

ORDINANCE 2021 300 -TC -458

TC-10-21

**Extraterritorial Representation on Boards and Commissions
Conflicts of Interest, Updating Statutory References and
Amending the Appearance Commission Composition**

**AN ORDINANCE TO AMEND THE PART 10
RALEIGH UNIFIED DEVELOPMENT ORDINANCE REGARDING
EXTRATERRITORIAL REPRESENTATION ON BOARDS
AND COMMISSIONS, CONFLICTS OF INTEREST, UPDATING STATUTORY
REFERENCES AND AMENDING THE APPEARANCE COMMISSION
COMPOSITION**

WHEREAS, the City of Raleigh strives to maintain the Unified Development Ordinance; and

WHEREAS, certain recent amendments to State Law require updates to language and statutory references found in the Unified Development Ordinance; and

WHEREAS, it is in the public interest to amend the Appearance Commission composition given new duties being performed by the Appearance Commission.

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

Section 1. Article 1.1 of the Part 10 Raleigh Unified Development Ordinance, Legal Provisions, is hereby amended by adding the following new Sec. 1.1.13. Extraterritorial Representation on Boards and Commissions:

1.1.13 Extraterritorial Representation on Boards and Commissions.

Representation shall be provided by appointing at least one resident of the entire extraterritorial planning and development regulation area to the Planning Commission, Board of Adjustment, and Appearance Commission, as well as the Raleigh Historic Development Commission if there are historic districts or designated landmarks in the extraterritorial area. The outside representatives shall have equal rights, privileges, and duties with the other members of the board or commission to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area.

Section 1a. Section 3.5.6.C.5.d of the Part 10 Raleigh Unified Development Ordinance, Historic Alley Transition – Design Requirements, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

- d. Private residential garage parking that satisfies the requirements of Section 1.5.12 is permitted along the alley as part of a detached house, attached house, or

townhouse within the Historic Alley Transition. Such parking must be concealed behind a garage door of not more than 12-foot width. Any standard contained in Section 1.5.12 that is applied must be consistent with G.S. ~~160A-381(h)~~ 160D-702(b).

Section 2. Section 8.7.1.E.3 of the Part 10 Raleigh Unified Development Ordinance, Water Supply – Community Water Systems, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

3. If the conditions of N.C. Gen. Stat. ~~§160A-374~~ 160D-806 are met by the City, full dedication of a community water system, including all wells, pumps and utility lines, is required.

Section 3. Section 10.1.5.A.1. of the Part 10 Raleigh Unified Development Ordinance, Appearance Commission – In General - Establishment, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

1. Establishment

The Appearance Commission is established to exercise any and all powers prescribed by North Carolina general and local law under N.C. Gen. Stat. ~~§160A, Article 19, Part 7~~ Chapter 160D, Article 9, Part 5, including the City Charter, and to perform duties as lawfully directed by the City Council.

Section 3a. Section 10.1.5.A.2. of the Part 10 Raleigh Unified Development Ordinance, Appearance Commission – In General - Composition, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

2. Composition

- a. ~~The~~Except as provided in Sec. 10.1.5.A.2.b., the Appearance Commission shall be composed of 15 members who shall reside either within the City corporate limits or within the extraterritorial jurisdiction of the City; however, at least one member shall reside outside of the City corporate limits, but within the extraterritorial jurisdiction of the City.
- b. When the Appearance Commission is performing the quasi-judicial duties of the Planning Commission, it shall be composed of 9 regular members and 6 alternate members, as appointed by the City Council. At least one regular member shall reside outside of the City corporate limits, but within the extraterritorial jurisdiction of the City.
- c. Members of the Appearance Commission residing within the City corporate limits, including those designated as alternates, shall be appointed by the City Council. Members of the Appearance Commission residing outside the City corporate limits, but within the extraterritorial jurisdiction of the City, including those designated as

alternates, shall be appointed by the Board of Commissioners of Wake County. Each member shall be appointed for a term of 2 years.

- ed. Where possible, appointments to the Appearance Commission shall be made in such manner as to maintain a majority of members with special training or experience in a field of design such as architecture, landscape design, horticulture, city planning, urban design or a closely-related field.
- e. Vacancies on the Appearance Commission will be filled in the same manner and by the same governing body as the original appointment.
- f. When the Appearance Commission is performing the quasi-judicial duties of the Planning Commission, alternate members so serving have the same powers and responsibility as the regular members they are replacing.

Section 4. Article 10.1 of the Part 10 Raleigh Unified Development Ordinance, Administration, is hereby amended by inserting of the following new Section 10.1.9 Conflicts of Interest:

Sec. 10.1.9. Conflicts of Interest

A. City Council

A City Council member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A City Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

B. Appointed Boards and Commissions

Members of appointed boards and commissions shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

C. Administrative Staff

No staff member shall make a final decision on an administrative decision required by this UDO if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this UDO unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

D. Quasi-Judicial Decisions

A member of any board exercising quasi-judicial functions pursuant to this UDO shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

E. Resolution of Objection

If an objection is raised to a council, board or commission member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the council, board or commission shall by majority vote rule on the objection.

F. Familial Relationship

For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Section 5. Section 10.2.1.C.1.g. of the Part 10 Raleigh Unified Development Ordinance, Common Review Procedures – Public Notice Requirements - Mailed Notice, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

- 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:
 - i. 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).

- ii. 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~~160D-601).

Section 6. Section 10.2.1.D.1.a.ii. of the Part 10 Raleigh Unified Development Ordinance, Additional Requirements – Quasi-Judicial Public Hearing Requirements, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

- ii. The review body shall act as an impartial decision-maker. ~~No member shall participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to the hearing of the matter that is not susceptible to change, undisclosed ex parte communication, a close financial business or other associational relationship with an affected person or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not excuse themselves, the remaining members of the review body shall by majority vote rule on the objection. See Sec. 10.1.9.D. for additional requirements of an impartial decision maker.~~

Section 7. Section 10.2.11.A. of the Part 10 Raleigh Unified Development Ordinance, Appeal of Administrative Decision - Applicability, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

A. Applicability

Any person with standing under N.C. Gen. Stat. § ~~160A-393(d)~~160D-1402(c), or the City of Raleigh, may file an appeal of any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO made by an administrative official charged with the administration and enforcement of these provisions of the UDO. All appeals shall be filed in accordance with the provisions of this section.

Section 8. Section 10.2.11.G. of the Part 10 Raleigh Unified Development Ordinance, Appeal of Administrative Decision, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

F. Appeals from the Board of Adjustment are to Wake County Superior Court pursuant to N.C. Gen. Stat. § ~~160A-393~~160D-1402.

Section 9. Section 10.2.15.D.4.b. of the Part 10 Raleigh Unified Development Ordinance, Action on Application for Certificate of Appropriateness - Hearing, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

- b. Prior to the issuance or denial of a certificate of appropriateness by the Commission, the applicant and persons meeting the criteria for standing in of G.S. ~~160A-393~~ 160D-1402 shall be given the opportunity to be heard at the hearing.

Section 10. Section 10.2.15.G. of the Part 10 Raleigh Unified Development Ordinance, Action on Application for Certificate of Appropriateness – Effect of Conflict with Other Ordinances, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

G. Effect of Conflict with Other Ordinances

Whenever any ordinance adopted pursuant to N.C. Gen. Stat. Part ~~3C4~~, Article 19, Chapter ~~160AD~~ requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or designated –HOD-G or –HOD-S than are established under any other statute, charter provision or regulation, Part ~~3C4~~ shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under general statute such other statute, charter provision, ordinance or regulation shall govern.

Section 11. Section 10.2.19.A. of the Part 10 Raleigh Unified Development Ordinance, Vested Rights - Applicability, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

A. Applicability

Those landowners desiring the protections granted by N.C. Gen. Stat. §~~160A-385.1~~ 160D-108.1 may, at their own option, request the City Council to hold a public hearing on ~~an~~ site plan.

Section 12. Section 10.2.19.D.5. of the Part 10 Raleigh Unified Development Ordinance, Vested Rights – Action Following Approval, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

5. Site plans which are vested under this section shall be subject to new or amended zoning regulations as allowed by State law and such vested rights shall terminate for any of the reasons stated in N.C. Gen. Stat. ~~160A-385.1(e)~~160D-108.1(e).

Section 13. Section 11.6.1.A. of the Part 10 Raleigh Unified Development Ordinance, Housing Code – Preamble; Definitions, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

- A. Pursuant to G.S. ~~160A-441~~ 160D-1201, it is hereby found and declared that there exist in the City of Raleigh and its extraterritorial jurisdiction dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health,

safety or morals, or otherwise inimical to the welfare of the residents of the City and its extraterritorial jurisdiction.

Section 14. Section 11.6.11. of the Part 10 Raleigh Unified Development Ordinance, Housing Code – Board of Adjustment to Hear Appeals, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 11.6.11. Board of Adjustment to Hear Appeals

An appeal from any decision or order of the inspector pursuant to this Article may be made by the person aggrieved thereby or by any officer, board or commission of the City. Any such appeal shall be made to the Board of Adjustment and governed by the procedures set forth in G.S. ~~160A-446~~ 160D-1208.

Section 15. Section 11.9.2. of the Part 10 Raleigh Unified Development Ordinance, Nonresidential Building or Structure Code – Purpose, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 11.9.2. Purpose

In order to protect the health, safety and welfare of the City and its citizens, it is the purpose of this Article to establish minimum standards of maintenance, sanitation, and safety relating to nonresidential buildings or structures, as expressly authorized by North Carolina General Statute §~~160A-439~~ 160D-1129. This Article provides for the repair, closing or demolition of nonresidential buildings or structures as a result of a public necessity caused by conditions that are dangerous to the public health, safety and welfare.

Section 16. Section 11.9.13. of the Part 10 Raleigh Unified Development Ordinance, In Rem Action by The Code Enforcement Coordinator or Officer, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 11.9.13. In Rem Action by The Code Enforcement Coordinator or Officer

After failure of an owner of a nonresidential building or structure to comply with an order of the code enforcement coordinator or officer issued pursuant to the provisions of this Article and upon adoption by the City Council of an ordinance authorizing and directing the owner to do so, as provided by G.S. ~~160A-439(f)~~ 160D-1129(f), the code enforcement coordinator or officer shall proceed to cause the nonresidential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this Article, or to be vacated and closed or to be removed or demolished, as directed by the ordinance of the City Council. The code enforcement coordinator or officer shall post on the main entrance of any nonresidential building or structure which is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.

Section 17. Section 11.9.14.A. of the Part 10 Raleigh Unified Development Ordinance, Costs, a Lien on Premises, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

A. As provided by G.S. ~~160A-439(i)~~ 160D-1129(i), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the code enforcement coordinator or officer shall be a lien against the real property upon which such costs were incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by Article 10, Chapter 160A of the North Carolina General Statutes. The amount of the costs shall also be a lien on any other real property of the owner located within the City limits except for the owner's primary residence. The additional lien on other real property of the owner, excluding the subject property, as provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

Section 18. Section 11.9.15. of the Part 10 Raleigh Unified Development Ordinance, Ejectment, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 11.9.15. Ejectment

If any occupant fails to comply with an order to vacate a nonresidential building or structure, a civil action may be filed in the name of the City to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as the defendant any person occupying the nonresidential building or structure. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the code enforcement coordinator or officer produces a certified copy of an ordinance adopted by the City Council pursuant to G.S. ~~160A-439(f)~~ 160D-1129(f) and this UDO to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the City Council has ordered the code enforcement coordinator or officer to proceed to exercise his duties under G.S. ~~160A-439(f)~~ 160D-1129(f) and this UDO to vacate and close or remove and demolish the nonresidential building or structure.

Section 19. Section 11.9.16. of the Part 10 Raleigh Unified Development Ordinance, Filing of Ordinances, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 11.9.16. Filing of Ordinances

An ordinance adopted by City Council pursuant to this Article shall be recorded in the office of the Register of Deeds of Wake County and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. ~~160A-439(f) and (g)~~ 160D-1129(f) and (g).

Section 20. Section 11.9.18.B.1. of the Part 10 Raleigh Unified Development Ordinance, Board of Adjustment to Hear Appeals, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

1. An appeal from any decision or order of the code enforcement coordinator or officer may be taken by any aggrieved party. Any appeal from the code enforcement coordinator or officer shall be taken within 10 days from the rendering of the decision or service of the order, and shall be taken by filing with the code enforcement coordinator or officer, and the Board of Adjustment, a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement coordinator or officer shall transmit to the Board all the papers constituting the record upon which the appealed decision was made. When the appeal is from a decision of the code enforcement coordinator or officer refusing to allow the aggrieved party to act, the code enforcement coordinator or officer's decision shall remain in force until modified or reversed. When the appeal is from a decision of the code enforcement coordinator or officer requiring the aggrieved party to act, the appeal shall have the effect of suspending the requirement until the hearing of the appeal by the Board; however, should the code enforcement coordinator or officer certify to the Board, after the notice of appeal is filed, that by reason of the facts stated in the certification, a suspension of the requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order. The restraining order may be granted for due cause shown upon not less than 1 day's written notice to the code enforcement coordinator or officer, by the Board or by a court of general jurisdiction upon petition made pursuant to G.S. ~~160A-446(f)~~ 160D-1208(d) and this UDO.

Section 21. Section 11.9.19. of the Part 10 Raleigh Unified Development Ordinance, Temporary Injunction Remedy for Aggrieved Person, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 11.9.19. Temporary Injunction Remedy for Aggrieved Person

Any party aggrieved by an order issued by the code enforcement coordinator or officer or a decision rendered by the board of adjustment shall have the right within 30 days after issuance of the order or rendering of the decision, to petition the Superior Court for a temporary injunction pending a final disposition of the cause, as provided by G.S. ~~160A-446(f)~~ 160D-1208(d).

Section 22. Section 12.2. of the Part 10 Raleigh Unified Development Ordinance, Defined Terms, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

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Pre-Development Conditions

The land use, drainage and impervious surface conditions existing on the site at the time plans are submitted for approval, including any previously approved development plans for the site which has not sunsetted, projects which have an outstanding valid building permit in compliance with N.C. Gen. Stat. ~~§160A-418~~ 160D-1110, 160D-1111 and ~~§160A-422 or §153A-358 and §153A-362~~ 160D-1115 and projects that have obtained a State permit such as landfills, land application of residuals on the site.

...

Inspector

The Appropriate City Official or his authorized inspectors. In addition to the powers and responsibilities granted in this article, the Appropriate City Official or his designee shall exercise the powers and responsibilities given to "public officer" in G.S. ~~160A-441~~ Chapter 160D, Article 12~~et seq.~~

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Section 23. This text change has been reviewed by the Raleigh Planning Commission.

Section 24. This ordinance has been adopted following a duly advertised legislative hearing of the Raleigh City Council.

Section 25. This ordinance has been provided to the North Carolina Capital Planning Commission as required by law.

Section 26. 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 27. This ordinance is effective five-days after adoption.

Adopted: October 19, 2021

Effective: October 24, 2022

Distribution: Management Team; City Attorney DL, Planning DL, Puccini, Taylor