

**ORDINANCE NO. (2019) 934 TC 413
TC-1(A)-18**

AN ORDINANCE TO AMEND MULTIPLE SECTIONS OF THE PART 10 RALEIGH UNIFIED DEVELOPMENT ORDINANCE TO CORRECT TYPOGRAPHICAL ERRORS AND FORMATTING ISSUES; INSTITUTE MAILED NOTICE REQUIREMENTS FOR CERTAIN TYPES OF SITE PLAN REVIEWS; AND GRANT THE HISTORIC DEVELOPMENT COMMISSION AUTHORITY TO REVIEW NON-SUBDIVISION FINAL PLAT AND RECORDED INSTRUMENTS THAT FALL WITHIN THEIR ESTABLISHED PURVIEW.

WHEREAS, the Unified Development Ordinance is a regulatory document and in order to properly regulate development, the document should be clear and understandable;

WHEREAS, errors and inconsistencies in the document can undermine the consistency and application of the regulations;

WHEREAS, after application of certain standards, staff has identified areas of need to improve and correct the errors; and

WHEREAS, staff has identified a need to enhance or clarify certain processes contained within the document;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH THAT:

Section 1. Section 1.5.3.B.1. of the Part 10 Raleigh Unified Development Ordinance, Coverage – Intent, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

1. Outdoor amenity areas are intended to provide usable on-site open space in both residential and non-residential developments for the healthy enjoyment of occupants, invitees and guests of ~~teh~~the development.

Section 2. Section 5.3.1.G.1. of the Part 10 Raleigh Unified Development Ordinance, Special Highway Overlay Districts (-SHOD-) – Existing Vegetation, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

1. General

Where the protective yard basal area is less than ~~50~~30 square feet per acre for each 50 linear feet, existing vegetation that meets or exceeds the quantity, spacing and height standards may be used to satisfy the protective yard requirements. Where the protective yard basal area is ~~50~~30 square feet per acre or more for each 50 linear feet, such areas shall be primary tree conservation areas and must meet the requirements of *Article 9.1. Tree Conservation*.

Section 3. Section 7.1.2.A.2. of the Part 10 Raleigh Unified Development Ordinance, Required Parking – Calculation of Required Parking, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

2. When a lot is used for a combination of uses, the parking requirements are the sum of the requirements for each use and no parking space for one use can be included in the calculation of parking requirements for any other use, except as allowed as in Sec. ~~7.1.5.B~~7.1.5.A.

Section 4. Section 9.1.4.B.2. of the Part 10 Raleigh Unified Development Ordinance, Tree Conservation Area Allocation – Secondary Tree Conservation Areas, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

2. Secondary tree conservation areas described in ~~h. through~~Sec. 9.1.4.B.1.a and Sec. 9.1.4.B.1.b. above and their alternates must be at least 32 feet in all directions and be a minimum of 4,000 square feet in area, excluding external boundaries.

Section 5. Section 9.1.4.E.3. of the Part 10 Raleigh Unified Development Ordinance, Tree Conservation Area Allocation – Tree Cover Required, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

3. For those developments that fulfill any of their tree conservation area requirement using a -SHOD-1, -SHOD-2, Parkway Frontage or undisturbed areas adjoining a ~~Major or Minor~~ Thoroughfare protective yard or with secondary tree conservation areas from Sec. 9.1.4.B.1.a. or Sec. 9.1.4. B.1.b. and their alternates, the following must be submitted:
 - a. Photo panoramic panels of the intended area to be conserved. The photo panel shall equal 50 feet of the length of the tree conservation area to be saved.
 - b. A tree cover report prepared by a North Carolina registered forester or North Carolina licensed landscape architect or ~~C~~certified Aarborist that, inventories each 50-foot length of proposed tree conservation area as shown in the photo panels, to identify all eligible trees 3 inches DBH and larger, by species, DBH, ~~with~~ basal area calculations and a determination of the general health of the tree stand. The report and photo panels shall be correlated; and
 - c. The most recent aerial photograph of the subject tract.

Section 6. Section 9.1.7.A. of the Part 10 Raleigh Unified Development Ordinance, Penalties, is hereby amended by insertion of the following underlined language:

- A. A violation of this Article, where unlawful tree disturbing activity has occurred and trees and stumps are absent, shall subject the violator to a civil penalty of a minimum of \$1,000 for the first tree plus 35 cents of every square foot of unlawful tree disturbing activity.

Section 7. Section 9.1.10.E. of the Part 10 Raleigh Unified Development Ordinance, Lots Without Recorded Tree Conservation Areas – Violations, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

1. A violation of this section, where unlawful tree disturbing activity has occurred and trees and stumps are absent, shall subject the violator to a civil penalty equal to \$1,000 for the first tree plus 35 cents of every square foot of unlawfully disturbed perimeter buffer.
2. Where trees or stumps are present after unlawful tree disturbing activity has occurred, the civil penalty shall instead be calculated as \$1,000 for the first tree plus \$100 per diameter inch for any other tree or stump 3 inches diameter and larger.
3. No civil penalty shall exceed 1/3 of the current land tax value of the entire site.
4. The penalty shall be processed as set forth in Sec. 10.4.2. In addition to this civil penalty, within the unlawfully disturbed perimeter buffer, the land owner shall install one 2-inch caliper tree for each 200 square feet of all of the unlawfully disturbed perimeter buffer; provided that, in R-1 and R-2 no more than 15% of the acreage of the entire tract and no more 10% of the acreage of the entire tract of all other districts shall be planted.
5. Prior to any replanting, the Parks, Recreation and Cultural Resources Director shall first approve a replacement planting and maintenance plan.
6. The replanting areas shall be designated as tree conservation areas on plats with delineated metes and bounds descriptions recorded with the local County Register of Deeds, however, the replacement planting areas shall not count toward the tree conservation percentage requirements of Sec. 9.1.3. Following the recording of this plat, no tree disturbing activity shall take place within the designated tree conservation areas.
7. Where an unlawful tree disturbing activity violation has occurred, the Parks, Recreation and Cultural Resources Director may require active tree preservation measures instead of tree removal and replacement and the owner shall carry out the active tree preservation measures required.

Section 8. Section 10.1.4.C. of the Part 10 Raleigh Unified Development Ordinance, Historic Development Commission – Specific Review Authority, is hereby amended by insertion of the following underlined language at the end of the Section in alphabetical order:

1. The Historic Development Commission is responsible for review and recommendation regarding:
 - a. Historic district rezoning;
 - b. Historic landmark designation; and

- c. Subdivision approvals in a Historic Overlay District or for a designated Historic Landmark.

2. The Historic Development Commission is responsible for review regarding Non-Subdivision Final Plat and Recorded Instruments.

Section 9. Section 10.1.8. of the Part 10 Raleigh Unified Development Ordinance, Summary of Review Authority, is hereby amended as follows:

1. In the “Rezoning Map Amendment” row, Historic Development Commission Column, delete “R⁽¹⁾” and replace with “RR”.
2. In the “Preliminary Subdivision Plan” row, Historic Development Commission Column, delete “R⁽¹⁾” and replace with “RR”.
3. In the “Non-Subdivision Final Plat and Recorded Instruments” row, add a “R⁽¹⁾” in the “Historic Development Commission” column.
4. In the “Site Plan Review” row, add a “Y” to the Mailed Notice column, with a footnote that refers to Section 10.2.8.C.1.d.
5. In the “Historic Landmark Designation” row, Historic Development Commission Column, delete “R⁽¹⁾” and replace with “RR”.
6. In the “Vested Rights” row, in the “Site Posted” column, the “Y” should be centered.

Section 10. Section 10.2.1.C.1.g. of the Part 10 Raleigh Unified Development Ordinance, Common Review Procedures – Public Notice Requirements, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

- g. Except for a City-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the City Council that the owner of the parcel of land, as shown on the county tax listing, has received actual notice of the proposed amendment and a copy of the notice of public hearing. The applicant shall certify to the City Council that proper notice has been provided in fact and such certification shall be deemed conclusive in the absence of fraud. Actual notice shall be achieved as follows:

- hi. Actual notice of the proposed amendment and a copy of the notice of public hearing shall be by any manner permitted under N.C. Gen. Stat. §1A-1, Rule 4(j).
- hii. If notice with due diligence cannot be achieved by personal delivery, registered or certified mail or by a designated delivery service, notice may be given by publication consistent with N.C. Gen. Stat. §1A-1, Rule 4(j1). (See N.C. Gen. Stat. §160A-384).

j~~h~~. For quasi-judicial hearings, mailed notice shall be provided to all other persons with an ownership interest in the subject property as set forth in all applicable State and local laws.

Section 11. Section 10.2.2.D.2.b. of the Part 10 Raleigh Unified Development Ordinance, Comprehensive Plan Amendment – Planning Commission Action, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

- b. The Planning Commission may refer the proposed amendment to a work session of the Planning Commission or ~~one~~ of its committees for additional consideration or the Planning Commission may act upon the application.

Section 12. Section 10.2.6.D.1. of the Part 10 Raleigh Unified Development Ordinance, Non-Subdivision Final Plat and Recorded Instruments – Recombinations by Recorded Maps, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

- 1. The recombination plat will be processed in accordance with this section- and Section 10.1.8.

Section 13. Section 10.2.6.D.2. of the Part 10 Raleigh Unified Development Ordinance, Non-Subdivision Final Plat and Recorded Instruments – Recombinations by Recorded Instrument, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

- o. The recombination instrument will be processed in accordance with this section- and Section 10.1.8.

Section 14. Section 10.2.8.C.1.d. of the Part 10 Raleigh Unified Development Ordinance, Site Plan Review – Approval Process, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

- d. ~~A sign shall be posted by the property owner on the property for 30 consecutive days, and~~ b~~Beginning~~ the day of issuance of a zoning permit or site permit by the property owner or the next working day, mailed notice shall be required pursuant to Section 10.2.1.C.1. and a sign shall be posted by the property owner on the property for 30 consecutive days pursuant to Section 10.2.1.C.4. for the following administrative approvals:
 - i. Where the new building is 25,000 square feet or more in size or any addition that represents an increase of more than 10% of the building area or 25,000 square feet whichever is greater; and
 - ii. Where the property of the approved administrative site plan is located within 100 feet of a property that is zoned R-1, R-2, R-4, R-6 or R-10.

Section 15. Section 10.2.15. of the Part 10 Raleigh Unified Development Ordinance, Certificate of Appropriateness, is hereby amended by the modification of the process diagram as follows:

In the “Minor Works” section, the box labeled “Disapprove” should be labeled “Do Not Approve,” and a gray arrow should connect the “Do Not Approve” box with the left side of the “Historic Development Commission” box below.

Section 16. Section 10.2.18.C. of the Part 10 Raleigh Unified Development Ordinance, Design Adjustment – Development Services Director Action, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

1. In reviewing the design adjustment, the Development Services Director shall consult with the heads of the ~~departments of~~, Public Utilities, Engineering Services, Transportation, Parks, Recreation and Cultural Resources, City Planning and the Fire Departments to check the proposed request against the requirements of this UDO and other applicable technical requirements of the City.
2. The Development Services Director shall consider the applicable intent statements and design adjustment findings for the request and either approve, approve with conditions or deny the request within 60 days of the receipt of a completed application.
 - a. The reasons for such approval or disapproval shall be stated in writing. In accordance with Sec. 10.2.1.C.6., notice of the decision shall be provided to the applicant and the property owner (if the property owner is not the applicant) and to each person who has filed a written request for notice with the Development Services Director prior to their decision.
 - b. Within 30 days from the date the application was decided, an appeal of the Development Services Director’s action may be made to the Board of Adjustment in accordance with Sec. 10.2.11
3. Additional review time may be necessary when the design adjustment involves review by another municipal or state entity or when detailed engineering studies are submitted to or required by the Development Services Director.
 - a. ~~The reasons for such approval or disapproval shall be stated in writing. In accordance with Sec. 10.2.1.C.6., notice of the decision shall be provided to the applicant and the property owner (if the property owner is not the applicant) and to each person who has filed a written request for notice with the Development Services Director prior to their decision.~~
 - b. ~~Within 30 days from the date the application was decided, an appeal of the Development Services Director’s action may be made to the Board of Adjustment in accordance with Sec. 10.2.11~~

Section 17. Section 10.4.2.A.2. of the Part 10 Raleigh Unified Development Ordinance, Civil Penalty, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

2. All violations shall be subject to a civil penalty in the amount of ~~one~~ \$100 unless a higher amount is otherwise specified in this UDO; continuous violations shall be subject to a civil penalty in the amount specified in subsection ~~eE.~~, below.

Section 18. Section 12.2 of the Part 10 Raleigh Unified Development Ordinance, Definitions, is hereby amended by insertion of the following underlined language and deletion of the following strikethrough language:

Minor Tree Removal Activity

The lawful removal of a tree, other than a champion tree and trees protected in either Resource Management District or natural protective yard, which is unrelated to forestry general or to the installation of any driveway, use, structure, facility improvement, site plan or subdivision, is a minor tree removal activity when it meets one or more of the following:

1. Unsafe trees are removed within 1 year following a natural disaster declared by the State of North Carolina or City of Raleigh such an ice storm, hurricane or tornado.
2. Fewer than 16 trees with a DBH of 3 inches or more are lawfully removed from the property within any continuous twelve month period, provided that the subsequent subdivision of the property shall not increase the number of tree which can be removed from the property and that no tree 10 inches or greater in DBH is removed if such tree is located:
 - a. Within 50 feet of a right-of-way of any thoroughfare; or
 - b. Within 32 feet of any vacant adjoining property boundary line; or
 - c. Within 65 feet of any other property line or urban forestry.
4. The term “vacant” means that at the time of application for development there is no building or structure or vehicular surface area within 200 feet from the common property line of the property being developed and the adjoining or adjacent property.
5. An arborist, certified by the International Society of Arboriculture or a forester registered by the State of North Carolina or a landscape architect licensed by the State of North Carolina first certifies in writing to the City that the tree is either unsafe or is unhealthy and applicable soil erosion and sedimentation laws are obeyed.

6. The tree is less than 3 inches DBH.
7. The tree is damaging an existing improvement on the lot.
8. The lawful removal of trees located on lots of record existing prior to the application of this regulation that are less than 2 acres in size.
9. The tree to be removed is for a City of Raleigh project to install or maintain public infrastructure and is unrelated to any site plan, ~~subdivision~~subdivision or building permit

Section 19. All laws and clauses of laws in conflict herewith are repealed to the extent of such conflict.

Section 20. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 21. This text change has been reviewed by the Raleigh City Planning Commission.

Section 22. This ordinance has been adopted following a duly advertised public hearing of the Raleigh City Council.

Section 23. This ordinance has been provided to the North Carolina Capital Commission as required by law.

Section 24. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty dollar limit in N.C.G.S. §14-4(a) or similar limitations.

Section 25. This ordinance is effective 30 days after adoption.

Adopted: April 2, 2019

Effective: May 2, 2019

Distribution: City Planning
Development Services
Management Team
City Attorney
Transcription Services

Prepared by the Department of City Planning