

**AN ORDINANCE TO AMEND VARIOUS PROVISIONS  
OF THE UNIFIED DEVELOPMENT ORDINANCE (TC1900001)**

**WHEREAS**, the [Durham Board of County Commissioners/Durham City Council] wishes to amend certain provisions in the *Unified Development Ordinance* (UDO) by making technical and minor policy revisions; and

**WHEREAS**, it is the objective of the [Durham Board of County Commissioners/Durham City Council] to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

**NOW, THEREFORE**, be it ordained that Article 1, General; Article 3, Applications and Permits; Article 5, Use Regulations; Articles 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; Article 10, Parking and Loading; Article 12, Infrastructure and Public Improvements; Article 13, Additional Requirements for Subdivisions; Article 14, Nonconformities; Article 16, Design Districts; and Article 17, Definitions, of the Unified Development Ordinance are amended to make the following changes set forth in the deletions (strikethroughs) and additions (underlining), or as otherwise noted, below:

**PART 1**

[Amendments to Article 1, General; Article 3, Applications and Permits; and Article 4, Zoning Districts]

**Sec. 1.11 Declaration of Emergency Waiver**

The Planning Director or designee shall waive, suspend and/or cease enforcement of this Ordinance in accordance with an official declaration of emergency pursuant to Durham City Code of Ordinances Chapter 22; Durham County Code of Ordinances Chapter 10, Article III; and N.C. Gen. Stat. 166A.

**Sec. 3.1 Interpretation of this Ordinance**

[Paragraphs not listed remain unchanged]

**3.1.1 Applicability**

C. Other than official interpretations of this Ordinance issued by the authority indicated in paragraph 3.1.1B, Interpretation Authority, and permit and application approvals, the Planning Department does not issue interlocutory determinations or interpretations.

**Sec. 3.2 Common Review Procedures**

[Paragraphs not listed remain unchanged]

**3.2.2 Pre-Application Conference**

**B.** A mandatory pre-application conference with the Planning Director or designee shall be required for the following development reviews:

1. Comprehensive Plan amendments (text or future land use map) not initiated by the City or County;

2. Zoning map changes and UDO text amendments, including petitions to initiate a neighborhood protection overlay, not initiated by the City or County, ~~except for petitions to initiate a neighborhood protection overlay;~~

D. Validity Time-Period

If an application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.

**3.2.3 Neighborhood Meeting**

**C. Mailed Notice**

The applicant shall provide notice to each owner of record of any land located within 600 feet of the subject property ~~the following~~ by first class mail at least ten days prior to the date of the neighborhood meeting.

Commentary: It is also recommended that the same notice, either by email or first class mail, be provided to any applicable neighborhood organization, home owners' association, or similar neighborhood community organization.

- ~~1. Each owner of record of any land located within 600 feet of the property for zoning map change requests that do not require a comprehensive plan amendment application. Otherwise, 1,000 feet shall be required for any other applicable development approval; and~~
- ~~2. Neighborhood associations located within 1,000 feet of the site which have registered with the Planning Department to receive notice.~~

**3.2.4 Application Requirements**

**A. Forms**

Applications required under this Ordinance shall be submitted on forms and in such numbers as required by the appropriate department. All forms shall include, at a minimum, the following information:

1. Contact information for the individual or firm submitting the application.
2. Contact information for the individual or firm on whose behalf the application is being submitted.
3. Identification of the property affected by the application, such as a legal description, address, PID, or PIN as may be appropriate.
4. Any other information required by the director of the appropriate department, or designee, or the provisions of this Ordinance.

**3.2.5 Notice and Public Hearings**

**A. Summary of Notice Required**

1. Notice shall be required for applications for development approval as shown in the table below.

Procedure	Published	Mailed	Posted
<i>Comprehensive Plan</i> Future Land Use Map Amendment	✓	✓	✓
Zoning Map Change	✓	✓	✓
Site Plan		✓	
Minor Special Use Permit	✓	✓	✓

Procedure	Published	Mailed	Posted
Major or Transportation Special Use Permit	✓	✓	✓
Variance	✓	✓	✓
Appeal of Administrative Decision	✓	✓	✓
Major Works Certificate of Appropriateness		✓	✓
Historic District Designation	✓	✓	✓
Historic Landmark Designation	✓	✓	
<i>Historic Properties Local Review Criteria Text Amendment</i>	✓	✗	
Historic District Preservation Plan Text Amendment	✓	✓	✓
UDO or <i>Comprehensive Plan</i> Text Amendment	✓	✗	
Vested Rights Determination	✓	✓	✓
<del>Evaluation and Assessment</del> <u>Rectification</u> Report	✓		
Reasonable Accommodation	✓	✓	✓

**B. Public Notice Requirements**

**2. Mailed Notice**

**a. Mailed Notice Table**

The director of the appropriate department or designee shall provide notification as indicated in the notification table below:

Procedure	Property Owner	
	Subject Property, if applicable	Distance of Property from Subject Property (ft.)
<i>Comprehensive Plan</i> Future Land Use Map Amendment	✓	600
<del><i>Comprehensive Plan</i> Text Amendment</del>	—	—
Zoning Map Change	✓	600
<del>UDO Text Amendment</del>	—	—
Initial Zoning	✓	100
Site Plans <sup>1</sup>	✓	600
Board of Adjustment	✓	600
Governing Body Quasi-Judicial Hearings	✓	600
Historic District Designation; Neighborhood Protection Overlay	✓	100
Historic Landmark Designation and Certificate of Appropriateness (Major Works)	✓	All adjacent properties <sup>2</sup>

Procedure	Property Owner	
	Subject Property, if applicable	Distance of Property from Subject Property (ft.)
Historic District Preservation Plan Text Amendment	✓	All adjacent properties <sup>2</sup>
<del>Historic Properties Local Review Criteria Text Amendment</del>	—	—
Vested Rights Determination	✓	All adjacent properties <sup>2</sup>

**4. Content of Notice**

~~For all applications for development approval except UDO text amendments, the notices listed above shall contain the following specific information.~~

**a. Published or Mailed Notice**

~~Except for applications in paragraph b, below, A~~ published or mailed notice shall provide at least the following:

**b. Published Notice for UDO, Comprehensive Plan, Historic District Preservation Plan, or Historic Properties Local Review Criteria Text Amendments**

**D. Public Notification Service**

Any organization or individual may ~~pay an established fee, if applicable, and~~ register with the Planning Department to receive, at a minimum, a monthly electronic notification.

1. The notification shall contain the scheduled public hearings for the procedures listed in paragraph 3.2.5B.2.a, Mailed Notice Table, and major site plans.
2. To be eligible for registration, the applicant must provide the notification information required by the Planning Department.
3. Each organization or individual is responsible for providing updated information to the Planning Department in order to continue receiving notice.
4. The information provided shall be consistent with paragraph 3.2.5B.4, Content of Notice.

**3.2.6 Notice of Decision**

~~Within seven days after a decision is made, or as otherwise required in this Ordinance, a~~ copy of ~~the~~ a decision regarding an application shall be provided to the applicant and filed in the appropriate department to be available for public inspection during regular office hours.

**Sec. 3.4 Comprehensive Plan Adoption/Amendment**

[Paragraphs not listed remain unchanged]

**3.4.1 Applicability**

C. Adoption of or amendments to the Comprehensive Plan shall only apply to the jurisdiction in which the subject property is located unless the property is the subject of an annexation petition, or the amendment is pursuant to paragraph 3.4.10, ~~Evaluation and Assessment~~Rectification Report.

**3.4.3 Pre-Application Conference**

~~A.~~ Applicants applying for a plan amendment shall schedule a pre-application conference with the Planning Director or designee in accordance with paragraph 3.2.2, Pre-Application Conference.

~~B. If a plan amendment application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.~~

#### **3.4.4 Neighborhood Meeting**

All applicants applying for a plan amendment shall hold a neighborhood meeting in accordance with paragraph ~~3.4.43.2.3~~, Neighborhood Meeting, except for the following:

- A. Changes made pursuant to paragraph 3.4.10, ~~Evaluation and Assessment~~Rectification Report; or
- B. Amendments that are solely text amendments not specific to a particular site.

#### **3.4.10 ~~Evaluation and Assessment~~ Rectification Report**

A. Annually, the Planning staff will prepare ~~an Evaluation and Assessment Report (EAR)~~a rectification report for review and approval by the governing bodies. ~~The EAR will include, at a minimum, the following:~~report will include a rectification of any differences between the adopted Future Land Use Map of the City and County.

- ~~1. A rectification of any differences between the adopted Future Land Use Map of the City and County;~~
- ~~2. A report on the progress of policies within the Durham Comprehensive Plan;~~
- ~~3. Proposed changes to the policies of the Durham Comprehensive Plan that are primarily technical in nature, if any;~~
- ~~4. A summary of land use trends and issues that developed over the previous year; and~~
- ~~5. Technical updates to the Future Land Use Map;~~
  - ~~a. Amendments to the Recreation and Open Space layer, if needed, to conform to the most recent Special Flood Hazard Area designation by the Federal Emergency Management Agency;~~
  - ~~b. Amendments to the Recreation and Open Space layer to include those properties for which a conservation easement has been recorded with the Register of Deeds; and~~
  - ~~c. Amendments to the Agricultural layer to include those properties for which an agricultural easement has been recorded with the Register of Deeds.~~

B. The governing bodies shall hold public hearings for the approval of the ~~EAR~~rectification. Notification of the public hearings shall be pursuant to paragraph 3.2.5, Notice and Public Hearings.

### **Sec. 3.5 Zoning Map Change**

[Paragraphs not listed remain unchanged]

#### **3.5.2 Pre-Application Conference**

~~A.~~ Pursuant to paragraph 3.2.2, Pre-Application Conference, a pre-application conference is required prior to the submittal of a zoning map change application.

~~B. If a zoning map change application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.~~

#### **3.5.5 Application Requirements**

D. (County Only) If the boundaries of a zoning map change request in process are modified so as to 1) remove property from the request, and 2) have the effect of separating other adjoining properties from the boundaries of the modified request, that change shall be considered a substantial change from the original request and shall result in the modified

request being considered a new zoning map change request and requiring resubmittal with a new application and applicable fees.

### **Sec. 3.19 Text Amendment**

[Paragraphs not listed remain unchanged]

#### **3.19.1 General**

##### **D. Pre-Application Conference**

Pursuant to paragraph 3.2.2, Pre-Application Conference, a pre-application conference is required prior to the submittal of a text amendment application.

~~**Sec. 3.22 Limited Agriculture Permit (City Only)**~~ [This section is deleted in its entirety]

### **Sec. 3.23-22 Architectural Review**

~~**3.2322.1 Applicability**~~ [text remains unchanged]

~~**3.2322.2 Application Requirements**~~ [text remains unchanged]

~~**3.2322.3 Action by the Planning Director**~~ [text remains unchanged]

### **Sec. 3.24-23 Reasonable Accommodation**

~~**3.2423.1 Purpose**~~[text remains unchanged]

~~**3.2423.2 Applicability**~~[text remains unchanged]

~~**3.2423.3 Other Regulatory Obligations**~~[text remains unchanged]

~~**3.2423.4 Pre-Application Conference**~~[text remains unchanged]

~~**3.2423.5 Application Requirements**~~[text remains unchanged]

~~**3.2423.6 Notice and Public Hearings**~~[text remains unchanged]

~~**3.2423.7 Burden of Proof**~~[text remains unchanged]

~~**3.2423.8 Action by the Planning Director**~~[text remains unchanged]

~~**3.2423.9 Action by the Board of Adjustment**~~[text remains unchanged]

~~**3.2423.10 Findings**~~[text remains unchanged]

~~**3.2423.11 Appeal**~~[text remains unchanged]

### **Sec. 4.10 Historic Districts Overlay (-H)**

[Paragraphs not listed remain unchanged]

#### **4.10.5 Downtown Historic District Overlay**

##### **D. Building Step-Backs**

Building step-backs shall meet the preservation plan requirements through the issuance of a COA and shall be exempt from the height articulation requirements of paragraph ~~16.3.4C.1~~16.3.3C.1, DD District.

**PART 2**

[Amendments to Article 5, Use Regulations]

**Sec. 5.1 Use Table**

USE CATEGORY	SPECIFIC USE	RESIDENTIAL						NONRESIDENTIAL						PLANNED				DESIGN		NOTES:			
		RR	RS	RS-M	RU	RU-M	RC	CI	CN	OI	CG	SRP	SRP-C <sup>3</sup>	IL	I	PDR	UC	CC	IP		MU	DD	CD
<b>AGRICULTURAL USES</b> (City-Only)																							
<b>Agriculture</b>	All agriculture, except as listed below	L	L																				5.3.1A
	Apiculture	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Commercial crop production	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	5.3.1A
	Forestry	L	L	L	L	L	L	L	L	L	L		L	L	L	L	L	L	L	L		L	5.3.1B
<u>Agriculture (County Only)</u>	<u>Bona fide Farms</u>	<u>Bona fide farms shall be permitted in accordance with NCGS 153A-340(b).</u>																					

**Sec. 5.3 Limited Use Standards**

[Paragraphs not listed remain unchanged]

**5.3.1 Agricultural Use Standards**

**A. Agricultural Uses (City-Only)**

Agricultural uses in the City, and in the County if not otherwise exempted from zoning regulation by state statute, shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following standards:

~~**C. Agricultural Uses (County Only)**~~

~~Agricultural uses in the County shall be permitted in accordance with state statute.~~

**Sec. 5.4 Accessory Uses and Structures**

[Paragraphs not listed remain unchanged]

~~**5.4.12 Limited Agriculture Domestic Chickens (City Only)**~~

~~Limited agriculture shall be subject to the following regulations:~~

~~**A. General**~~

~~**1. Permits Required**~~

~~A permit under Sec. 3.22, Limited Agriculture Permit (City Only), is required in order to conduct the uses designated by this section. Such uses are distinct from agricultural uses or~~

~~agricultural use categories permitted under this Ordinance. The limited agriculture permit is personal to the permittee and cannot be assigned.~~

~~Commentary: A building permit issued by the City County Inspections Department may be required in addition to a Limited Agriculture Permit.~~

~~2. Permit Revocation and Removal of Items~~

- ~~a. Compliance with the requirements of this Ordinance shall create a presumption that the permitted use does not create a nuisance or threat to public health or safety. The permit shall, however, be revoked if the Planning Director determines that the permitted use creates a nuisance or detriment to public health or safety.~~
- ~~b. Violation of ordinance standards shall result in permit revocation under paragraph 3.22.4, Revocation, and possible enforcement under Article 15, Enforcement, including civil and criminal penalties. Misrepresentation by a permittee shall result in permit revocation or voiding under paragraph 15.3.7, Permit Revocation or Voiding.~~
- ~~c. Regardless of whether an ordinance violation has occurred, the Planning Director is authorized to order immediate removal of items and structures associated with the permitted use that the Director determines create a nuisance or detriment to public health or safety.~~

~~3. Non-Commercial Use Only~~

~~Uses authorized under a Limited Agriculture Permit shall be non-commercial only. Commercial activities are prohibited. Domestic animals authorized by a Limited Agriculture Permit shall be kept as pets or for personal use only.~~

~~4. Nuisance Prohibited~~

~~Uses authorized under a Limited Agriculture Permit shall not create a nuisance. Uses shall be conducted in a manner that does not disturb the use or enjoyment of adjacent properties. Odor generated shall not be perceptible at the property boundaries, and noise generated shall not disturb people of reasonable sensitivity at the property boundaries. Only motion-activated lighting shall be used to light any limited agriculture area.~~

~~5. Public Health and Safety~~

~~Uses authorized under a Limited Agriculture Permit shall not create a detriment to public health or safety.~~

~~B. Domestic Chickens~~

~~1A. Purpose~~

The purpose of this section is to authorize and provide standards for the keeping of domesticated chickens. It is intended to enable residents to responsibly keep a small number of female chickens on a non-commercial basis while limiting the potential adverse impacts on the surrounding neighborhood.

~~2B. Definitions~~

“Chicken”, “Chicken Coop”, and “Chicken Pen” are defined in Sec. 17.3, Defined Terms.

~~3C. Number and Type of Chickens Allowed~~

The maximum number of chickens allowed is ten (10) per lot, regardless of how many dwelling units are on the lot. Only female chickens are allowed. There is no restriction on chicken breeds.

~~4. Accessory to Single Family Housing Types~~



~~Residents of single family houses can keep chickens as authorized under this section. A limited agriculture permit shall not be issued for chickens at other housing types.~~

**5D. Personal Use Only**

- a1. Eggs, chicks, adult chickens, and processed chickens shall not be sold. Chicken manure and compost using chicken manure shall not be sold or otherwise distributed.
- b2. Produce on which chicken manure from the permitted chickens has been used as fertilizer, or on which compost made with such manure has been used, shall not be sold.

**6E. Chicken Enclosures**

A chicken coop and chicken pen shall be provided. Chickens shall be secured in the chicken coop during non-daylight hours. During daylight hours chickens can be located in the chicken pen and can be located outside of the pen in a securely fenced yard or chicken tractor/portable pen if supervised by an adult person.

**7F. Construction, Design, and Location for Coop and Pen**

**a1. Location**

Notwithstanding the location requirements of paragraph 5.4.1, Accessory Structures, chicken coops shall be located at least 15 feet from any property line or public right-of-way, and chicken pens shall be located at least five feet from any property line or right-of-way.

**b2. Coop**

~~(1)a.~~ Except as required in paragraph ~~5.4.12B.7.a, Location 1, above,~~ the chicken coop shall comply with the requirements of paragraph 5.4.1, Accessory Structures.

~~(2)b.~~ The coop shall be enclosed with solid material on all sides and have a solid roof and door(s). An existing shed or garage can be used for a coop.

~~(3) The coop shall be at least 18 inches high, and provide at least three square feet of floor area per chicken.~~

~~(4) The coop shall provide one square foot of window per 15 square feet of floor area, and vents as necessary to ensure adequate ventilation. If the floor area is less than 15 square feet, then at least one window measuring one foot by one foot shall be provided.~~

~~(5) Doors shall be constructed so that they can shut and lock. Windows shall be constructed so they can shut.~~

~~(6) Windows and vents shall be covered with wire that is 16 gauge or wider diameter with maximum spacing of one inch by one inch.~~

~~(7) An existing shed or garage can be used for a coop if it meets the standards pursuant to paragraph 5.4.12B.7, Construction, Design, and Location for Coop and Pen.~~

**c3. Pen**

~~(1)a.~~ The chicken pen shall be constructed of wood or metal posts and wire fencing material ~~that is 19 gauge or wider diameter with maximum spacing, overall or along the lower portion for graduated poultry fencing, of one inch by six inches.~~

~~(2) The pen shall provide at least 10 square feet of area per chicken. The fence shall rise at least four feet above the ground, and be buried at least one foot in the ground.~~

~~(3)b.~~ The pen shall be covered with wire, aviary netting, or solid roofing.

- ~~(4) The chicken coop shall comply with the requirements of Sec. 5.4, Accessory Uses and Structures. The coop shall be enclosed with solid material on all sides and have a solid roof and door(s). The coop shall be at least 18 inches high, and provide at least three square feet of floor area per chicken. The coop shall provide one square foot of window per 15 square feet of floor area, and vents as necessary to ensure adequate ventilation. The materials for each element, e.g., walls, roof, windows and doors, shall be uniform and in harmony with the surrounding area. Doors shall be constructed so that they can shut and lock. Windows shall be constructed so they can shut. Windows and vents shall be covered with wire that is 14 1/2-gauge or less with maximum spacing of one inch by one inch. The coop shall be impermeable to rodents, wild birds, and predators, including dogs and cats.~~
- ~~d. The chicken pen shall be constructed of wood or metal posts and wire fencing material that is 14 1/2-gauge or less with maximum spacing, overall or along the lower portion for graduated poultry fencing, of one inch by six inches. The pen shall provide at least 10 square feet of area per chicken. The fence shall rise at least four feet above the ground and be buried at least one foot in the ground. The pen shall be covered with wire, aviary netting, or solid roofing.~~

**8G. Maintenance**

1. The chicken coop, chicken pen, and surrounding area shall be kept clean, dry, odor-free, and in a neat and sanitary condition at all times.

Commentary: The chicken coop should provide adequate security, ventilation, and shelter from moisture and extremes of temperature. The chicken pen should provide adequate security and sun and shade. Chickens should have access to feed and clean water at all times, and such feed and water shall be inaccessible to rodents, wild birds, and predators. Chickens should be provided adequate bedding in the chicken coop and perches are encouraged.

2. All manure, uneaten feed, and other trash shall be removed in a timely manner and disposed of in a sanitary manner.
3. ~~The permittee is subject to, and shall comply with, the~~ requirements of Chapter 70, Utilities, Article V, Stormwater Management and Pollution Control shall apply. ~~The permittee shall take all~~ necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites shall be performed.
4. Slaughter and other processing of chickens shall be conducted in accordance with Small Flock Management Resources guidance provided by the Poultry Science Division of the North Carolina Cooperative Extension/North Carolina State University College of Agriculture and Life Sciences. Slaughter shall not be visible from any adjacent property, public area, or right-of-way. If a chicken dies from causes other than slaughter, it shall promptly be placed into a plastic bag, which shall be closed securely and disposed of with household waste.

**9. Living Conditions**

~~The chicken coop shall provide adequate security, ventilation, and shelter from moisture and extremes of temperature. The chicken pen shall provide adequate security and sun and shade. Chickens shall have access to feed and clean water at all times, and such feed and water shall be inaccessible to rodents, wild birds, and predators.~~

~~Chickens shall be provided adequate bedding in the chicken coop and perches are encouraged.~~

**10H. Waste Storage and Use**

- a1. No more than two cubic feet of chicken manure shall be stored, for use as unprocessed fertilizer. All other manure shall be disposed of or composted. All stored manure shall be completely contained in a waterproof container.
- b2. Any compost using chicken manure shall be produced in an enclosed backyard composter.

**Commentary:** Be aware that unprocessed chicken manure may contain pathogens that can be transmitted to produce on which it is used as fertilizer. A proper mix of materials and maintaining a temperature of at least 131 degrees Fahrenheit for at least three consecutive days is necessary to destroy pathogens in compost.

**5.4.13 Cluster Box Unit (CBU)**

**A. General**

1. If required by the United States Postal Service (USPS), CBUs for residential developments shall meet or exceed the standards of the ~~United States Postal Service-USPS~~ and meet the following additional requirements. In case of regulatory conflicts, any requirement of the USPS shall supersede regulations of this Ordinance.

**PART 3**

[Amendments to Articles 6, District Intensity Standards and 7, Design Standards]

**Sec. 6.2 Residential Rural (RR) Development Intensity**

[Paragraphs not listed remain unchanged]

**6.2.1 Development Standards**

**C. Accessory Structure Requirements (Not applicable to bona fide farms in the CountyCity Only)**

1. In addition to the accessory structure requirements set forth in Sec. 5.4, Accessory Uses and Standards, the following accessory structures shall maintain a minimum 50-foot setback from all property lines.
  - a. New farm buildings and equestrian facilities; and
  - b. Pens, chicken coops, corrals, or similar enclosures where livestock are kept.
2. Livestock shall be kept in pens, chicken coops, corrals, or similar enclosures.

**Commentary:** The Durham City Code of Ordinances considers the accumulation of refuse and debris a public nuisance pursuant to Sec. 26-179, Accumulation of refuse and debris declared public nuisance; abatement.

**Sec. 6.3 Residential Suburban (RS) Development Intensity**

[Paragraphs not listed remain unchanged]

**6.3.1 Development Standards**

**B. RS-20 District Accessory Structure Requirements (Not applicable to bona fide farms in the CountyCity Only)**

1. In addition to the accessory structure requirements set forth in Sec. 5.4, Accessory Uses and Structures, the following accessory structures shall maintain a minimum 50-foot setback from all property lines:
  - a. New farm buildings and equestrian facilities; and
  - b. Pens, chicken coops, corrals, or similar enclosures where livestock are kept.
2. Livestock shall be kept in pens, chicken coops, corrals, or similar enclosures.

**Commentary:** The Durham City Code of Ordinances considers the accumulation of refuse and debris a public nuisance pursuant to Sec. 26-179, Accumulation of refuse and debris declared public nuisance; abatement.

**Sec. 6.5 Residential Compact (RC) Development Intensity**

[Paragraphs not listed remain unchanged]

**6.5.1 Development Standards**

**A. Dimensional Standards**

1. All residential development in the RC District shall meet the standards in the table below. For illustrations, lot dimensions, and required yards for each housing type, see Sec. 7.1, Housing Types.

Dimensional Standard	RC	
	Min.	Max.
Residential Density (units per acre)		
Core Area	12.0	53.0
Support Area	6.0	20.0
Open Space (% of gross area) <sup>1</sup>		
Core Area	2.0	—
Support Area	5.0	—
Site Area	See Sec. <a href="#">7.1</a> , Housing Types	
Lot Area	See Sec. <a href="#">7.1</a> , Housing Types	
Height (feet)		
Core Area	24	75
Support Area	—	45

<sup>1</sup> Please see Sec. 12.5, Recreation land, for additional land dedication requirements that may apply.

**Sec. 6.10 Nonresidential District and Group Living Development Intensity**

[Paragraphs not listed remain unchanged]

**6.10.1 Nonresidential and Group Living Development Standards**

**A. Rural Tier**

1. Standards for All Districts

Dimensional Standard	CN		CG		I	
	Min.	Max.	Min.	Max.	Min.	Max.
Site-Lot Area (acres)	2	—	3	—	10	—
Project Floor Area (square feet)	—	20,000	—	50,000	—	—
Lot Width (feet)	100	—	150	—	250	—
Street Yard (feet)	25	—	25	—	40	—
Side Yard (feet)	25	—	25	—	50	—
Rear Yard (feet)	25	—	25	—	50	—
Building Coverage (%) <sup>1</sup>	—	23	—	35	—	30
Height (feet)	—	25	—	25	—	50

## B. Suburban Tier

### 1. Standards for the CN, OI, and CG Districts

Dimensional Standard	CN		OI		CG	
	Min.	Max.	Min.	Max.	Min.	Max.
Site-Lot Area (square feet)	5,000	—	20,000	—	20,000	—
Project Floor Area (square feet)	—	20,000	—	—	—	—
Lot Width (feet)	50	—	60	—	100	—
Street Yard (feet)	25	—	25	—	25	—
Side Yard (feet)	15	—	20	—	25	—
Rear Yard (feet)	25	—	25	—	25	—
Building Coverage (%) <sup>1</sup>	—	60	—	60	—	60
Height (feet)	—	35	—	50	—	50

### 2. Standards for the SRP, IL, and I Districts

Dimensional Standard	SRP		IL		I	
	Min.	Max.	Min.	Max.	Min.	Max.
Site-Lot Area (square feet)	—	—	25,000	—	30,000	—
Lot Width (feet)	300	—	100	—	150	—
Street Yard (feet)	100	—	40	—	40	—
Side Yard (feet)	100	—	30	—	50	—
Rear Yard (feet)	100	—	25	—	40	—
Building Coverage (%) <sup>1</sup>	—	15	—	60	—	65
Height (feet)	—	120	—	50	—	90

C. Urban Tier

2. Standards for the CN, OI, and CG Districts

Dimensional Standard	CN		OI		CG	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Lot Area (square feet)	5,000	—	20,000	—	20,000	
Project Floor Area (square feet)	—	20,000	—	—	—	—
Lot Width (feet)	50	—	50	—	100	
Street Yard <sup>1</sup> (feet) From ROW (feet)	—	15	—	15	—	15
Side Yard (feet)	10	—	10	—	15	—
Rear Yard (feet)	25	—	25	—	25	—
Building Coverage (%) <sup>2,1</sup>	—	60	—	60	—	60
Height (feet)	—	35	—	90	—	50

<sup>1</sup> Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

<sup>2-1</sup> Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- a. Structure(s) A primary structure shall be oriented such that at least one of the following standards is met:
- (1) The longest building façade is parallel to and within the maximum street yard;
  - or
  - (2) The street-facing building façade occupies at least 60% of the total street frontage for the development.

3. Standards for the IL and I Districts

Dimensional Standard	IL		I	
	Min.	Max.	Min.	Max.
Site Lot Area (square feet)	5,000	—	25,000	—
Lot Width (feet)	50	—	100	—
Street Yard (feet) From ROW (feet)	—	20 <sup>2</sup>	40	—
Side Yard (feet)	15	—	40	—
Rear Yard (feet)	25	—	40	—
Building Coverage (%) <sup>1</sup>	—	60	—	65 <sup>2</sup>
Height (feet)	—	50	—	90

<sup>1</sup> Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

<sup>2-1</sup> Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- a. In the IL District, structure(s) a primary structure shall be oriented such that at least one of the following standards is met:
- (1) The longest building façade is parallel to and within the maximum street yard; or

- (2) The street-facing building façade occupies at least 60% of the total street frontage for the development.

**D. Compact Neighborhood Tier**

**2. Standards for the CN and OI Districts**

Dimensional Standard	CN		OI	
	Min.	Max.	Min.	Max.
Project Floor Area (square feet)	—	20,000	—	—
Lot Width (feet)	50	—	50	—
Street Yard <sup>1</sup> (feet) From ROW (feet)	—	15	—	15
Side Yard (feet)	10	—	10	—
Rear Yard (feet)	15	—	15	—
Height (feet)	—	35	—	120

<sup>1</sup> Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

- a. Structure(s) A primary structure shall be oriented such that at least one of the following standards is met:
- (1) The longest building façade is parallel to and within the maximum street yard; or
  - (2) The street-facing building façade occupies at least 60% of the total street frontage for the development.

**3. Standards for the CG and IL Districts**

Dimensional Standard	CG		IL	
	Min.	Max.	Min.	Max.
Lot Width (feet)	50	—	50	—
Street Yard <sup>1</sup> (feet) From ROW (feet)	—	15	—	15
Side Yard (feet)	10	—	15	—
Rear Yard (feet)	15	—	15	—
Height (feet)	—	90	—	50

<sup>1</sup> Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

- a. Structure(s) A primary structure shall be oriented such that at least one of the following standards is met:
- (1) The longest building façade is parallel to and within the maximum street yard; or
  - (2) The street-facing building façade occupies at least 60% of the total street frontage for the development.

## Sec. 6.11 Planned Districts

[Paragraphs not listed remain unchanged]

### 6.11.3 Planned Development Residential (PDR)

#### C. Intensity

##### 1. Residential Density

The specific maximum density in units per acre, other than the areas proposed for nonresidential development and areas precluded from consideration for density in paragraphs ~~8.3.1C.5, Tree Coverage Calculation Exclusions~~8.3.1C.5.b(1); 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas; and 8.8.5, Density Credits, shall be included in the application. The allowable density shall be consistent with the land use designation shown in the Comprehensive Plan.

### 6.11.4 University and College Districts (UC and UC-2)

#### L. Infrastructure

##### 2. Sidewalks

d. Payment-in-lieu is available pursuant to paragraph 12.4.2C.2, Payment-in-lieu (City only)

### 6.11.5 Commercial Center (CC)

#### G. Yards

1. All nonresidential and upper-story residential structures shall maintain yards per the CG District within the applicable Tier.
2. Apartment and multiplex structures shall maintain yards per the applicable housing type in Sec. 7.1, Housing Types.
3. Yard requirements shall not apply to internal property lines of the overall development site.

## Sec. 6.12 Measurement and Computation

[Paragraphs not listed remain unchanged]

### 6.12.3 Required Yards

#### A. General Standards for Required Yards

1. Required yards shall be unobstructed by structures, or objects constructed or erected in a fixed location on the ground, ~~buildings or structures~~, unless allowed by standards found elsewhere in this Ordinance.
2. Required yards and other open areas provided for one lot or building structure shall not be considered as providing yard space for another building structure or lot.

#### B. Encroachments into Required Yards

Unless otherwise regulated within this Ordinance, the following encroachment standards shall apply, ~~so long as they do not extend in any easements~~:

Commentary: Easements, other ordinances, or other legally established restrictions may limit encroachments otherwise allowed by this Ordinance.

7. For residential uses, Decks~~decks~~, uncovered terraces, and at-grade patios can extend up to four feet into any required side yard, or up to eight feet into any required street yard, or within four feet of a rear property line. For nonresidential uses, such features can be located within any yard.



9. Except in Design Districts, bay windows, entrances, balconies, and similar features that are less than ten feet wide can extend up to one and one-half feet into any required yard, but shall remain at least ~~six~~three feet from the property line.

#### **Sec. 7.4 Outdoor Lighting**

[Paragraphs not listed remain unchanged]

##### **7.4.3 Standards**

##### **C. Full-Cutoff Lighting**

The maximum height for directional or full cut-off lighting fixtures (fixtures designed to ensure that no light is emitted above a horizontal line parallel to the ground) shall be:

1. 30 feet above grade if located at least 50 feet from a residential property line; and
2. 15 feet above grade if located within 50 feet of a residential property line.

##### **D. Non-Directional Lighting**

1. The maximum height for non-directional lighting fixtures (fixtures designed to allow light to be emitted above a horizontal line parallel to the ground) shall be 15 feet above grade. Non-directional lighting fixtures shall be translucent or have baffles to prevent views of the light source.

2. Non-directional lighting fixture shall be located at least 50 feet from a residential property line.

##### **F. Glare**

Lighting shall be oriented not to direct glare or excessive illumination onto streets and adjacent residences~~in a manner that may distract or interfere with the vision of drivers on such streets.~~

#### **PART 4**

[Amendments to Article 9, Landscaping and Buffering; Article 10, Parking and Loading; Article 12, Infrastructure and Public Improvements; and Article 13, Additional Requirements for Subdivisions]

#### **Sec. 9.4 Project Boundary Buffers**

[Paragraphs not listed remain unchanged]

##### **9.4.3 Standards**

##### **B. Project Boundary Buffer Table**

		ZONING DISTRICT OF ADJACENT PROPERTY																
		RR and PDR <u>at-in Rural DensityTier</u>	RS-20, RS-10, RS-8 and PDR <u>at-in Suburban DensityTier</u>	RU and PDR <u>at-in Urban DensityTier</u>	RS-M, RU-M	RC	CI	CN	OI	SRP	SRP-C (County Only)	MU	UC	CG	CC	IL	IP	I
ZONING DISTRICT OF SUBJECT PROPERTY	RR and PDR <u>at-in Rural DensityTier</u>	0/0	0/.2	.2/.6	.2/.8	.2/.8	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RS-20, RS-10, RS-8 and PDR <u>at-in Suburban DensityTier</u>	.2/.2	0/0	.2/.4	.2/.6	.2/.6	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RU and PDR <u>at-in Urban DensityTier</u>	.4/.6	.2/.4	0/0	.2/.6	.2/.6	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RS-M, RU-M	.6/.8	.4/.6	.4/.6	.2/.4	.2/.4	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RC	.6/.8	.4/.6	.4/.6	.2/.4	0/0	0/.2	0/0	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	CI	.2/.2	.2/.2	.2/.2	.2/.2	.2/.2	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	.2/.4	.2/.4	.2/.4
	CN	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	OI	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	SRP	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	0/0	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	SRP-C (County Only)	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	0/0	.4/.6	.4/.6	0/0	0/0	.4/.6	.4/.6	.2/.4	.2/.4	.2/.4	.2/.4	.2/1.0
	MU	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	UC	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	CG	.6/.8	.6/.8	.6/.8	.6/.8	.4/.6	0/0	.4/.6	.4/.6	.4/.6	.2/.4	.4/.6	.4/.6	.2/.4	.2/.4	.2/.4	.2/.4	.2/1.0
	CC	.6/.8	.6/.8	.6/.8	.6/.8	.4/.6	0/0	.4/.6	.4/.6	.4/.6	.2/.4	.4/.6	.4/.6	.2/.4	.2/.4	.2/.4	.2/.4	.2/1.0
IL	.6/.6	.6/.6	.6/.6	.6/.6	.4/.2	.2/.4	.4/.4	.4/.4	.4/.4	.2/.2	.4/.4	.4/.4	.2/.2	.2/.2	.2/.2	.2/.2	.2/.2	

		ZONING DISTRICT OF ADJACENT PROPERTY																
		RR and PDR <u>at-in Rural Density Tier</u>	RS-20, RS-10, RS-8 and PDR <u>at-in Suburban Density Tier</u>	RU and PDR <u>at-in Urban Density Tier</u>	RS-M, RU-M	RC	CI	CN	OI	SRP	SRP-C (County Only)	MU	UC	CG	CC	IL	IP	I
		.8	.8	.8	.8	.6	.4	.6	.6	.6	.4	.6	.6	.4	.4	.4	.4	1.0
IP		.6/ .8	.6/ .8	.6/ .8	.6/ .8	.4/ .6	.2/ .4	.4/ .6	.4/ .6	.4/ .6	.2/ .4	.4/ .6	.4/ .6	.2/ .4	.2/ .4	.2/ .4	.2/ .4	.2/ 1.0
	I	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.2/ .4	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.8/ 1.0	.2/ .4

**Sec. 9.6 Street Trees**

[Paragraphs not listed remain unchanged]

**9.6.1 Applicability**

- A. All development shall be conducted in accordance with this section except that additions to existing residential buildings on single-family residential lots of record recorded prior to June 28, 1999, shall be exempt from the provisions of this section.
- B. In the Rural Tier, Residential-residential development utilizing-in the RR District shall be exempt from the provisions of this section except for conservation subdivisions.

**Sec. 10.2 General Requirements**

[Paragraphs not listed remain unchanged]

**10.2.3 Vehicle Parking Permitted in Residential Districts and Uses**

- A. Other than townhouses-multiplexes and apartments, residential uses shall-only-can utilize designated driveways within any yard area between the primary structure and the street for parking.
  1. Driveways shall be surfaced with an all-weather material with edges clearly delineated per paragraph 10.4.2D, surfacing; and,
  2. Within the area between the primary structure and the street, shall not exceed 25 feet in width unless otherwise required in this Ordinance.
  3. Except for driveways, no additional curb cuts or vehicle access points shall be permitted.

**Sec. 10.3 Required Parking**

[Paragraphs not listed remain unchanged]

**10.3.1 Required Motorized Vehicle and Bicycle Parking**

**B. Required Parking**

**9. Parking Reduction Allowed By-Right**

The minimum amount of motor vehicle parking can be reduced using the following methods for a maximum reduction of 20%:

**a. Shared Parking**

(1) Proposed developments or change of use with two or more uses can reduce the total minimum parking requirements by a maximum of 20% if the following factors are demonstrated through a parking generation analysis, prepared and sealed by a registered engineer with transportation expertise, documenting the following:

(1a) The peak hours for each use do not overlap; and

(1b) The proposed amount of parking is sufficient to accommodate the anticipated demands for each of the uses at peak hour.

(2) Bicycle parking can be reduced by the same percentage if the amount of bicycle parking provided would accommodate each use individually.

**Sec. 10.4 Design Standards**

[Paragraphs not listed remain unchanged]

**10.4.2 Parking Space Design Standards**

**D. Surfacing**

**Commentary:** Paving shall be required to adhere to any standards maintained by the City Public Works Department.

**2. All Other Tiers**

**b. Compact Neighborhood and Downtown Tiers**

~~**Commentary:** Paving shall be required to adhere to any standards maintained by the City Public Works Department.~~

**10.4.4 Design Standards for Bicycle Parking**

**A. General Standards**

1. Where bicycle parking facilities are not clearly visible to approaching cyclists, signs shall be posted to direct cyclists to the facilities.

**Commentary:** Users (and especially first-time users) should recognize the rack as bicycle parking and should be able to use it as intended without the need for written instructions.

9. A rack shall support a standard bicycle frame at two points of contact with the frame, at least six inches apart horizontally, without damage to frame, wheels, or components, allowing a closed section of the bicycle frame and at least one wheel to be conveniently secured with a single U-lock.

**C. Outdoor Parking**

1. Bicycle parking can be located as follows:

c. Up to 100 feet from a main entrance, if the following is provided:

(4) Lighting shall be provided in the bicycle parking area, and walkways connecting the parking area to the main entrance, equivalent to that provided in facilities for motorized vehicles.

**Sec. 12.1 Improvement Requirements**

[Paragraphs not listed remain unchanged]

**12.1.1 General**

**A. Applicability**

The requirements of this Article shall apply to all development ~~required to submit site plans or plats~~, unless expressly exempted by the language of the sections below.

**Sec. 12.2 Ingress and Egress Requirements**

[Paragraphs not listed remain unchanged]

**12.2.2 Other Forms of Access**

**B. Ingress/Egress/Regress Easements Other than Private Streets**

**1. ~~Single-family Residence in the Rural Tier~~**

Easements shall be allowed for ~~the construction of~~ one single-family residence on an existing lot of record as of September 16, 1996. The parcel shall not be further subdivided.

**2. ~~Other than in the Rural Tier~~ All Other Instances** [Text remains unchanged]

**Sec. 12.4 Pedestrian and Bicycle Mobility**

[Paragraphs not listed remain unchanged]

**12.4.2 Sidewalk Requirement**

**A.** A sidewalk shall be provided along public or private right-of-way as shown in the table below.

Street Type	Rural Tier	Suburban Tier	Urban Tier	Compact Neighborhood/ Downtown Tiers
Freeways; Expressways	None	None	None	None
Boulevards; Major/Minor Thoroughfare	None	Both Sides	Both Sides	Both Sides
Collectors	None	Both Sides	Both Sides	Both Sides
Nonresidential Street				
At least 2,000 daily trips (post development)	None	<del>Both Sides</del> One-Side	Both Sides	Both Sides
Less than 2,000 daily trips (post development)	None	<del>Both Sides</del> One-Side	<del>Both Sides</del> One-Side	Both Sides
Residential Street	None	<del>Both Sides</del> One-Side	<del>Both Sides</del> One-Side	Both Sides
Cul-de-Sac				
400 or more linear feet	None	<del>Both Sides</del> One-Side	<del>Both Sides</del> One-Side	Both Sides
Less than 400 linear feet	None	<del>Both Sides</del> None	<del>Both Sides</del> One-Side	Both Sides

## Sec. 12.5 Recreation Land

### 12.5.2 Dedication, Impact Fees, and Payment-in-Lieu

#### A. In the ~~Rural Tier~~County

1. The applicant for a residential development shall be responsible for either:
  - a. Dedicating 1,150 square feet of land for recreation purposes (including active and passive recreation areas, including trails) for each proposed dwelling unit; or
  - b. Making payment-in-lieu equivalent to the tax value of 1,150 square feet of comparable property per dwelling unit.
2. One of the following shall be required:
  - a. Dedication of land; or
  - b. Payment-in-lieu of dedication.

#### B. ~~Requirements in all Tiers other than the Rural Tier~~In the City

1. The applicant for a residential development shall be responsible for
  - a. Paying a recreation impact fee or dedicating 575 square feet of land for parks and active recreation areas for each proposed dwelling unit; and
  - b. Paying a resource based recreation impact fee or dedicating 575 square feet of land for passive recreation areas (including trails) for each proposed dwelling unit. The applicant may make payment-in-lieu equivalent to the tax value of 575 square feet of comparable property per dwelling unit.
2. Where recreation service districts have been established, payments made under this section shall be expended within the respective district from which collected.
3. The following, individually or in combination, shall be required based upon jurisdiction and whether the development is located on the Durham Trails and Greenways Master Plan or the Durham Comprehensive Bicycle Transportation Plan:
  - a. Payment of an impact fee;
  - b. Dedication of land; or
  - c. Payment-in-lieu of dedication.

## Sec. 13.6 Street Connectivity Requirements

[Paragraphs not listed remain unchanged]

### 13.6.2 Required Ratio

#### A. Street Network

1. The street network, including common access driveways permitted in paragraph 12.2.2B.2.b, Driveways, for any subdivision with internal roads or access to any public road shall achieve a minimum connectivity ratio of 1.40 in all tiers except the Rural and Downtown Tiers, measured within the subdivision.
2. Within the Rural Tier, the street network, including common access driveways permitted in paragraph 12.2.2B.2.b, Driveways, for any subdivision with internal roads or access to any public road shall achieve a minimum connectivity ratio of 1.15, measured within the subdivision.

## PART 5

[Amendments to Article 14, Nonconformities]

### Sec. 14.1 General

[Paragraphs not listed remain unchanged]

#### 14.1.2 Nonconformities Defined

##### B. Nonconforming Lot

A nonconforming lot shall be any legally established parcel that does not conform to the current area or dimensional requirements of the zoning district in which it is located.

#### 14.1.5 Completion of Buildings and Improvements

##### A. Nonconformities Resulting from Adoption of this Ordinance or Other Governmental Action

Completion of buildings that become nonconforming as a result of passage of this Ordinance or another governmental action shall be allowed if an application for a building permit sufficient to allow approval was submitted prior to passage of this Ordinance, and if the building is subsequently completed in accordance with an approved building permit within two years of initial issuance of the permit. In addition, completion of buildings for which building permits were not applied for may be allowed under the Transitional provisions of this Ordinance. Completion of improvements other than buildings that become nonconforming as a result of passage of this Ordinance shall be governed by the Transitional provisions of this Ordinance.

##### B. Subsequent Nonconformities

Completion of buildings that are created by amendments to this Ordinance or another governmental action shall be allowed if a building permit was issued prior to the amendment, if the permit remains continuously valid, and if the building is completed within two years of initial issuance of the permit. Completion of buildings or improvements for which permits were not issued, but that are subject to site plans or preliminary plats that were approved prior to the Ordinance amendment shall be governed by the provisions regarding continuous validity of site plans and preliminary plats found elsewhere in this Ordinance.

### Sec. 14.2 Nonconforming Uses

[Paragraphs not listed remain unchanged]

#### 14.2.6 Single-Family Use Exemption

Single-family uses that were ~~conforming uses prior to~~ existing as of January 1, 2006, shall be exempt from the limitations of this Section.

### Sec. 14.3 Nonconforming Lots

[Paragraphs not listed remain unchanged]

#### 14.3.3 Lots Other Than Single-Family Lots

~~Where otherwise allowed by this Ordinance, a structure other than a single family structure may be constructed on a legal nonconforming lot only upon the issuance of a minor special use permit by the Board of Adjustment in accordance with Sec. 3.9, Special Use Permit.~~

A. A legal nonconforming lot can be developed subject to all other applicable Ordinance requirements and if the proposed use is a permitted use in the zoning district, if:

1. The lot is not located within a Special Flood Hazard Area;

2. The lot is located on a street that is accepted and maintained by NCDOT or the City (or such other form of access as is permitted pursuant to paragraph 12.2.2, Other Forms of Access); and
  3. Water and wastewater treatment systems are available to serve the lot.
- B.** Any nonconforming lot not qualifying under paragraph A, above, may be developed only upon issuance of a minor special use permit per Sec. 3.9, Special Use Permit. This provision shall not allow any use not otherwise allowed by the zoning district, or take precedence over any other applicable requirement of this Ordinance.

## **PART 6**

[Amendments to Article 16, Design Districts]

### **Sec. 16.3 Building Design**

[Paragraphs and portions of tables not listed remain unchanged]

#### **16.3.2 Structured Parking**

##### **A. Ground Floor**

1. Parking shall not be exposed on the ground floor.
2. A frontage type pursuant to paragraph 16.3.1, Frontage and Building Types, shall be required along a public right-of-way or pedestrian mall.
3. Ground floor frontage along a right-of-way or pedestrian mall shall only be ~~non-residential~~ uses (pursuant to paragraph 16.1.3, Uses and Density ) other than parking, pursuant to Sec. 5.1, Use Table, and meet the following requirements:
  - a. The area required for ~~non-residential~~the uses shall have a minimum interior depth of 20 feet and a minimum clear ceiling height of 14 feet.  
**Commentary:** "Clear ceiling height" typically refers to the measured height from floor to ceiling without obstructions.
  - b. For structured parking in a completely residential building, the ancillary uses typically provided for residents of the development, such as but not limited to lobbies, fitness rooms, and leasing offices, shall be considered non-residential uses.
  - c. Pedestrian and vehicular access to parking is allowed.

##### **B. Architectural Standards**

The following architectural standards shall apply to any parking structure facade visible from a right-of-way:

6. All openings shall be screened with material that is at least 60% opaque, while allowing for required ventilation per the NC Building Code. Such screening can consist of ~~with~~ decorative screens, vegetative walls, or window frames, and shall be articulated with additional columns or pilasters.



16.3.3 Height

C. Sub-District Requirements

1. DD District

c. Maximum Building Height with Provisions

(4) Eligible Provisions

Project Provisions	Standards	Additional Height Allowance		
		Core	Support 1	Support 2
Historic Preservation	Undertake or incorporate the adaptive reuse of an existing historic structure, including local landmarks, National Register properties, <del>or</del> contributing buildings in a historic district, <u>or structures which the applicable governing body has determined to be of local historic significance</u> . The renovation can add onto the structure but shall not demolish any historically significant portion of the structure.	45 feet	30 feet	–

2. CD District

d. Maximum Height with Provisions

(4) Eligible Provisions

Project Provisions	Standards	Additional Height Allowance		
		Core	<del>S1-Support</del> 1	<del>S2-Support</del> 2
Historic Preservation	Undertake or incorporate the adaptive reuse of an existing historic structure, including local landmarks, National Register properties, <del>or</del> contributing buildings in a historic district, <u>or structures which the applicable governing body has determined to be of local historic significance</u> . The renovation can add onto the structure but shall not demolish any historically significant portion of the structure.	45 feet	30 feet	–

3. CSD District

- a. Unless otherwise specified, the following standards shall apply to all frontage and building types:

**Building Height and Massing**

CSD Sub-Districts	Height Articulation (Massing)		Residential <sup>2</sup> Maximum Building Height without Affordable Housing Bonus	Non- Residential Maximum Building Height without Affordable Housing Bonus	Maximum Building Height with Affordable Housing Bonus <sup>3</sup>	Optional Corner Tower Elements: Additional Height above Proposed Podium Height	
	Minimum/Maximum Podium Height	Minimum Upper Story Step-Back					
<b>Core (-C)</b>	30 feet min	75 feet max <sup>1</sup>	20 feet	145 feet	300 feet	300 feet	30 feet
<b>Support 1 (-S1)</b>	25 feet min	75 feet max	20 feet	45 feet	90 feet	145 feet	15 feet
<b>Support 2 (-S2)</b>	20 feet min	35 feet max	10 feet	35 feet	60 feet	60 feet	15 feet

1 See paragraph (1) for additional height allowance.

2 Mixed use developments with a residential component are considered residential for establishing maximum allowable height

3 See paragraph c, below, for affordable housing height bonus requirements.

(6) The maximum height allowances for congregate and independent living facilities shall be the “Non-Residential Maximum Building Height without Affordable Housing Bonus” category.

**PART 7**

[Amendments to Article 17, Definitions]

**Sec. 17.3 Defined Terms**

**Density:** The number of dwelling units per ~~net developable~~ gross acre, excluding accessory residences or dwelling units, or any other exclusion within this Ordinance. except in the case of conservation subdivisions, where gross area shall be used in accordance with paragraph 6.2.4 Conservation Subdivision.

**Dwelling Unit:** ~~As defined by the most current edition of the North Carolina State Building Code: Residential Code.~~ A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

**Structure:** A walled ~~and or~~ roofed building-constructed object that is principally above ground; ~~a manufactured home~~; vertical projections meeting the definition of antenna-supporting or wireless support structures; or when used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, a gas or liquid storage tank that is principally above ground. Included in this definition are extensions or additions which are covered by a roof supported by walls or columns, such as but not limited to porte cocheres, car ports, covered or screened porches, and breezeways.

## **PART 8**

[Amendments to references of specimen trees]

### **Sec. 3.5 Zoning Map change**

[Paragraphs not listed remain unchanged]

#### **3.5.6 Development Plan**

##### **D. Requirements**

###### **4. Minimum Commitments**

- I. Tree preservation areas, tree replacement areas, and a generalized or major specimen tree survey as required under paragraph 8.3.3, Tree Survey;

### **Sec. 3.6 Subdivision Review**

[Paragraphs not listed remain unchanged]

#### **3.6.6 Preliminary Plat Requirements**

##### **B. Existing Conditions**

2. Topographic contours at two foot intervals for all property within 100 feet of a proposed development area and topographic contours at five foot contour intervals for the remainder of the property including a source reference; locations and names of water features including shorelines, water bodies, intermittent and perennial streams; a major specimen tree survey; locations of drainage ways, stream buffers, floodways, floodway fringes, wetlands and wetland buffers; locations of vegetation, rock outcrops, steep slope areas, Durham Natural Inventory sites and Durham Historic Inventory Sites.

### **Sec. 8.3 Tree Protection and Tree Coverage**

[Paragraphs not listed remain unchanged]

#### **8.3.1 Tree Coverage Standards**

##### **D. Preserved Tree Coverage**

Areas proposed as tree preservation shall meet the following requirements to satisfy the tree coverage standards in paragraph 8.3.1, Tree Coverage and Protection Standards:

1. The provisions of paragraph 8.3.2, Protection of Existing Vegetation, shall be fulfilled.
2. Tree preservation areas shall be located in the areas listed in paragraph 8.3.1, Tree Coverage Standards, above. Additional tree preservation areas can be located outside of these areas, in which case they shall be located in order to preserve major specimen trees and to preserve clusters of trees.

#### **8.3.3 Tree Survey**

##### **A. Purpose**

The primary purpose of the tree survey requirements is to provide better information about the presence and location of significant trees on sites proposed for development. This information is needed before plans for development are so far advanced that it is unreasonable and impractical to modify the plans to protect the trees identified on the tree survey. Knowing the location and size of major specimen trees helps the staff and governing body evaluate possible modifications to the proposed plans to preserve significant trees and improve the appearance of proposed development.

### 8.3.5 Major Specimen Trees

- A. A major specimen tree shall be defined ~~as any evergreen canopy tree eighteen (18) inches dbh or greater, any deciduous canopy tree twelve (12) inches dbh or greater and any understory tree (deciduous or evergreen) eight (8) inches dbh or greater, except any tree listed as a non-native invasive plant by the US Forest Service or prohibited in the Landscape Manual for Durham, North Carolina pursuant to paragraph 9.2.1, Landscape Manual pursuant to Sec. 17.3, Defined Terms.~~
- B. ~~Major Specimen specimen~~ trees, ~~as defined above~~, that are saved and protected under the requirements of paragraph 8.3.2, shall be granted tree coverage credit at one and one-half times the size of the root protection zone. ~~Major Specimen specimen~~ trees that are located in the floodway, non-encroachment area, floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) (unless proposed to be filled or developed in accordance with paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas), preserved wetlands and wetland buffers, steep slope areas, riparian buffers, Major Transportation Corridor (MTC) buffers, and Durham Natural Inventory Sites are not eligible for additional credit as described above.
- C. In order to receive additional credit for major specimen trees ~~as described above~~, a major specimen tree survey shall be required showing specific location, species, size, and root protection zone of all specimen trees to be saved. This survey shall be included on all site, landscape, grading, utility, demolition, and erosion control plans.

## Sec. 9.4 Project Boundary Buffers

[Paragraphs not listed remain unchanged]

### 9.4.5 Constructed Buffer

#### E. Major Specimen Trees Retained

Existing major specimen trees, as defined in ~~paragraph 8.3.5, Specimen Trees~~Sec. 17.3, Defined Terms, located within a required project boundary buffer shall be retained; except where the removal of such trees is required to provide access to the property.

## Sec. 16.4 Streetscape, Right-of-Way, and Block/Lot Standards

[Paragraphs not listed remain unchanged]

### 16.4.2 Streetscape

#### A. Sidewalk Standards

3. For additions or modifications to existing structures on sites with existing sidewalk, sidewalk along all frontages shall be widened to at least 12 feet, unless:
  - a. Exempt per paragraph 16.4.1C, Exemptions;
  - b. A wider sidewalk would require the removal of a major specimen tree; or
  - c. Existing conditions prohibit the widening of the sidewalk.

### Sec. 17.3 Defined Terms

**Specimen Tree, Major:** Any evergreen canopy tree 18 inches dbh or greater, any deciduous canopy tree 12 inches dbh or greater and any understory tree (deciduous or evergreen) eight inches dbh or greater, except any tree listed as a non-native invasive plant by the US Forest Service or prohibited pursuant to in the Landscape Manual for Durham, North Carolina, also referred to as the *Landscape Manual*.

**Specimen Tree, Minor:** Trees that qualify for required preservation under the following paragraphs of this Ordinance.

(a) Any species of tree that qualify for tree preservation within a cluster of trees under paragraph 8.3.1D.3, Cluster of Trees; and

(b) Any species of tree that qualify for tree preservation as an individual tree under paragraph 8.3.1D.4, Individual Trees.

## PART 9

[Amendments to clarify allowances for solar energy to receive SolSmart silver accreditation, as provided by the National League of Cities through the City General Services Department]

### Sec. 5.4 Accessory Uses and Structures

[Paragraphs not listed remain unchanged]

#### 5.4.14 Solar Energy System

A solar energy system shall be an allowed accessory use serving a principal use within any zoning district.

### Sec. 6.12 Measurement and Computation

[Paragraphs not listed remain unchanged]

#### 6.12.1 Height

B. The height limitations shall not apply to steeples, decorative features including parapet walls less than four feet tall, air conditioning units, utility poles, mechanical features (including those for solar energy systems), penthouses for mechanical equipment or stairways, belfries, lightning rods, antennas other than those regulated in Article 5, Use Regulations, water towers, clock towers, or any other tower which is not used for transmitting and receiving electronic signals or is not a corner tower element regulated within Sec. 16.3, Building Design.

#### 6.12.3 Required Yards

##### B. Encroachments into Required Yards

11. Mechanical equipment for residential uses, such as HVAC units and equipment for a solar energy system, can extend into any required side yard but shall remain at least six-three feet from the property line.

### Sec. 17.3 Defined Terms

Solar Energy System: An energy system which converts solar energy to usable thermal, mechanical, chemical, or electrical energy to meet all or a significant part of a structure's energy requirements.

## PART 10

[Amendments related to Sedimentation and Erosion Control regulations]

### Sec. 3.8 Sedimentation and Erosion Control

[Paragraphs not listed remain unchanged]

#### 3.8.2 Application Requirements

##### B. Land-Disturbing Permit

1. A land-disturbing permit may be obtained by submitting the following:
  - b. ~~Zoning compliance checkoff~~ Verification of an approved site plan or written approval issued by the Durham City-County Planning Department;

#### 3.8.7 Disapproval of Plan

- A. An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:
  1. Is conducting or has conducted land-disturbing activity without an approved plan; ~~or~~
  2. ~~Has~~ Has received notice of violation of a plan previously approved by the North Carolina Sedimentation Control Commission or a local government pursuant to the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act) or local ordinance adopted pursuant to the Act, and has not or had not complied with the notice within the time specified in the notice;
  23. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
  34. Has been convicted of a misdemeanor pursuant to NCGS § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
  45. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

### Sec. 12.10 Sedimentation and Erosion Control

[Paragraphs not listed remain unchanged]

#### 12.10.2 Applicability

##### A. Exemptions

The following activities do not require a permit under this section:

##### 3. Agricultural Exemption

- a. As set forth in NCGS § 113A-52.01, land-disturbing activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:

- ~~a.~~(1) Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
- ~~b.~~(2) Dairy animals and dairy products;
- ~~c.~~(3) Poultry and poultry products;
- ~~d.~~(4) Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals;
- ~~e.~~(5) Bees and apiary products;

- ~~f.~~(6) Fur animals; and
- ~~g.~~(7) Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances;
- b.** In order for a land-disturbing activity to be eligible for an agricultural exemption (no exemption is to be assumed until approval of the request by the County), it must be reasonably demonstrated to the county that the land on which the disturbance is taking place is intended for continuous agricultural use. To qualify for exemption under this section, an application for exemption shall be submitted to the County Sedimentation and Erosion Control Office. The Erosion Control Officer or designee shall review the application and grant or deny the exemption within 15 working days of receipt. The land owner shall receive notification of this decision in writing and have ten working days to respond if the exemption is denied. The County Engineer or designee shall have five working days to review and decide on the appeal. Appeal of the County Engineer or designee’s decision may be made to the Board of Commissioners within 30 days of receipt.

The county may require preparation and approval of an erosion and sedimentation control plan for land-disturbing activities applying for an application for exemption where sediment control measures are needed to protect against off-site damages due to sediment from the land-disturbing activity as documented by the county staff.

#### **12.10.4 Mandatory Standards for Land-Disturbing Activity**

No land-disturbing activity shall occur except in accordance with the mandatory standards listed below. Except where more stringent standards are specified in this Ordinance, the technical standards and specifications contained in the North Carolina Erosion and Sediment Control Planning and Design Manual shall also apply. In addition, for land disturbing activities greater than or equal to one acre, requirements within the most recent version of the State of North Carolina General Permit No. NCG010000 shall apply.

#### **B. Stabilization of Disturbed Land**

The angle for disturbed land shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures.

##### **1. Ongoing Activity**

##### **a. Groundcover**

Land left exposed shall be planted or otherwise provided with temporary ground cover, devices, or structures sufficient to restrain erosion within the applicable time period after completion of any phase of grading or period of inactivity as follows: seven days for a steep slope; ten days for a moderate slope; 14 days for land with no slope or inclination. For purposes of this section, a moderate slope means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance; and a steep slope means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance. No other criteria apply.

**Commentary:** The moderate and steep slope definitions in this section are mandated by state law (S.L. 2009-486) for sedimentation and erosion control

purposes. This steep slope definition differs from the steep slope definition under UDO Sec. 8.8, Steep Slope Protection Standards, which is otherwise applicable throughout the UDO.

**b. Soil Stockpiles**

Soil stockpiles shall be limited to the shorter of thirty (30) feet above existing grade or half the height of adjacent existing mature tree cover. Stockpiles shall be wrapped in two rows of silt fence and groundcover shall be planted in accordance with this section. Stockpile slopes shall be 2:1 or flatter.

- E. Each sediment basin or trap in the Suburban or Rural Tier shall have a minimum volume of 3,600 cubic feet per acre of disturbed area and a minimum surface area of 435 square feet per cfs of Q25 (25-year storm) peak inflow. Each sediment basin or trap in the Downtown, Compact Neighborhood, or Urban Tier shall have a minimum volume of 1,800 cubic feet per acre of disturbed area and a minimum surface area of 325 square feet per cfs of Q25 peak inflow. A skimmer shall be used in each sediment basin or trap. If the temporary sediment basin or trap is to be converted to a permanent stormwater control measure and the volume is greater than that of the temporary basin, the larger of the two shall be used, unless approved in writing by the Durham County Erosion Control Office.
- I. ~~One party shall retain operational control of any basin or trap. Sold outparcels shall be permitted separately.~~ Developer shall retain control of permitted area, including sediment basins or traps, until permit has been closed. For commercial sites, sold outparcels shall be permitted separately.
- L. In high quality water (HQW) zones, Lake Michie/Little River Critical Area (M/LR-A), Lake Michie/Little River Protected Area (M/LR-B), Falls/Jordan Critical Area (F/J-A), Eno River Critical Area (E-A), and Third Fork Creek Watershed, uncovered areas shall be limited at any time to a maximum total area of 20 acres. In high quality water (HQW) zones, Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas within HQW- may be uncovered with the written approval of the Director of DEQ, Division of Energy, Mineral and Land Resources. Larger areas within all other zones may be uncovered with the written approval of the Durham County Erosion Control Office.

**12.10.6 Borrow and Waste Areas**

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the State Department of ~~Environmental and Natural Resources~~ Environmental Quality's Division of Solid Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity. The name and location of any borrow and/or waste areas shall be provided to the Durham County Erosion Control Office upon request.



## Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties

[Technical revisions and reorganization of the section consistent with the State's November 2018 Model Ordinance]

### 15.5.1

~~Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee may periodically inspect land disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or (the Act,) or an approved sedimentation and erosion control plan and to determine whether the measures utilized or required in the plan are effective in restraining erosion and retaining sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each sedimentation and erosion control plan.~~

### 15.5.2

~~No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.~~

### 15.5.3

~~If it is determined that a person engaged in land disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land disturbing activity fails to comply within the time specified, enforcement action shall be initiated. If the person engaged in the land disturbing activity has not received a previous notice of violation as specified in this section, the Erosion Control Officer or designee shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program or cooperative extension program, or by the provision of written documents such as Department of Environmental Quality or County Sedimentation and Erosion Control Office documents. If the Erosion Control Officer or designee is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by NCGS § 1A-1, rule 4, and shall include information on how to obtain assistance in developing corrective measures.~~

### 15.5.4

~~The Sedimentation and Erosion Control Officer, or designee shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out their duties as~~

~~prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activity.~~

#### **15.5.5**

~~The Sedimentation and Erosion Control Officer, or designee shall also have the power to require written statements, or the filing of reports under oath, with respect to land disturbing activity.~~

#### **15.5.6 Revocation of Permits**

~~A. The County Engineer shall have the power to revoke land disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer that a land disturbing permit be revoked, the Officer or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre termination hearing.~~

~~B. Should the County Engineer determine that the land disturbing permit should be revoked, he/she shall serve the permittee or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.~~

~~C. The person responsible for the land disturbing activity may appeal the revocation of a land disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.~~

~~D. No person shall resume or continue any land disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land disturbing permit or decision of the Board of Commissioners reinstating a land disturbing permit. After the Sedimentation and Erosion Control Officer or designee has inspected the site and approved the remedial work, the responsible party may reapply for a land disturbing permit. The fee for reapplication shall be 100% of the current application fee.~~

#### **15.5.7 Civil Penalties**

~~A. Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who initiates or continues a land disturbing activity for which sedimentation and erosion control plan and/or land disturbing permit is required except in accordance with such plan or permit shall be subject to civil penalties. The maximum civil penalty for a violation shall be \$5,000, or \$5,000 per day for a continuing violation. Civil penalties may be imposed from the date a violation was commenced. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this section for~~

~~any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.~~

- ~~B. The Sedimentation and Erosion Control Officer or designee shall impose the civil penalties authorized by this section. The Sedimentation and Erosion Control Officer or designee shall notify the person upon whom the civil penalties are imposed of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request remission of the civil penalty under paragraph 15.5.8, the date of the deadline for that person to make the remission request regarding this particular penalty, and when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under this section. In determining the amount of the penalties the Sedimentation and Erosion Control Officer or designee shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan. The notice of civil penalties shall be served by any means authorized under NCGS § 1A-1, rule 4, and shall direct the violator to either pay or contest the civil penalties, within 30 days after receipt of the notice, by filing a petition for a contested case under NCGS § 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.~~
- ~~C. If payment is not received within 30 days after demand for payment is made the matter will be referred to the County Attorney's Office for initiation of a civil action to recover the amount of the civil penalties. Civil penalties that are not contested are due when the~~

~~violator is served with a notice of civil penalties. Civil penalties that are contested are due at the conclusion of administrative and judicial review.~~

~~D. The clear proceeds of civil penalties collected pursuant to this section shall be credited to the Durham Public Schools in accordance with the provisions of NCGS § 115C 437.~~

#### **15.5.8 Remission of Civil Penalties**

~~A. A request for remission of a civil penalty imposed under this section may be filed with the Sedimentation Control Commission within 60 days of receipt of the notice of assessment. Notification of a request for remission must also be filed with the County Engineer. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to NCGS § 150B, art. 3, and a stipulation of the facts on which the assessment was based.~~

~~B. The following factors shall be considered in determining whether a civil penalty remission request will be approved:~~

- ~~1. Whether one or more of the civil penalty assessment factors in NCGS § 113A 64(a)(3) were wrongly applied to the detriment of the petitioner.~~
- ~~2. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.~~
- ~~3. Whether the violation was inadvertent or a result of an accident.~~
- ~~4. Whether the petitioner had been assessed civil penalties for any previous violations.~~
- ~~5. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.~~
- ~~6. The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.~~

~~C. The petitioner has the burden of providing information concerning the financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's financial hardship.~~

~~D. The Commission may remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the civil penalty will prevent payment for necessary remedial actions.~~

~~E. The Commission may not impose a penalty under this section that is in excess of the civil penalty imposed by the County.~~

#### **15.5.9 Criminal Penalties**

~~Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS § 113A 64.~~

#### **15.5.10 Enforcement Alternatives**

~~Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under paragraph 3.8.3.~~

~~A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10,~~

~~Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.~~

- ~~B. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalties assessed under this section.~~
- ~~C. Land disturbing activities undertaken without first obtaining a land disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph 15.5.7, Civil Penalties.~~
- ~~D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.~~

#### **15.5.11 Restoration of Areas Affected by Failure to Comply**

~~The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § 113A 57(3) and Sec. 12.10, Sedimentation and Erosion Control, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section or the Act.~~

#### **15.5.1 Inspections and Investigations**

##### **A. Inspection**

Agents, officials, or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee will periodically inspect land-disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or (the Act,) or an approved sedimentation and erosion control plan, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.

##### **B. Willful Resistance, Delay or Obstruction**

No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of Durham County, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

##### **C. Notice of Violation**

If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act,

or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall inform the person of the actions that need to be taken to comply and specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated. If the person engaged in the land-disturbing activity has not received a previous notice of violation as specified in this section, the Erosion Control Officer or designee shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program or cooperative extension program, or by the provision of written documents such as Department of Environmental Quality or County Sedimentation and Erosion Control Office documents. If the Erosion Control Officer or designee is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by NCGS § 1A-1, rule 4, and shall include information on how to obtain assistance in developing corrective measures.

**D. Investigation**

The Sedimentation and Erosion Control Officer or designee, shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

**E. Statements and Reports**

The Sedimentation and Erosion Control Officer or designee, shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

**15.5.2 Revocation of Permits**

**A.** The County Engineer or designee shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer or designee that a land-disturbing permit be revoked, the Officer or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer or designee. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

**Commentary:** County Engineer designee shall be a North Carolina Professional Engineer and employed outside the Durham County Stormwater and Erosion Control Division.

**B.** Should the County Engineer or designee determine that the land disturbing permit should be revoked, he/she shall serve the permittee or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall

immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.

- C.** The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.
- D.** No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer or designee has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

### **15.5.3 Civil Penalties**

#### **A. Civil Penalty for a Violation**

Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the (city)(town)(county) may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

#### **B. Civil Penalty Assessment Factors**

The Sedimentation and Erosion Control Officer or designee shall determine the amount of the civil penalty based upon the following factors:

1. The degree and extent of harm caused by the violation;
2. The cost of rectifying the damage;
3. The amount of money the violator saved by noncompliance;
4. Whether the violation was committed willfully, and
5. The prior record of the violator in complying or failing to comply with this ordinance.

#### **C. Notice of Civil Penalty Assessment**

The Sedimentation and Erosion Control Officer or designee shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the Sedimentation and Erosion Control Officer or designee shall direct the violator to either:

1. Pay the assessment;
2. File a request for remission of the assessment;

- a. A request for remission of a civil penalty imposed under this section must be filed with the Sedimentation Control Commission within 60 days of receipt of the notice of assessment.
  - b. Notification of a request for remission must also be filed with the County Engineer.
  - c. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to NCGS § 150B, art. 3, and a stipulation of the facts on which the assessment was based.
3. Or, contest the assessment within 30 days by filing a petition for a contested case under NCGS § 150B, art. 3.
  - a. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own.
  - b. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36.
  - c. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.

#### **D. Collection**

If payment is not received within 60 days after it is due, Durham County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

#### **E. Credit of Civil Penalties**

The clear proceeds of civil penalties collected by Durham County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by Durham County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by Durham County for the prior fiscal year.

#### **15.5.4 Criminal Penalties**

Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or



orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS § 113A-64.

#### **15.5.5 Enforcement Alternatives**

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under paragraph 3.8.3.

- A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.
- B. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalties assessed under this section.
- C. Land-disturbing activities undertaken without first obtaining a land-disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph 15.5.7, Civil Penalties.
- D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.

#### **15.5.6 Restoration of Areas Affected by Failure to Comply**

The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § 113A-57(3) and Sec. 12.10, Sedimentation and Erosion Control, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section or the Act.

#### **PART 11**

That the Unified Development Ordinance shall be renumbered, including references, as necessary to accommodate these changes.

#### **PART 12**

That this amendment of the Unified Development Ordinance shall become effective *[insert date]*