

STAFF REPORT

Amendments to the Unified Development Ordinance

January 11, 2022 Town Council Meeting



Requested by Legal Staff:

1. **Amendment to Sec. 7.1.8 *Penalties and Remedies for Violation of Article* in order to add a reference to the State statute that provides the authority for a criminal penalty for violation of a development regulation and to remove text that is no longer applicable due to changes to State law.**

Background:

Changes to State law were recently passed (SB 300) dealing with what types of ordinances may have a criminal penalty. Generally, development regulations may not have a criminal penalty, but there are limited exceptions. When the statute provides a criminal penalty, it is best now to have the ordinance be clear about the authority for that penalty and so this amendment adds a reference NCGS 160D. Note that Chapter 11 of the Town's Code of Ordinances has been repealed so I deleted the last sentence too.

7.1.8 *Penalties and Remedies for Violation of Article*

Per NCGS 160D-807, Any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of the Town, hereafter subdivides such person's land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this ~~a~~Article and recorded in the office of the Wake County register of deeds, shall be guilty of a **Class 1** misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town, through its attorney or other official designated by the Town Council, may enjoin illegal subdivision, transfer or sale of land by action for injunction. ~~Further, violators of this article shall be subject, upon conviction, to fine or imprisonment as provided by Chapter 11 of the Code of Ordinances, Town of Apex, North Carolina.~~

Requested by Planning Staff:

2. **Amendments to Secs. 6.1.12.B *Stormwater Control Measures (SCMs), Design, Location, and Landscaping of SCMs* and 8.2.7 *Fences, Walls, and Berms* in order to allow fences to completely enclose a Stormwater Control Measure (SCM) even if some or all of the SCM is dedicated or proposed to be dedicated as Resource Conservation Area (RCA).**

Background:

The current interpretation of the UDO is that a fence is not allowed to encircle a Stormwater Control Measure (SCM) when any portion of the SCM is dedicated as Resource Conservation Area (RCA). Water Resources staff is fine with allowing fencing as it does not affect the functionality of the SCM as long as they provide proper SCM maintenance, access, and public easements, including adequate gates. Since we mandate SCMs, if the property owner/HOA feels liability is incurred as a result of that requirement, we feel they should have the opportunity to address that liability with a fence.

6.1.12.B Stormwater Control Measures (SCMs), Design, Location, and Landscaping of SCMs

...

- 10) ~~In lieu of peripheral fencing, d~~Detention and retention basin edges shall be contoured and shaped to form low angles at primary water line thereby ensuring greater pedestrian safety. **A peripheral fence may be installed in accordance with Sec. 8.2.7 Fences, Walls, and Berms.**

...

8.2.7 Fences, Walls, and Berms

Fences, walls, and berms are permitted as elements of site design and in some locations, may be used to conceal storage or other unsightly or conflicting land uses. ~~Fences are not allowed around detention and retention basins per Sec. 6.1.12.B.10.~~ All fences, walls, and berms shall meet the following requirements:

A) *Materials*

- 1) **Unless specified elsewhere, f**Fences or walls shall be constructed of wood, stone, brick, decorative concrete block, wrought iron, (or products created to resemble these materials), or a combination of any of these materials. Chain link fencing is allowed provided it meets the standards in Sec. 8.2.7.A.4.

...

- 6) **Fences along or around a stormwater control measure shall only be constructed of wrought iron or black aluminum pickets (or products created to resemble these materials).**

...

PLANNING STAFF RECOMMENDATION:

Planning staff recommends approval of the proposed UDO amendments.

PLANNING BOARD RECOMMENDATION:

The Planning Board heard these amendments at their December 12, 2021 meeting and unanimously recommended approval with the condition that the wording in Sec. 6.1.12.B.10 be revised from "...pedestrian safety or a peripheral fence shall be installed..." to "...pedestrian safety. A peripheral fence may be installed..." or as needed after further consultation with Water Resources staff. The revision is to avoid the implication that using a fence allows steep slopes. Note: These changes have been incorporated into the proposed amendment.

PLANNING BOARD REPORT TO TOWN COUNCIL

Unified Development Ordinance Amendments

Planning Board Meeting Date: December 13, 2021



Report Requirements:

Per NCGS §160D-604, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Planning Board Recommendation:

Motion: Approval

Introduced by Planning Board member: Sherman

Seconded by Planning Board member: Steele

Approval of the proposed UDO amendment(s)

Approval of the proposed UDO amendment(s) with the following conditions:

Approval with the condition that the wording in Sec. 6.1.12.B.10 be revised from

"...pedestrian safety or a peripheral fence shall be installed..." to "...pedestrian safety. A peripheral fence may be installed..." or as needed after further consultation with

Water Resources staff. The revision is to avoid the implication that using a fence allows steep slopes.

Denial of the proposed UDO amendment(s)

With 7 Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

This report reflects the recommendation of the Planning Board, this the 13 day of December 2021.

Attest:

Michael Marks Digitally signed by Michael Marks
Date: 2021.12.15 11:05:53 -05'00'

Michael Marks, Planning Board Chair

Amanda Bunce Digitally signed by Amanda Bunce
DN: cn=Amanda Bunce, o, ou,
email=amanda.bunce@apexnc.org, c=US
Date: 2021.12.13 20:13:23 -05'00'

Dianne Khin, Director of Planning and
Community Development

**TOWN OF APEX**

POST OFFICE BOX 250
APEX, NORTH CAROLINA 27502
PHONE 919-249-3426

**PUBLIC NOTIFICATION
OF PUBLIC HEARING
AMENDMENTS TO THE
UNIFIED DEVELOPMENT
ORDINANCE (UDO)**

Pursuant to the provisions of North Carolina General Statutes §160D-601 and to the Town of Apex Unified Development Ordinance (UDO) Sec. 2.2.11, notice is hereby given of a public hearing before the Town Council of the Town of Apex for the purpose of soliciting comments relative to the following amendment(s) to the Unified Development Ordinance:

Requested by Planning Staff:

1. Amendments to Sec. 7.1.8 *Penalties and Remedies for Violation of Article* in order to add a reference to the State statute that provides the authority for a criminal penalty for violation of a development regulation and to remove text that is no longer applicable due to changes to State law.
2. Amendments to Secs. 6.1.12.B *Stormwater Control Measures (SCMs), Design, Location, and Landscaping of SCMs* and 8.2.7 *Fences, Walls, and Berms* in order to allow fences to completely enclose a Stormwater Control Measure (SCM) even if some or all of the SCM is dedicated or proposed to be dedicated as Resource Conservation Area.

Public Hearing Location: Apex Town Hall
Council Chamber, 2nd Floor
73 Hunter Street, Apex, North Carolina

Town Council Public Hearing Date and Time: January 11, 2022 6:00 PM

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at: <https://www.youtube.com/c/townofapexgov>. Please visit www.apexnc.org on the day of the meeting to confirm whether the meeting will be held in-person or remotely.

If you are unable to attend, you may provide a written statement by email to public.hearing@apexnc.org, or submit it to the Deputy Town Clerk, Tesa Silver (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council members prior to their vote. Please include the Public Hearing name in the subject line.

In the event that the Town Council meeting is held remotely or with at least one member attending virtually, written comments may be submitted up to 24 hours prior to the scheduled time of the meeting per NCGS §166A-19.24 according to the methods specified above. Virtual meetings may be viewed via the Town's YouTube livestream at <https://www.youtube.com/c/townofapexgov>.

The UDO can be accessed online at: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Director of Planning and Community Development

es: December 22, 2021-January 11, 2022



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**NOTIFICACIÓN PÚBLICA DE
AUDIENCIAS PÚBLICAS**
modificación de la
Ordenanza de Desarrollo Unificado (UDO)

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-602 y con la Sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del ayuntamiento de Apex a fin de solicitar comentarios relativos a la siguiente modificación de la Ordenanza de Desarrollo Unificado:

A solicitud del personal jurídico:

1. Enmiendas a la Sec. 7.1.8 *Sanciones y remedios relacionados con la infracción de artículo*, para agregar una referencia al Estatuto estatal que autoriza una sanción penal por infracción de un reglamento de desarrollo, y para eliminar el texto que ya no es válido debido a cambios en la ley estatal.

A solicitud del personal de planificación:

2. Enmiendas a la Sec. 6.1.12.B, Medidas de Control de Aguas Pluviales (Stormwater Control Measures, SCM) y su diseño, ubicación y paisajismo; y a la Sec. 8.2.7, Cercas, muros y bermas, para permitir que las cercas encierren completamente a las SCM, incluso si parte o la totalidad de la SCM se ha designado, o se ha propuesto que se designe, Área de Conservación de Recursos.

Lugar de la audiencia pública: Ayuntamiento de Apex
Cámara del Consejo, 2º piso
73 Hunter Street, Apex, Carolina del Norte

Fecha y hora de la audiencia pública del Consejo Municipal: 11 de enero de 2022 6:00 PM

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>. Por favor visite www.apexnc.org el día de la reunión para confirmar si la reunión se llevará a cabo de manera presencial o remotamente.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a public.hearing@apexnc.org, o presentarla a la secretaria municipal adjunta, Tesa Silver (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

En caso de que la reunión del Consejo Municipal se lleve a cabo remotamente o que por lo menos uno de los miembros asista virtualmente, se permite presentar comentarios por escrito hasta 24 horas antes de la hora programada de la reunión según los estatutos de Carolina del Norte NCGS §166A-19.24 siguiendo los métodos especificados anteriormente. Las reuniones virtuales se pueden seguir en la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Se puede acceder a la UDO en línea en: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Directora de Planificación y Desarrollo Comunitario



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PUBLIC NOTIFICATION OF PUBLIC HEARING AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE (UDO)

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modificación de la Ordenanza de Desarrollo Unificado (UDO)

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Fechas de publicación: 22 de diciembre de 2021 – 11 de enero de 2022