayor Schewel stated that he would follow-up with the City Manager.

**[PRIORITY ITEMS BY THE CITY MANAGER, CITY ATTORNEY AND CITY CLERK]**

City Manager Page noted that Items 9 and 22 had updated information.

City Attorney Rehberg and City Clerk Schreiber had no priority items.

**[CONSENT AGENDA]**

Mayor Schewel pulled Item 6 from the Consent Agenda on behalf of a resident.

**SUBJECT: APPROVAL OF CITY COUNCIL MINUTES (ITEM 1/ PR #14583)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to approve the following City Council minutes: March 1, 2021 Regular Meeting; March 4, 2021 Special Meeting; March 4 Work Session; March 15, 2021 Special Meeting; March 15, 2021 Regular Meeting; and March 18, 2021 Work Session, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: MAYOR'S HISPANIC/LATINO COMMITTEE – APPOINTMENT (ITEM 2/ PR #14580)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to appoint Raymundo Garcia to the Mayor's Hispanic/Latino Committee with the term expiring on October 1, 2022, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: GREEN AND EQUITABLE INFRASTRUCTURE PROJECT (ITEM 3/ PR #14605)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to continue the discussion of the Green and Equitable Infrastructure Project; and to provide further direction in FY22 Budget/Capital Improvement Projects (CIP) planning, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: CITY-COUNTY PLANNING DEPARTMENT FY22 WORK PROGRAM (ITEM 4/ PR #14591)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to approve the City-County Planning Department FY22 Work Program, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: APPROVAL OF THE DRAFT FY 2021-2022 ANNUAL ACTION PLAN (ITEM 5/ PR #14603)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to approve the Draft FY 2021-2022 Annual Action Plan for the use of Community Development Block Grant (CDBG), Home Investment Partnership (HOME), Emergency Solutions Grant (ESG), and Housing Opportunities for Persons With AIDS (HOPWA) funds;

To approve the Draft FY 2021-2022 Annual Action Plan for submission to the U.S. Department of Housing and Urban Development;

To authorize the City Manager to execute all administrative requirements and contractual documents necessary for implementation of the Annual Action Plan to include all CDBG, HOME, ESG, and HOPWA program agreements and related documents;

To adopt the City of Durham/U.S. Department of Housing and Urban Development Community Development Block Grant Project Ordinance in the amount of \$2,207,077;

To adopt the City of Durham/U.S. Department of Housing and Urban Development HOME Investment Partnership Program Grant Project Ordinance in the amount of \$1,299,161;

To adopt the City of Durham/U.S. Department of Housing and Urban Development Emergency Solutions Grant Project Ordinance in the amount of \$174,344; and

To adopt the City of Durham/U.S. Department of Housing and Urban Development Housing Opportunities for Persons With AIDS Grant Project Ordinance in the amount of \$542,712, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**ORDINANCES #15799, 15800, 15801 & 15802**

**SUBJECT: CAPITAL IMPROVEMENT PROJECT (CIP) ORDINANCE AMENDMENT AND CONTRACT FOR SIGNAL TIMING SERVICES FOR THE DURHAM COMPUTERIZED SIGNAL SYSTEM (ITEM 7/ PR #14594)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to adopt an ordinance amending the General Capital Improvement Project Ordinance, Fiscal Year 2020-21, as amended, the same being ordinance #15627; and to authorize the City Manager to execute Supplemental Agreement #5 to City of Durham, North Carolina Master

Agreement for Transportation Engineering On-Call Services between the City of Durham and Kimley-Horn and Associates, Inc. in the amount of \$1,300,000 to provide signal timing plan development, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**ORDINANCE #15803**

**SUBJECT: PROPOSED WATER AND SEWER RATES FOR FY 2021-2022 (ITEM 8/ PR #14601)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to receive a presentation regarding the proposed Water and Sewer Rates for FY 2021-2022; and to adopt an ordinance to change rates for water and sewer service, Section 1, Part 15-104 of the City's fee schedule, effective July 1, 2021, with new rates applied to all bills issued after August 1, 2021, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**ORDINANCE #15804**

**SUBJECT: CONSTRUCTION MANAGER AT RISK GUARANTEED MAXIMUM PRICE FOR MIST LAKE DAM RECONSTRUCTION AMENDMENT #6 FOR GILBANE BUILDING COMPANY (ITEM 9/ PR #14553)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to authorize the City Manager to execute a Guaranteed Maximum Price (GMP) Amendment #6 to the Construction Manager At Risk (CMAR) contract for Mist Lake Dam Reconstruction with Gilbane Building Company in an amount not to exceed \$898,185;

To establish a project contingency fund for the Mist Lake Dam Reconstruction in the amount of \$90,000; and

To authorize the City Manager to negotiate and execute change orders to GMP #6 so long as the total GMP Amendment #6 does not exceed \$988,185, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: MIST LAKE FACILITY EXPANSION - AMENDMENT #1 TO CONSTRUCTION MATERIAL TESTING AND CONTRACT WITH FALCON ENGINEERING INCORPORATED (ITEM 10/ PR #14554)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to authorize the City Manager to execute an amendment to the professional engineering contract with

Falcon Engineering, Incorporated for Construction Materials Testing and Special Inspections for the Department of Water Management Mist Lake Facility Expansion project in the amount of \$256,500, with a not to exceed total amount of \$1,211,025; and

To authorize the City Manager to execute change orders to the contract so long as the contract amount does not exceed \$1,306,500, which includes the previously established contingency of \$95,475, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: RESIDENTIAL BACKFLOW PREVENTION ASSEMBLY TESTING AND REPAIR – AWARD OF SERVICE CONTRACT TO ACME SERVICES OF DURHAM, INCORPORATED (ITEM 11/ PR #14582)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to authorize the City Manager to execute a three-year contract with Acme Services of Durham, Incorporated for the 2021-2023 Residential Backflow Prevention Assembly Testing and Repair Contract in the amount of \$121,732.50, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: RESIDENTIAL BACKFLOW PREVENTION ASSEMBLY TESTING AND REPAIR – AWARD OF SERVICE CONTRACT TO WATER WORX SERVICES, INCORPORATED (ITEM 12/ PR #14581)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to authorize the City Manager to execute a three-year contract with Water Worx Services, Incorporated for the 2021-2023 Residential Backflow Prevention Assembly Testing and Repair Contract in the amount of \$117,982.50, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: RESOLUTION AUTHORIZING THE VIRTUAL CITY AUCTION (ITEM 13/ PR #14585)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to adopt a resolution authorizing the Virtual City Auction to be held on May 16, 2021 at 6:00 p.m. Eastern Standard Time (EST), was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**RESOLUTION #10210**

**SUBJECT: COOPERATIVE GROUP PURCHASE CONTRACT – THREE (3) INTERNATIONAL TRUCKS (ITEM 14/ PR #14586)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to authorize the City Manager to execute a contract with White Herring Tractor and Truck LLC for the purchase of three (3) International trucks with service bodies in the amount of \$402,787.83, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: CONTRACT ST-318C INSPECTIONS FOR CONSTRUCTION PROJECTS (ITEM 15/ PR #14567)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to authorize the City Manager to execute a professional services contract for ST-318C Inspections for Construction Projects with Johnson, Mirmiran & Thompson, Inc., in the amount not to exceed \$545,283.75, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**SUBJECT: AMENDMENT TO CONTRACT WITH POWERHOUSE RECYCLING INC. FOR RECYCLING SERVICES FOR ELECTRONIC EQUIPMENT (ITEM 17/ PR 14597)**

**MOTION** by Council Member Reece, seconded by Council Member Freelon, to approve the proposed amendment to contract with Powerhouse Recycling Inc. for recycling services for electronic equipment; and to authorize the City Manager to execute the proposed amendment, was approved at 7:54 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**[ITEMS PULLED FROM THE AGENDA]**

**SUBJECT: CONVEYANCE OF 702, 704 AND 917 GRANT STREET TO DURHAM COMMUNITY LAND TRUSTEES FOR THE PURPOSE OF AFFORDABLE HOUSING DEVELOPMENT (ITEM 6/ PR #14595)**

Ajax Wooley, Durham resident shared a video by other residents that described the conditions of the immediate area and expressed concerns that the area was a blight to the community.

Pastor William Lucas spoke in support of the item and stated that the project was a step in the right direction.

Council Member Freeman echoed the tale of two cities example from Council Member Middleton; stated that it was important to support community solutions for root causes; and expressed a desire to do reparative work in the area along with a restitution plan.

**MOTION** by Council Member Freeman, seconded by Council Member Freelon, to authorize the City Manager to convey 702, 704 and 917 Grant Street to Durham Community Land Trustees for the purpose of affordable housing development; and

To authorize the City Manager to execute any and all documents and instruments, necessary, reasonable and appropriate in order to carry out this property conveyance, and to make necessary and sundry changes so long as the changes do not increase the obligations of the City, and the changes taken as a whole, are not less favorable to the City was approved at 8:09 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**[GENERAL BUSINESS AGENDA]**

**SUBJECT: UTILITY EXTENSION AGREEMENT WITH CHARTER DEVELOPMENT COMPANY, L.L.C. TO SERVE NATIONAL HERITAGE ACADEMIES (NHA) OAK GROVE CHARTER SCHOOL (ITEM 16/ PR #14600)**

Robert Joyner of Public Works introduced the item and provided a summary based on the last time it was presented to Council. Staff also recommended denial of the application.

Bill Brian, a representative for the applicant, spoke in support of the item, requested Council support and stated that a denial would result in legal action on behalf of the applicant.

Council Member Middleton stated that threats were not a useful or helpful tactic and that the Council would not be swayed by threats of legal action.

**MOTION** by Council Member Reece, seconded by Mayor Pro Tempore Johnson, to authorize the City Manager to enter into a utility extension agreement with Charter Development Company, L.L.C. to serve National Heritage Academies (NHA) Oak Grove School, **FAILED** at 8:22 p.m. by the following vote: Ayes: None. Noes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Absent: None.

**[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]**

**SUBJECT: CONSOLIDATED ANNEXATION - OLIVE BRANCH RESERVE (ITEM 20/ PR #14592)**

Danny Cultra, Senior Planner stated for the record that the Planning Department hearing item had been advertised and noticed in accordance with state and local law, and affidavits of all notices were on file in the Planning Department and provided the following staff report:

The request for voluntary annexation, utility extension agreement, future land use map (FLUM) change, and zoning map change was received from Tim Sivers of Horvath and Associates for 113.579 acres located at 1607 Olive Branch Road, and 802 and 830 Virgil Road.

The site was presently zoned Residential Rural (RR) and Falls/Jordan Lake Watershed Protection Overlay District-B (F/J-B), and is located within the Suburban Development Tier. The applicant was proposing to rezone the property to Planned Development Residential 3.220 (PDR 3.220) for up to 350 single-family and townhouse residential dwelling units.

The property was currently designated Very Low Density Residential on the Future Land Use Map. The proposed PDR 3.220 zoning was inconsistent with the designated Future Land Use, but if the proposed zoning was approved, the FLUM will be re-designated to Low Density Residential to ensure a consistency with the zoning. The change does not require a separate motion and would take effect concurrently with the zoning map change ordinance. All referenced approvals would become effective as of May 31, 2021.

The Planning Commission, by a vote of 0-13 at their November 10, 2020 meeting, recommended denial of this request.

The item came before Council on March 15<sup>th</sup>, 2021, at which time they voted for a continuance to the present meeting, in order to give the applicant an opportunity to address several concerns raised with the proposed request. The applicant had made some modifications and the changes were highlighted on the updated development plan.

There were three motions required for the application. The first was to adopt an ordinance annexing 'Olive Branch Reserve' into the City of Durham, and enter into a Utility Extension Agreement with MF Development, LLC. The second was to adopt an ordinance for the rezoning and amend the future land use map; and the third was to adopt a Consistency Statement.

This item was continued from the March 15, 2021 meeting and had been kept open.

Mayor Schewel asked what additional proffers had been included since the previous meeting.

Mr. Cultra stated the primary changes were that they had increased the percentage of townhomes from 20% to 50%, public access to greenway trails would be permitted, and removed some of the open space to preserve the wildlife corridor.

Mayor Schewel asked about assertions made by the applicant about improving transportation in the area.

Mr. Judge, Assistant Director of Transportation stated that the development team intended to add turning lanes and signalization in the area.

Mayor Schewel asked for clarification on what a collector street was.



Mr. Judge stated that usually it was a street with a single lane of traffic in each direction.

Council Member Reece asked what passive recreation activities were, in relation to text commitment 13.

Mr. Cultra stated that per the ordinance a certain amount of open space was needed and that passive open space could have been vegetation, tree coverage, buffers, or other agricultural means.

Council Member Reece asked if the Greenway was going to be in the wildlife corridor.

Mr. Cultra stated that it was.

Michael Foley and Nil Ghosh, representatives for the applicant, gave a presentation on the item and outlined the following: the property had not been under the family's ownership since 1920, letters were sent to 27 descendants of the property; the applicant was choosing not to relocate the cemetery and would design the project around it; 50% of the project would be townhomes; price points would begin at 250 thousand dollars; and there would only be one stream crossing on the development.

Kevin Curtain spoke in support of the item and asked Council for their approval.

Ms. Beuseu, a resident with an adjacent property, spoke in support of the item and asked Council for their approval.

Susan Dees a co-owner of the property, spoke on behalf of herself and 3 siblings and requested Council's approval of the item.

Council Member Reece asked where the picnic tables would be located on the property.

Mr. Ghosh advised that they would be outside of the corridor.

Council Member Reece noted the progress the applicant had made based on the concerns of the Planning Commission and the Council.

Seeing no additional speakers, Mayor Schewel declared the public hearing closed.

Mr. Cultra advised that due to the change regarding the relocation of the cemetery, the applicant would have needed to update the existing conditions sheet as well as a text commitment.

Tim Sivers, a representative for the applicant, stated that Mr. Cultra's advice was acceptable and that they could work out the specific language together following the meeting. He also reiterated that public access to the cemetery would be available as well as a buffer no greater than 25 feet.

**MOTION** by Council Member Middleton, seconded by Mayor Pro Tempore Johnson, to adopt an ordinance annexing 1101 Olive Branch Road into the City of Durham effective May 31, 2021; and

To authorize the City Manager to enter into a utility extension agreement with MF Development, LLC, D/B/A Humabuilt Development, was approved at 9:13 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman and Middleton. Noes: Council Member Reece. Absent: None.

**ORDINANCE #15805**

**MOTION** by Council Member Middleton, seconded by Council Member Freelon, to adopt an ordinance amending the Unified Development Ordinance by taking property out of the Residential Rural (RR), Falls/Jordan Lake Watershed Protection Overlay District-B (F/J-B), County Jurisdiction and establishing the same as Planned Development Residential 3.220 (PDR 3.220), Falls/Jordan Lake Watershed Protection Overlay District-B (F/J-B), City Jurisdiction, was approved at 9:14 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, and Middleton. Noes: Council Members Freeman and Reece. Absent: None.

**ORDINANCE #15806**

**MOTION** by Council Member Middleton, seconded by Mayor Pro Tempore Johnson, to adopt a Consistency Statement as required by NCGS 160D-605, was approved at 9:15p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman and Middleton. Noes: Council Member Reece. Absent: None.

UNIFIED DEVELOPMENT ORDINANCE  
ZONING MAP CHANGE CONSISTENCY STATEMENT  
BY THE DURHAM CITY COUNCIL  
REGARDING Z2000003, OLIVE BRANCH RESERVE

WHEREAS the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160D-605, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

WHEREAS the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160D-605, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:

That final action regarding zoning map change Z2000003, OLIVE BRANCH RESERVE, is based upon review of consistency with the *Durham Comprehensive Plan* and any other officially adopted plan that is applicable, as provided in the 'Consistency with Adopted Plans' and 'Reasonable and in the Public Interest' sections of the staff report and Attachment 09C, 'Comprehensive Plan Consistency Analysis'; dated May 3, 2021, regarding the subject 'Z2000003, OLIVE BRANCH RESERVE' along with additional agenda information provided to the City Council and information provided at the public hearing; and

Although the proposed zoning map change designation is inconsistent with the Future Land Use designation as provided on the Future Land Use Map (FLUM) of the Comprehensive Plan in Attachment 04, the zoning change will amend the FLUM to a designation consistent with the proposed zoning change and other land use designations in the vicinity of the subject area.

It is the objective of the Durham City Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. This request promotes this by offering fair and reasonable development regulations supported by the 'Consistency with Adopted Plans' and 'Reasonable and in the Public Interest' sections of the staff report, and the applicant's responses to the 'Comprehensive Plan Consistency Analysis', Attachment 09c; dated May 3, 2021 regarding the subject 'Z2000003, OLIVE BRANCH RESERVE' along with additional agenda information provided to the City Council and information provided at the public hearing. Therefore, the request is reasonable and in the public interest.

**SUBJECT: UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT, OMNIBUS CHANGES 16 (TC2100001) (ITEM 21/ PR #14593)**

Michael Stock, Land Use Manager stated for the record that the Planning Department hearing item had been advertised and noticed in accordance with state and local law, and affidavits of all notices were on file in the Planning Department and provided the following staff report:

Text amendment TC2100001 proposed technical revisions and minor policy changes to various provisions of the Unified Development Ordinance (UDO). The amendments were identified as necessary corrections, clarifications, re-organization, or other minor changes to clarify the intent of the regulations or codify interpretations of regulations, or reflect minor policy changes, some of which are not solely technical in nature.

The Planning Commission recommended approval with a vote of 11-1 on March 9, 2021. Changes subsequent to the Planning Commission meeting included the following, most of which were issues discussed with the Planning Commission:

1. Neighborhood meeting and pre-submittal requirements were changed to maintain a requirement for at least one meeting, although more can be performed may may be recommended based upon the request,
2. Revisions to deviations of development plans were removed, but to be included in a forthcoming set of amendments focused on applications and permits, primarily in Article 3.,

3. Additional text to paragraph 9.4.1G, Along Rights-of-Way, is removed and is anticipated to be included in the next set of omnibus changes.
4. Co-living parking requirements were revised to be consistent with the parking for a dwelling unit, and removing the term “co-housing”.

Two actions were requested, the first on the ordinance, and the second on the appropriate statement of consistency.

Mayor Schewel opened the public hearing and asked for any speakers to the item.

Council Member Reece asked about the practical effect of Article 5 as it pertained to co-living as a group living use.

Mr. Stock stated that it was meant to have a more modernized and expansive impact on that particular housing type.

Council Member Reece asked for clarification on the district intensity standards increasing from 50 to 55 feet.

Mr. Stock advised that the change was to allow for increased consistency in the area near North Gate Mall and the Shops at Northgate Mall.

Mayor Schewel asked for Mr. Stock’s opinion on Planning Commissioner Miller’s comments in regard to allowing for more discretion by the Planning Director.

Mr. Stock stated that current text was already relatively discretionary, but that it had been discussed with the Planning Director and could possibly be changed in the future.

Mayor Schewel asked if the Planning Department had been in contact with local developers that were advocating for changes to the Omnibus text.

Mr. Stock advised that his department had been contact with those local developers.

Mayor Schewel asked if the item had been to both the Joint City-County Planning Commission and the City Planning Commission.

Mr. Stock responded that the item had been before both bodies.

Mimi Kessler, a resident of Durham, thanked staff for their work on the item, however she expressed concerns on the item. She cited regulations regarding impervious surfaces, minor special use permits, public notice requirements, and text amendment changes as the basis of her position.

Mr. Stock advised that the minor special use permits did go through a public hearing process through the Board of Adjustment, notice was required to be provided to homeowners within 600 feet of the site, and that signs were to be visible on the property.

Council Member Freeman asked a clarifying question regarding the length of driveways and if there was a limit.

Mr. Stock stated there was no limit on the length.

Seeing no additional speakers, Mayor Schewel declared the public hearing closed.

Council Member Freeman expressed concerns regarding equity and the notice requirements of the minor special use permits and requested that notice be extended to 1200 feet from the site.

Sara Young, Director of Planning Department, stated that she was not opposed to changing the notice requirement, however she suggested that Council Member's Freeman's concern would be better suited through a legislative process to have a greater impact. She advised that in her opinion the issue was not a notice requirement, but an approval mechanism issue.

**MOTION** by Council Member Middleton, seconded by Council Member Caballero, to adopt an ordinance amending the Unified Development Ordinance, incorporating revisions Article 1, General; Article 3, Applications and Permits; Article 5, Use Regulations; Article 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; Article 10, Parking and Loading; Article 11, Sign Standards; Article 12, Infrastructure and Public Improvements; Article 16, Design Districts, and Article 17, Definitions, was approved at 9:48 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

**ORDINANCE #15807**

**MOTION** by Council Member Reece, seconded by Council Member Caballero, to adopt the appropriate consistency statement as required per NCGS 160D-605, was approved at 9:48 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

UNIFIED DEVELOPMENT ORDINANCE  
TEXT AMENDMENT CONSISTENCY STATEMENT  
BY THE DURHAM CITY COUNCIL REGARDING  
TC2100001, Omnibus Changes 16

WHEREAS the Durham City Council, upon acting on a text amendment to the Unified Development Ordinance and pursuant to NCGS § 160D-605, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

WHEREAS the Durham City Council, upon acting on a text amendment to the Unified Development Ordinance and pursuant to NCGS § 160D-605, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:

That final action regarding text amendment TC2100001, Omnibus Changes 16, is based upon review of, and consistency with, the Durham Comprehensive Plan, as provided in the “Issues” and “Consistency with the Comprehensive Plan; Reasonable and in the Public Interest” sections of the memo to the City Manager, dated May 3, 2021, regarding the subject “Unified Development Ordinance Text Amendment Omnibus Changes 16 (TC2100001),” along with additional agenda information provided to the City Council and information provided at the public hearing; and

It is the objective of the Durham City Council to have the Unified Development Ordinance promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the City of Durham as supported in the “Issues” and “Consistency with the Comprehensive Plan; Reasonable and in the Public Interest” sections of the memo to the City Manager, dated May 3, 2021, regarding the subject “Unified Development Ordinance Text Amendment, Omnibus Changes 16 (TC2100001),” along with additional agenda information provided to the City Council and information provided at the public hearing. Therefore, the amendment is reasonable and in the public interest.

**SUBJECT: ZONING MAP CHANGE - CASA NORTH DUKE (ITEM 22/ PR #14590)**

Michael Stock, Land Use Manager stated for the record that the Planning Department hearing item had been advertised and noticed in accordance with state and local law, and affidavits of all notices were on file in the Planning Department and provided the following staff report:

Dan Jewell of Coulter Jewell Thames, PA, proposed to change the zoning designation of four parcels of land totaling 2.484 acres, and located on the west side of North Duke Street, south of West Carver Street and north of Stadium Drive. The current zoning was Office-Institutional with a development plan (OI(D)) and Residential Urban-5 (RU-5). The applicant proposed to change the designation to Planned Development Residential 8.000 (PDR 8.000). No change was proposed to the current watershed overlay designation of F/J-B. The properties were currently designated Office on the Future Land Use Map (FLUM). If the proposed zoning was approved staff recommended a change to the FLUM to designate the property as Medium High Density Residential (8-20 DU/acre). Planning Commission recommended approval 11-1 on March 9, 2021.

The applicant was granted an Expedited Hearing by the City Council on March 1, 2021. Therefore, the Planning Commission was not permitted to continue the hearing. The plan

indicated a list of committed elements detailed on the cover sheet of the plan and summarized in the report. The foremost was a commitment to affordable housing for all of the units, as defined by the UDO, which mandated a maximum 60% AMI at time of lease for rentals, 30-year minimum, and monitoring through Community Development. Subsequent to the Planning commission hearing, the applicant added an additional commitment to prohibit all construction traffic from accessing the site from Birmingham Avenue. The applicant discussed with staff since residents who spoke at the Planning commission hearing were concerned about traffic to and from the site.

Additionally, a planning commissioner brought up a concern regarding the proposed building envelop. Development plans were required to show them. The plan showed two, one definitive envelop outside of the required 100-foot stream buffers, and a secondary one that showed a limited amount of encroachment into the buffer. The secondary envelop did not automatically allow the encroachment, but showed the extent to which the applicant could seek it through special approvals during site plan review, through approval of a quasi-judicial hearing with the Board of Adjustment. Similar contingencies had been applied to other development aspects, such as access points that may not be approved unless by NCDOT, or even more recently with Harriet's Place, where a variance to project boundary buffers was reserved as a contingency, which raised no concern by the Planning Commission. The city attorney's office had reviewed the item and had no concern. The Planning Commission recommended approval 11-1 on March 9th. Again, council was requested to take two actions, the first on the ordinance and the second on the appropriate state of consistency.

Mayor Schewel opened the public hearing and asked for any speakers to the item.

Council Member Reece asked for clarification on the conditions on a future variance.

Mr. Stock confirmed that there was a text commitment was a reservation to seek a variance from project boundary buffers.

Council Member Reece asked if there were any notice signs placed at any of the entrances of Birmingham Avenue.

Mr. Stock stated that there was no specific entrance on Birmingham Avenue.

Council Member Reece questioned if the notice sign on the North Duke Street side of the property met the requirements for the process.

Mr. Stock said that he would confer with the state statute and report back.

Dan Jewel, a representative for the applicant, thanked staff for their work on the item, spoke to neighborhood meetings that the developer held, spoke in support of the item, and requested Council's approval.

Jess Brandis, a representative for the applicant, highlighted the 100% affordability of the project, addressed their various funding sources as well as various timelines they were trying to meet.

Zenki Batson, a Durham resident, expressed concerns for renters who did not get notified of the project, since the notice requirements were only for home owners.

Mr. Stock clarified that the statute did not require signage to be at every right of way on the property.

Council Member Middleton asked if the applicant wanted to speak to concerns expressed by Planning Commissioner Miller suggesting that what was being proposed was unlawful.

Mr. Sivers and Mr. Stock disagreed with the characterization of Mr. Miller's assessment of the item.

Council Member Reece thanked Council Member Middleton for addressing the comments of Mr. Miller, thanked staff for clarifying, and was comforted knowing that the City Attorney's Office had reviewed the item and said that it was legal.

Council Member Freeman asked what the dollar amount was.

Ms. Brandis stated that the dollar amount was about \$600,000.

Council Member Freeman expressed concerns on the item, such as: lack of environmental justice and minimal notice requirements for renters in the immediate area. She stated that she would not be supporting the item.

Mayor Schewel stressed the importance of Affordable Housing in the City and that the units were much needed.

Council Member Middleton thanked Mayor Schewel and Council Member Freeman for their comments and commended CASA for the history of their work ethic.

Mayor Pro Tempore Johnson expressed her support for the item and stated that she would be supporting it.

Council Member Freelon reiterated the need for Affordable Housing at such a low AMI and extended gratitude to CASA.

Council Member Freeman stated that she supported Affordable Housing, but did not support the process of the particular item.

Seeing no additional speakers, Mayor Schewel declared the public hearing closed.



**MOTION** by Council Member Reece, seconded by Mayor Pro Tempore Johnson, to adopt an ordinance amending the Unified Development Ordinance by taking property out of the Office-Institutional with a development plan (OI(D)) and Residential Urban-5 (RU-5); Falls/Jordan-District B (F/J-B) districts and establishing the same as Planned Development Residential 8.000 (PDR 8.000); Falls/Jordan-District B (F/J-B) districts, was approved at 10:22 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Middleton and Reece. Noes: Council Member Freeman. Absent: None.

**ORDINANCE #15808**

**MOTION** by Council Member Reece, seconded by Council Member Middleton, to adopt a Consistency and Reasonableness Statement as required by NCGS 160D-605, was approved at 10:23 p.m. by the following vote: Ayes: Mayor Schewel, Mayor Pro Tempore Johnson and Council Members Caballero, Freelon, Freeman, Middleton and Reece. Noes: None. Absent: None.

UNIFIED DEVELOPMENT ORDINANCE  
ZONING MAP CHANGE CONSISTENCY STATEMENT  
BY THE DURHAM CITY COUNCIL  
REGARDING Z2000039, CASA North Duke

WHEREAS the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160D-605, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

WHEREAS the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160D-605, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:

That final action regarding zoning map change Z2000039, CASA North Duke is based upon review of consistency with the Durham Comprehensive Plan and any other officially adopted plan that is applicable, as provided in the 'Consistency with Adopted Plans' and 'Reasonable and in the Public Interest' sections of the staff report and Attachment 6, 'Comprehensive Plan Consistency Analysis'; dated May 3, 2021, regarding the subject CASA North Duke Case Z2000039, along with additional agenda information provided to the City Council and information provided at the public hearing. Furthermore, the request addresses the need to provide housing for low-income populations in a location near transit and employment centers, consistent with Chapter 3, Housing Element, of the Durham Comprehensive Plan, and

Although the proposed zoning map change designation is inconsistent with the Future Land Use designation as provided on the Future Land Use Map (FLUM) of the Comprehensive Plan in Attachment 3, the zoning change will amend the FLUM to a designation consistent with the proposed zoning change and other land use designations in the vicinity of the subject area.

It is the objective of the Durham City Council to have the Unified Development Ordinance promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. This request promotes this by offering fair and reasonable development regulations supported by the 'Consistency with Adopted Plans' and 'Reasonable and in the Public Interest' sections of the staff report, the applicant's responses to the Public Interest Statements in Attachment 4, and Attachment 6, 'Comprehensive Plan Consistency Analysis'; dated May 3, 2021 regarding the subject CASA North Duke Case Z2000039 along with additional agenda information provided to the City Council and information provided at the public hearing. Therefore, the request is reasonable and in the public interest.

**[ADJOURNMENT]**

Seeing no further business to come before the Council, Mayor Pro Tempore Johnson adjourned the meeting at 10:24 P.M.

Ashley Wyatt, CMC  
Deputy City Clerk

Diana Schreiber, CMC  
City Clerk