

AN ORDINANCE TO AMEND CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. Sections 2.1.1, 2.1.3.A, 2.1.7.A, 2.2.11.E, 2.2.15, 2.3.1, 2.3.5, 2.3.6, 2.3.7.E, 8.3.9.E, 8.6.2, 14.1.1, and 14.1.5 of the Unified Development Ordinance are amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

2.1.1 Town Council

A) *Powers and Duties*

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2) *Review and approve, approve with conditions, or disapprove.* To review, hear, consider, and approve, approve with conditions, or disapprove:

- a) The adoption of an ordinance to amend the Official Zoning District Map.
- b) The adoption of an ordinance approving a PUD-CZ, SD-CZ, TND-CZ, or MEC-CZ for zoning district designation.
- c) ~~Applications for Special Use Permits.~~
- d) ~~Applications for Major Site Plans.~~

B) *Conflict of Interest*

Per NCGS 160D-109(a), Town Council members shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Town Council members 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.

~~Per NCGS 160D-109(d) and (e), Town Council members 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. If an objection is raised to a member's participation at or prior to the hearing or vote on that matter and that member does not ask to be recused, the remaining members shall by majority vote rule on the objection.~~

2.1.3 Board of Adjustment

A) *Powers and Duties*

The Board of Adjustment shall have the following powers and duties:

- 1) *Review and approve, approve with conditions, or deny.* To review, hear, consider and approve, approve with conditions, or deny:
 - a) Applications for Variance Permits.
 - b) **Applications for Special Use Permits.**

2.1.7 Technical Review Committee

A) *Powers and Duties*

The Technical Review Committee (TRC) shall have the following powers and duties:

- 1) *Minor Site Plan, **Major Site Plan**, and Master Subdivision Plan.* To review, consider, and approve, approve with conditions, or disapprove applications for Minor Site Plans, **Major Site Plans**, and Master Subdivision Plans.
- 2) *Rezoning ~~and Major Site Plan~~.* To review, consider, and make recommendations to approve, approve with conditions, or disapprove applications for Rezoning ~~and Major Site Plans~~.
- 3) *Construction Plans.* To consider and approve, approve with conditions, or disapprove applications for Construction Plans for subdivision, site plans, and other related Construction Plans.

2.2.11 Public Notification

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E) *Timing of Notice*

Unless otherwise expressly provided in the North Carolina General Statutes or this Ordinance, notice shall be provided as follows:

Application for Development Permit or Other Action	Notice Required (days before hearing/action)			
	Neighborhood Meeting (Sec. 2.2.7)	Written (Sec. 2.2.11.B)	Published (Sec. 2.2.11.C)	Posted (Sec. 2.2.11.D)
Rezoning, Conditional Rezoning, PUD-CZ, SD-CZ, TND-CZ, MEC-CZ	Written notice no less than 14 days prior to meeting date	Not more than 25 days nor less than 10 days prior to public hearing	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing	Not less than 10 days prior to public hearing
Major Site Plan , Special Use Permit (Quasi-judicial public hearings)	Written notice no less than 14 days prior to meeting date	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing	Once a week for two successive weeks prior to quasi-judicial public hearing; first publication not less than 10 days nor more than 25 days before quasi-judicial hearing	Not less than 10 days prior to quasi-judicial public hearing
Residential Master Subdivision Plans, Major Site Plans	Written notice no less than 14 days prior to meeting	N/A	N/A	N/A
Unified Development Ordinance (limited instances require Published Notice)	N/A	N/A	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing for 1) Changes that affect the permitted uses of land; or 2) Changes relating to telecommunications towers or windmills.	N/A
Variance permit (Quasi-judicial public hearings)	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing

Application for Development Permit or Other Action	Notice Required (days before hearing/action)			
	Neighborhood Meeting (Sec. 2.2.7)	Written (Sec. 2.2.11.B)	Published (Sec. 2.2.11.C)	Posted (Sec. 2.2.11.D)
Appeals to Board of Adjustment (interpretations and decisions of Director of Planning and Community Development) (Quasi-judicial public hearings)	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing
Expansion of ETJ	N/A	No less than 30 days prior to public hearing	Not more than 25 days nor less than 10 days prior to public hearing	N/A

2.2.15 Action by the Town Council

After receipt of the recommendation from the Planning Board (if required), or at the Town Council’s discretion, after 30 days of consideration of proposed amendments to the zoning ordinance or zoning map by the Planning Board with no written recommendation, the scheduling of a public hearing (Sec. 2.2.10) and public notification (Sec. 2.2.11), the Town Council shall conduct a public hearing on an application pursuant to Sec. 2.2.18 *Public Hearing Procedures* or Sec. 2.2.19 *Quasi-judicial Public Hearing Procedures*, as appropriate. At the public hearing, the Town Council shall consider the application, the relevant support materials, the Staff Report, the Planning Board recommendation (if required), and the public testimony given at the public hearing. After the close of the public hearing, the Town Council by a majority vote of the quorum present, shall approve, approve with conditions (if appropriate), or disapprove the application based on the relevant review standards.

~~Per NCGS 160D-406, when reviewing and taking action on Special Use Permits and Major Site Plans the Town Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Town Council to issue such approvals. For the purposes of this Section, vacant positions on the Town Council and members who are disqualified from voting on a quasi-judicial matter under NCGS 160D-109(d) shall not be considered ‘members of the board’ for calculation of the requisite majority.~~

Per NCGS 160D-605, prior to adopting or rejecting any zoning text or map amendment, the Town Council shall approve a statement describing whether its action is consistent or inconsistent with all applicable officially adopted plans. For zoning map amendments, the statement shall also explain why the Council considers the action taken to be reasonable and in the public interest.

2.3.1 Development Approvals, General Overview

Table 2.3.1 summarizes the development review procedures for all types of applications for development approvals and other permits outlined in this Article.

TABLE 2.3.1: DEVELOPMENT REVIEW PROCEDURES				
D = Final Decision Maker R = Recommendation A = Appellate Body				
DEVELOPMENT PERMIT	Director of Planning and Community Development / Technical Review Committee	Board of Adjustment	Planning Board	Town Council
Text Amendment (UDO) (Sec. 2.3.2)	R		R	D
Rezoning (Sec. 2.3.2)	R		R	D
Conditional Zoning (CZ) District (Sec. 2.3.3)	R		R	D
Planned Unit Development District (PUD-CZ) District (Sec. 2.3.4)	R		R	D
Traditional Neighborhood District (TND-CZ) (Sec. 2.3.4)	R		R	D
Sustainable Development Conditional Zoning District (SD-CZ) (2.3.16)	R		R	D
Major Employment Center (MEC-CZ) District (Sec. 2.3.4)	R		R	D
Special Use Permit (Sec. 2.3.5)	R	<u>D</u>		<u>D</u>
Site Plans (Major) (Sec. 2.3.6)	<u>R D</u>	<u>A</u>		<u>D</u>
Site Plans (Minor) (Sec. 2.3.6)	D	A		
Master Subdivision Plan (Sec. 2.3.7.D)	D	A		
Construction Plans (Sec. 2.3.7.E)	D	A		
Master Subdivision Final Plat (Sec. 2.3.7.F)	D	A		
Variance Permit (Sec. 2.3.8)	R	D		
Administrative Adjustment (Sec. 2.3.9)	D	A		
Certificate of Zoning Compliance (Sec. 2.3.10)	D	A		
Temporary use (Sec. 2.3.11)	D	A		
Appeals not identified in Table 2.3.1 (Sec. 2.3.12)	D	A		
Beneficial use Determination (Sec. 2.3.13)		D		
Vested Rights (Sec. 2.3.14)				D
Tree Removal and/or Pond Drainage Plan (Sec. 2.3.15)	D	A		

2.3.5 Special Use Permit

A) *Purpose*

Uses requiring a Special Use Permit are those uses that are potentially incompatible with the other uses permitted in a zoning district and, therefore, require, special, individual review of their location, design, configuration, intensity, and density of use or structures. To ensure land use compatibility, conditions of approval may be imposed that are pertinent to the particular use at a particular location.

B) *Authorization*

Only those uses authorized as special uses in Sec. 4.2.2 *Use Table* may be approved with a Special Use Permit. The designation of a use as a special use in Sec. 4.2.2 *Use Table*, does not constitute an authorization that such use shall receive approval of a Special Use Permit pursuant to this Section. Rather, each proposed Special Use Permit shall be evaluated by the ~~Town Council~~ **Board of Adjustment** for compliance with the standards set forth in this Section and applicable supplementary standards for the use in Sec. 4.4 *Supplemental Standards*.

C) *Procedures*

1) *General*

The procedures for initiation of the application, the application contents, neighborhood meeting, its submission, the fees, the review by Town staff, public notification, and then approval, approval with conditions, or disapproval by the ~~Town Council~~ **Board of Adjustment** at a quasi-judicial public hearing(s) shall comply with the requirements of Sec. 2.2 *Common Review Procedures*.

2) ~~Town Council~~ **Board of Adjustment** *Quasi-judicial Public Hearing Procedures*

In addition, to ensure review of the application complies with quasi-judicial requirements, the public hearing shall be conducted in accordance with Sec. 2.2.19 *Quasi-judicial Public Hearing Procedures*. **Per NCGS 160D-406, a majority of the members shall be required to approve a Special Use Permit. For the purposes of this Section, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter under NCGS 160D-109(d) shall not be considered 'members of the board' for calculation of the requisite majority.**

D) *Standards*

To approve an application for a Special Use Permit, the ~~Town Council~~ **Board of Adjustment** shall find that:

1) *Compatibility*. The proposed Special Use Permit shall be appropriate for its proposed location and compatible with the character of surrounding land uses.

2) *Zoning district supplemental standards*. The proposed Special Use Permit shall comply with Sec. 4.4 *Supplemental Standards*.

3) *Design avoids significant adverse impacts, avoids being a nuisance, and minimizes adverse impact*. The proposed Special Use Permit shall not have a significant adverse impact on surrounding lands (including but not limited to) regarding trash, traffic service delivery, parking and loading, odors, noise, glare, visual impact, and vibration. The proposed Special Use Permit shall not create a nuisance. The proposed Special Use Permit shall be designed to minimize adverse effects of the proposed use on adjacent lands.

- 4) *Design minimizes environmental impact.* The proposed Special Use Permit shall minimize environmental impacts and shall not cause significant deterioration of water and air resources, wildlife habitat, and other natural resources.
- 5) *Impact on public facilities.* The proposed Special Use Permit shall not have a significant adverse impact on public facilities and services, including roads, potable water and wastewater facilities, parks, police, fire, and EMS facilities.
- 6) *Standards of this Ordinance.* The proposed Special Use Permit shall comply with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

E) *Conditions and Restrictions*

The ~~Town Council~~ **Board of Adjustment** may impose, in approving the Special Use Permit, such restrictions and conditions on such approval, the proposed use, and the premises to be developed or used pursuant to such approval, it determines are required by the standards of this Section to prevent or minimize adverse effects from the proposed use and development on surrounding land uses. All conditions imposed on any special use shall be expressly set forth in the Special Use Permit.

F) *Expiration for Non-initiation of a Special Use*

If a special use authorized by a Special Use Permit is not initiated within 24 months of issuance of the Special Use Permit, the Special Use Permit shall expire and be void. A different time may be specified in the Special Use Permit within which the special use must be initiated. For purposes of this Subsection, “initiated” means that a building permit has been issued for the special use or if the special use does not require a building permit, the special use is established, ongoing, and in operation. Time frames do not change with successive owners. Upon written request, one 12-month extension of the time to initiate a special use may be granted by the ~~Town Council~~ **Board of Adjustment** for good cause shown.

G) *Amendments*

A Special Use Permit may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

2.3.6 Site Plan

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D) *Procedures*

- 1) ~~*Minor Site Plans (No public hearing required, staff review and approval).*~~ Procedures for the review of site plans that have less than 100,000 square feet of nonresidential floor area, ~~or less than 20300 multi-family units, or those that do not rise to the level of Major Site Plan per the criteria in Sec. 2.3.6.D.2~~ shall be processed and reviewed according to the standards below. All Town of Apex development projects, and sites designated as North Carolina Certified Sites by the North Carolina Department of Commerce, not exempt from review according to Sec. 2.3.6.C shall be reviewed as Minor Site Plans. A “Town of Apex development project” is defined as a development project performed or funded in part or in whole by the Town, with or without the use of either federal or state funds.

- a) ~~The procedures for initiation of an application for a Minor Site Plan, the application contents, fees, application submission, and staff review shall comply with the relevant provisions of Sec. 2.2 Common Review Procedures, except that:~~

- (i) ~~— A Traffic Impact Analysis (TIA) shall be required per Sec. 13.19.~~
- (ii) ~~— The Director of Planning and Community Development shall forward applications for Minor Site Plans to the TRC for review and recommendation.~~
- (iii) ~~— Within five (5) calendar days of the recommendation of the TRC on the application, the Director of Planning and Community Development shall review the TRC recommendation and determine if the application complies with Sec. 2.3.6.E Standards.~~
- (iv) ~~— If the Director of Planning and Community Development determines the application complies with Sec. 2.3.6.E Standards, a notice of approval shall be sent to the applicant. If the Director of Planning and Community Development determines the application does not comply with Sec. 2.3.6.E Standards, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be taken on the application until the Director of Planning and Community Development has received a corrected application from the applicant. The Director of Planning and Community Development may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Director of Planning and Community Development.~~

2) *Major Site Plans.* For the purposes of this Section and this Ordinance, Major Site Plans shall be considered site plans that propose 100,000 square feet or greater of nonresidential floor area, or ~~20~~ **300** multi-family units or more, ~~or those site plans that rise to the level of Major Site Plan based on the thresholds listed below.~~ Any Town of Apex development project, and sites designated as North Carolina Certified Sites by the North Carolina Department of Commerce, meeting the thresholds of this Section shall be reviewed as a Minor Site Plan.

- a) ~~Multiple site plan applications within any three year period for one property, or portions of the same property, or neighboring properties if owned by the same entity, shall be considered as one site plan for the determination of Major Site Plan. The non-residential square footage and multi-family unit count will be added together over the three-year period, and the multiple site plan applications will be considered as one for the criteria in Secs. 2.3.6.D.2.b., c., d., and e.~~
- b) ~~Site plans proposing 100 or more additional parking spaces to existing development.~~
- c) ~~Site plans proposing to grade more than 25 acres.~~
- d) ~~Site plans proposing any building taller than four (4) stories.~~
- e) ~~Site plans proposing the mixing of architectural types, exotic architecture, or the use of non-standard materials.~~

3) **Minor and** Major Site Plans shall be processed and reviewed as follows:

~~a) Reserved.~~

~~b) a)~~ The procedures for initiation of an application for a **Minor or** Major Site Plan, the application contents, fees, application submission, and staff review shall comply with the relevant provisions of Sec. 2.2 *Common Review Procedures*, except that:

(i) A Traffic Impact Analysis (TIA) shall be required in accordance with Sec. 13.19.

(ii) The Director of Planning and Community Development shall forward applications for Minor and Major Site Plans to the Technical Review Committee (TRC) for review.

~~(iii)~~ If the Director of Planning and Community Development **TRC** determines the application complies with Sec. 2.3.6.E *Standards*, ~~it shall be forwarded to the Town Council for consideration, a notice of approval shall be sent to the applicant~~ **by the Director of Planning and Community Development**. If the Director of Planning and Community Development **TRC** determines the application does not comply with Sec. 2.3.6.E *Standards*, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be taken on the application until the Director of Planning and Community Development has received a corrected application from the applicant. The Director of Planning and Community Development may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Director of Planning and Community Development **TRC**.

~~c) Town Council Quasi-judicial Hearing and Decision~~

~~(i) At the meeting, the Town Council shall conduct a quasi-judicial hearing in accordance with Sec. 2.2.19 *Quasi-judicial Public Hearing Procedures* and consider the application, Staff Report, and all other relevant matters and approve, approve with conditions, or disapprove the application based on the standards in Sec. 2.3.6.E *Standards*. The applicant shall have the burden of production and proof that standards are met.~~

~~(ii) The Town Council may, on its own motion and for good cause shown, continue consideration of the Major Site Plan to a future meeting, fixing the date, time, and place. An applicant shall be entitled to one (1) continuance as of right; however, all subsequent continuances shall be granted at the discretion of the Town Council only upon good cause shown.~~

E) *Standards*

~~1) *Minor Site Plan*.~~ In order to approve an application for a Minor **or Major** Site Plan, the Director of Planning and Community Development **TRC** shall find

the standards provided below are met by the proposed Minor or Major Site Plan. Notwithstanding anything to the contrary in this subsection, Town of Apex development projects shall meet such standards only to the maximum extent reasonable and practicable, as determined by the Director of Planning and Community Development.

- a) 1) *Zoning district supplemental standards.* The development and uses in the site plan comply with Sec. 4.4 *Supplemental Standards*.
 - b) 2) *Site development standards.* The development proposed in the site plan and its general layout and design comply with all appropriate standards in Article 8: *General Development Standards*.
 - c) 3) *Mitigation of development on steep slopes.* If appropriate, the site plan complies with the requirements of Sec. 8.1.4 *Slope Protection Standards*.
 - d) 4) *Dedication of ROW.* The development proposed in the site plan conforms to the requirements of Sec. 7.4 *Dedication of ROW Consistent with Advance Apex: 2045 Transportation Plan*.
 - e) 5) *Required improvements.* The development proposed in the site plan conforms to the requirements of Sec. 7.5 *Required Improvements*.
 - f) 6) *Other relevant standards of this Ordinance.* The development proposed in the site plan and its general layout and design comply with all other relevant standards of this Ordinance, except that a site plan is not required to comply with a setback standard if there is a permanent improvement on the site that existed prior to August 1, 2000 that makes compliance impossible and the exception to the setback standard is the minimum necessary to accommodate the pre-existing permanent improvement.
 - g) 7) *Applicable Standards of Article 7: Subdivision and Article 14: Parks, Recreation, Greenways, and Open Space.* The development proposed in the site plan shall comply with the applicable standards of Article 7: *Subdivision* and Article 14: *Parks, Recreation, Greenways, and Open Space*, including, but not limited to, street and utility improvements and park, recreation, and open space dedication or fee-in-lieu.
- 4) ~~Major Site Plan.~~ In order to approve an application for a Major Site Plan, the Town Council shall find the following standards are met by the proposed Major Site Plan:
- a) ~~Compatibility.~~ The development proposed in the site plan and its general location is compatible with the character of surrounding land uses.
 - b) ~~Zoning district supplemental standards.~~ The development and uses in the site plan comply with Sec. 4.4 ~~Supplemental Standards~~.
 - c) ~~Site development standards.~~ The development proposed in the site plan and its general layout and design comply with all appropriate standards in Article 8: ~~General Development Standards~~.

- d) ~~— *Mitigation of development on steep slopes.* If appropriate, the site plan complies with the requirements of Sec. 8.1.4 *Slope Protection Standards.*~~
- e) ~~— *Dedication of ROW.* The development proposed in the site plan conforms to the requirements of Sec. 7.4 *Dedication of ROW.*~~
- f) ~~— *Required improvements.* The development proposed in the site plan conforms to the requirements of Sec. 7.5 *Required Improvements.*~~
- g) ~~— *Other relevant standards of this Ordinance.* The development proposed in the site plan and its general layout and design comply with all other relevant standards of this Ordinance, except that a site plan is not required to comply with a setback standard if there is a permanent improvement on the site that existed prior to August 1, 2000 that makes compliance impossible and the exception to the setback standard is the minimum necessary to accommodate the pre-existing permanent improvement.~~
- h) ~~— *Applicable Standards of Article 7: Subdivision and Article 14: Parks, Recreation, Greenways, and Open Space.* The development proposed in the site plan shall comply with the applicable standards of Article 7: *Subdivision* and Article 14: *Parks, Recreation, Greenways, and Open Space*, including, but not limited to, street and utility improvements and park, recreation, and open space dedication or fee-in-lieu.~~
- i) ~~— *Impact on public facilities.* The proposed development shall not have a significant adverse impact on public facilities and services, including roads, potable water and wastewater facilities, parks, police, fire, and EMS facilities.~~

F) ~~— *Conditions and Restrictions*~~

~~The Town Council shall have the authority to impose such conditions on a Major Site Plan that are necessary to accomplish the purposes of this Section, this Article, this Ordinance and the goals and policies of the 2045 Land Use Map. All conditions imposed on a Major Site Plan shall be expressly set forth on the site Construction Plans.~~

G) **F) *Phasing Plan***

Provisions of required public improvements, buffers, Resource Conservation Area, and recreation areas may be installed in phases as approved by the ~~Director of Planning and Community Development, Planning Board and Town Council~~ **TRC** such that the improvements reasonably relate to the use intended for the site and as required by the *Town of Apex Standard Specifications and Standard Details*. A Phasing Plan clearly showing the phases and any other pertinent information required by the applicant, Department of Planning and Community Development, Planning Board, or Town Council shall be recorded by the applicant with the Wake County Register of Deeds.

H) G) *Site Construction Plan*

After a Site Plan has been approved by the ~~Town Council or a Minor Site Plan approved by the Director of Planning and Community Development TRC~~, the applicant shall submit the Site Construction Plans to the Development Services ~~Supervisor~~ **Manager**. The submission shall be in a form approved by the ~~Assistant Town Development Services~~ **Manager**. The applicant shall ensure that the Construction Plans conform to the approved Site Plan design and that all conditions imposed on the Site Plan by the ~~Town Council, or the Director of Planning and Community Development TRC~~ for a Minor **or Major** Site Plan, are met in the Construction Plans. The Construction Plans shall be reviewed by the ~~Technical Review Committee TRC~~ to ensure compliance with the approved Site Plan and all applicable Town, county, state, and federal regulations and requirements, including all relevant construction standard specifications and details. Any modifications to or deviations from the approved Site Plans must be requested in writing to the Director of Planning and Community Development and may require additional review by the relevant permit issuing authority if deemed appropriate by the Director of Planning and Community Development. All Construction Plans shall bear the seal and signature of a professional engineer, landscape architect, surveyor, or architect, who is authorized to perform such work and licensed in the State of North Carolina. Once the Construction Plan is approved, it is signed by the relevant members of the ~~Technical Review Committee TRC~~ and forwarded to the applicant. The applicant is responsible for returning the requisite number of copies, as determined by the ~~Assistant Town Development Services~~ **Manager**, to the Development Services ~~Supervisor~~ **Manager**.

H) H) *Final Plat*

After the Construction Plans are signed and the requisite number of copies are returned to the Development Services ~~Supervisor~~ **Manager**, the grading permit has been issued, and all relevant fees have been paid, then the applicant may commence work on the site as per the approved construction sequence. At some point during site construction, the applicant may determine that sufficient work has been completed and that they want to proceed with recording a final plat. At that point the applicant shall submit a final plat to the Department of Planning and Community Development for review and approval. All incomplete or insufficient site work must be guaranteed by the provision of a sufficient surety prior to approval of the final plat. All drainage and utility easements must be centered on the as-built locations of the installed improvements. The submission shall be in a form approved by the Director of Planning and Community Development, and should be made at least two months prior to the time that the applicant would like to obtain the Certificate of Occupancy (CO). This will allow the staff adequate time for review and for any necessary revision and re-review to be made to the plat submittal. The applicant shall ensure that all public utility easements, private access easements, Resource Conservation Area (with metes and bounds description), buffers, setbacks, and any other items required by the Director of Planning and Community Development are shown on the final plat and anchored, or described, with a metes and bounds description. Payment of all applicable fees and requisite bonding is due prior to final plat approval. The final plat must be recorded prior to a CO being issued for the project.

2.3.7 Subdivision

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E) *Construction Plans for Master Subdivision Plans*

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2) *Procedures*

The procedures for initiation of an application (Sec. 2.2.1) for Construction Plans for subdivision, the application contents (Sec. 2.2.4), fees (Sec. 2.2.5), and application submission (Sec. 2.2.8) shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. Within 60 days after the application is determined sufficient, the Director of Planning and Community Development (acting as the subdivision administrator) and the Development Services ~~Supervisor~~ **Manager** shall review the application, refer it to the TRC for review and comment, and approve, approve with conditions, or disapprove the Construction Plans based on the standards in Sec. 2.3.7.E.4 *Standards*.

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8.3.9.E Parking – *Other Eligible Alternatives*

For Minor **and Major** Site Plans and Master Subdivision Plans, the Director of Planning and Community Development may approve any other alternative to providing the requisite number of off-street parking spaces on the site of the subject development (including, but not limited to, a decrease in the number of proposed off-street parking spaces by not more than 10% from the minimum number of spaces otherwise required under Sec. 8.3) if the applicant demonstrates to the satisfaction of the Director of Planning and Community Development that the proposed plan will do at least as good of a job of protecting surrounding neighborhoods, maintaining traffic circulation patterns, and promoting quality urban design as would strict compliance with the otherwise applicable off-street parking standards.

~~For Major Site Plans, the Town Council may approve any other alternative to providing the requisite number of off-street parking spaces on the site of the subject development (including, but not limited to, a decrease in the number of proposed off-street parking spaces by not more than 10% from the minimum number of spaces otherwise required under Sec. 8.3) if the applicant demonstrates to the satisfaction of the Town Council that the proposed plan will do at least as good a job of protecting surrounding neighborhoods, maintaining traffic circulation patterns, and promoting quality urban design as would strict compliance with the otherwise applicable off-street parking standards.~~

The Director of Planning and Community Development ~~and Town Council~~ shall consider the following factors in determining whether any such proposed alternative is acceptable:

- 1) Existing topography;
- 5) The type, amount, and location of existing vegetation;
- 6) The size and configuration of the parcel;
- 7) The location and extent of underground and overhead utilities;
- 8) Rights-of-way bounded by slopes steeper than 2:1;
- 9) Natural barriers such as waterways, rock formations, and soil conditions;
- 10) Proximity to transit stops;
- 11) Frequency of use of the parking areas;

- 12) Availability of on-street parking;
- 13) Historic or cultural sites or structures;
- 14) Interference with convenient and enjoyable use of adjacent properties; and
- 15) Consistency with the intent of this Ordinance.

8.6.2 Lighting Plan

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- B) An isofootcandle plan that shows typical foot-candle contours or a point photometric grid that indicates foot-candle levels measured at grade across the site. A point photometric plan is required for ~~Minor and Major Site Plans~~ **with more than two (2) light poles**. Other information such as: maximum, average, and minimum site foot-candles and uniformity ratio (average/minimum) should also be included. Foot-candle levels shall be shown at initial levels.

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14.1.1 Dedication Generally; Fee in Lieu of Dedication Generally; Construction of Public Recreation Facilities with Fee-in-Lieu Monies Generally

- A) Every person who subdivides or develops land for residential purposes shall prior to the time of final approval of the Master Subdivision Plan or **Minor or Major Site Plan** agree to dedicate a portion of such land, as set forth in this Section, for the purpose of providing park, recreation, or open space sites to serve the future residents of the neighborhood within the Town of Apex corporate limits.

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14.1.5 Procedure for Determination of Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof; Performance Guarantees

The procedure for determining whether the subdivider is to dedicate land, pay a fee-in-lieu, construct public recreation facilities with fee-in-lieu monies, or some combination thereof, shall be as follows:

- A) *Action of Town*
After a proposal by the developer as indicated in Sec. 14.1.5.B below, the PRCR Advisory Commission shall recommend, and the Town Council shall determine as a part of PD Plan ~~or Major Site Plan~~ approval or prior to TRC approval of a Master Subdivision Plan **or Minor or Major Site Plan**, whether to require a dedication of land, payment of a fee-in-lieu, construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, pursuant to the standards in Sec. 14.1.4 *Standards for Town Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof*.

The procedure shall be as follows:

- 1) *Planned Development (PD) Plans*. At the time of the PD plan review, staff shall review and provide comments and a recommendation to the PRCR Advisory Commission. **The PRCR Advisory Commission recommendation shall be provided to the Town Council at the time of public hearing for the PD Plan.** The per-unit acreage and/or fee-in-lieu will be set as of the Town Council approval date for the PD Plan.

2) *Master Subdivision and **Minor and Major Site Plans***. Unless set at the time of PD Plan approval, at the time of Master Subdivision Plan or **Minor or Major Site Plan** review, staff shall review and provide comments and a recommendation to the PRCR Advisory Commission. **The PRCR Advisory Commission recommendation shall be provided to the Town Council prior to approval of such plans.** The per-unit acreage and/or fee-in-lieu will be set as of the approval date of the Master Subdivision Plan or **Minor or Major Site Plan**.

B) *Developer Proposal*

The developer shall propose land dedication for park and recreational purposes, payment of a fee-in-lieu, construction of public recreation facilities for credit against fees owed, or some combination of thereof on the PD Plan, Master Subdivision Plan, or **Minor or Major Site Plan**, whichever is submitted first. All land to be dedicated, all easements to be platted, and all greenway trails to be constructed must be shown on the Master Subdivision Plan or **Minor or Major Site Plan**. Where applicable, detailed drawings for all improvements, including plan and profile for greenway trails, are required for Construction Plan approval. Engineer-sealed cost estimates of construction work shall be submitted and approved by the Parks, Recreation, and Cultural Resources Director and the Water Resources Director, or their designees, prior to Construction Plan approval for credit against fees. The land proposed for dedication shall meet the standards in Sec. 14.1.3 *Standards for Dedication*.

C) *Prerequisites for Approval of First Final Plat or First Building Permit*

For the purpose of this subsection, first Final Plat shall apply to Master Subdivision Plans and first building permit shall apply to **Minor or Major Site Plans**.

Section 2. Sections 4.2.2, 4.3, and 4.4 of the Unified Development Ordinance are amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

4.2.2 Use Table

* Uses in the Small Town Character Overlay District (STC) designated as Permitted (P) are only allowed when also designated as Permitted (P) in the underlying zoning district. Uses requiring Special Use Permits (S) in the underlying zoning district are still required to get a Special Use Permit in the STC Overlay District.

**Uses allowed as a matter-of-right in a Sustainable Development Conditional Zoning District shall be those uses authorized in the Sustainable Development Plan approved for such district. Standards applicable to each such use shall be as provided in this Use Table unless modified by the respective Sustainable Development Plan.

***Uses in the Central Business District designated as Permitted (P) with three asterisks are not allowed in storefront locations. Storefront locations shall mean the first floor of all spaces abutting North Salem Street, East Chatham Street, West Chatham Street, Saunders Street, and Templeton Street, as well as along all public parking lots and garages.

Use Type	Definition Section	Zoning Districts																		Standards			
		Residential									Business						Planned Development			Other			Section(s)
		R A	R R	L D	M D	H D S F	H D M F	M H	M H P	M O R R	O & I	B 1	B 2	P C	L I	T F	M E C	T N D	P U D	CB	S D	S T C	
Residential Uses																							
Congregate living facility	4.3.1.C		S	S	S	S	P			S						P	P	P		**		4.4.1.B	
Nursing or convalescent facility	4.3.1.L	S	S	S	S	S	P			S	P			P		P	P	P		**	P*	4.4.1.H; 6.3	
Townhouse	4.3.1.O					<u>P/S</u>	P			P						P	P	P		**	<u>P/S*</u>	4.4.1.F; 6.3	
Townhouse, detached	4.3.1.P				<u>SP</u>	<u>P/S</u>	P			P						P	P	P		**	<u>P/S*</u>	4.4.1.J; 6.3	
Public and Civic Uses																							
Church or place of worship	4.3.2.G	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>	<u>P/S</u>		**	<u>P/S*</u>	4.4.2.B; 6.3
Day care facility	4.3.2.H	S	S	S	S	S	S	S	S	P	P	P		P	%	P	P	P	P		**	P*	4.4.2.C; 6.3
Utilities																							
Recycling collection station	4.3.3.G	P	P		P	P	P	P			P			P	P	<u>SP</u>	P	P	P	P	**		4.4.3.E
Recreational Uses																							
Beach bingo	4.3.4.B											S	S								**	S*	6.3
Horse boarding and riding stable	4.3.4.K	P	P															<u>SP</u>		**			
Commercial Uses																							
Office and research																							
Medical or dental laboratory	4.3.5.D.3										P	<u>SP</u>	P***	P	P	P	P		P		**	P*	4.4.5.D.3; 6.3

4.3.2 Use Classifications, Public and Civic Uses

...

G) *Church or Place of Worship*

A site and its buildings used primarily for religious worship and related religious services by a tax-exempt religious group. Churches may include cemeteries belonging to and operated by the church, **day care facilities, pre-schools, and/or schools**. Churches shall not include ~~day care facilities, pre-schools, schools~~ or homeless shelters, unless they are approved as a special use pursuant to Sec. 2.3.5 *Special Use Permit*.

4.4.1 Supplemental Standards, Residential Uses

...

F) ~~Reserved.~~ **Townhouse:**

Such use shall require a Special Use Permit if located within the Small Town Character Overlay District.

...

J) *Townhouse, detached:*

A detached townhouse use shall comply with the following standards:

- 1) *Maintenance.* A property owners association shall be established and shall maintain everything on the outside of the townhouses, including but not limited to landscaping, siding, roofing, porches, trim, mailboxes, driveways, and alleys.
- 2) *Alleys and Driveways.* Each detached townhouse lot shall be required to either be rear loaded from an alleyway, or in the absence of an alley, garages must be placed in the rear with a shared driveway from the front.
 - a) There shall be no more than 10 lots on a single alleyway without an intervening alleyway.
 - b) The alley shall consist of a 26'-wide dedicated right-of-way with 16' asphalt strip located entirely outside of the lots.
- 3) *Utilities.* Public utilities may be located in the alleyway within a public utility easement or in the public street.
- 4) ~~Reserved.~~
- 5) **4) *Dimensional criteria.*** Detached townhouses shall meet the following requirements in addition to the requirements set forth in Sec. 5.1.1 "Table of Intensity and Dimensional Standards" "Residential Districts":
 - a) Minimum lot size is 26' wide and 110' deep.
 - b) Front setback is a minimum of 10' and a maximum of 15'.
 - c) Side setback shall be a minimum of 3'.
 - d) Garages, if provided, shall be located a minimum of 13' off rear property line in the rear yard.

- 6) 5) *Parking.* A minimum of two (2) on-site parking spaces shall be provided per townhouse and shall be located in the rear yard. Parking spaces within garages do count toward the off-street parking requirement.
- 6) Such use shall require a Special Use Permit if located within the Small Town Character Overlay District.

4.4.2 Supplemental Standards, Public and Civic Uses

- ...
 - B) *Church ~~or~~ Place of Worship*
 - ...
 - 2) Churches shall not include ~~day care facilities, pre-schools, schools or homeless shelters,~~ unless they are approved as a special use pursuant to Sec. 2.3.5 *Special Use Permit.*
 - 3) Prior to the establishment of a day care facility, pre-school, or school, a Minor Site Plan shall be submitted and approved.

Section 3. Sections 8.3.2, 8.3.6.D, and 4.4.5.H of the Unified Development Ordinance are amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

8.3.2 Off-Street Parking Requirements

- A) *Off-Street Parking Schedule "A"*
 Unless otherwise expressly stated in this Code, off-street motor vehicle and bicycle parking spaces shall be provided in accordance with Table 8.3-1. Electric vehicle charging space requirements shall be provided in accordance with Sec. 8.3.11 *Electric Vehicle Charging Spaces.*

Table 8.3-1: Off-Street Parking Schedule "A"

Use	Minimum Number of Motor Vehicle Spaces Required	Minimum Number of Bicycle Spaces Required
Commercial Uses		
Automotive accessory sales and installation	1 per 300 square feet of sales/office area plus 1 per service bay	2 spaces
Automotive paint or body shop	Schedule B C	2 spaces
Repair and maintenance, general	Schedule B <u>1 per 300 square feet plus 2 per service bay</u>	2 spaces
All other uses	1 per 300 <u>square feet</u>	2 spaces
Industrial Uses		
All uses	Schedule B	2 spaces

- B) *Off-Street Parking Schedule "B"*
 Uses subject to off-street parking schedule "B" shall provide the following minimum number of off-street parking spaces.

Table 8.3-2: Off-Street Parking Schedule "B"

Activity	Number of Spaces Required
Office or administrative area	1 per 300 square feet
Indoor sales area	1 per 300 square feet
Outdoor sales or display area (3,000 square feet or less)	1 per 750 square feet

Activity	Number of Spaces Required
Outdoor sales or display area (over 3,000 square feet)	
\$ Motor vehicles/equipment sales	1 per 2,000 square feet
\$ Other sales/display	1 per 1,000 square feet
Indoor storage/warehousing	
\$ 1–50,000 square feet	1 per 1,500 square feet
\$ 50,001 square feet+	1 per 2,000 square feet
Vehicle service/manufacturing area	
\$ 1–3,000 square feet	1 per 250 square feet
\$ 3,001–5,000 square feet	1 per 500 square feet
\$ 5,001–10,000 square feet	1 per 750 square feet
\$ 10,001–50,000 square feet	1 per 1,250 square feet
\$ 50,001 square feet+	1 per 2,000 square feet

C) *Off-Street Parking Schedule “C”*

Uses that reference Schedule “C” have widely varying parking and loading demand characteristics, making it impossible to specify a single off-street parking or loading standard. Upon receiving a development application for a use subject to “Schedule C” standards, the Director of Planning and Community Development shall apply the off-street parking and loading standard specified for the listed use that is deemed most similar to the proposed use, or shall establish minimum off-street parking requirements on the basis of a parking and loading study prepared by the applicant. Such a study must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the Director of Planning and Community Development, and should include other reliable data collected from uses or combinations of uses that are the same as, or comparable with, the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations.

...

8.3.6 Parking Lot Design Standards

...

D) *Surfacing and Maintenance*

All off-street parking areas shall be paved and kept in a dust-free condition at all times. Permeable pavement, if used, shall comply with the North Carolina Department of Environmental Quality’s Minimum Design Criteria in the NCDEQ Stormwater Design Manual.

1) *Exceptions*

Parking for the following shall be gravel or paved and kept in a dust-free condition at all times:

- a) All uses in the CB Conservation Buffer zoning district;
- b) Athletic Fields only under the category of Entertainment, Outdoor where allowed; ~~and~~
- c) Uses associated with Landmark and other historic structures. Exposed aggregate concrete, or similar, may be used for paving; and
- d) Land clearing and inert debris landfills.

2) Gravel parking shall at a minimum meet the following specifications:

- a) Compacted Subgrade;
- b) 6 Inches Aggregate Base Course;
- c) 1.5 Inches #78M Stone; and
- d) Drive aisles must be repaired or replaced with #78M Stone every six (6) months.

4.4.5 Supplemental Standards, Commercial Uses

...

H) *Vehicle Repair and Service*

1) *Automotive paint or body shop.* An automotive paint and body shop use shall **comply with the following standards:**

- a) **Such use shall** be conducted within an enclosed structure.
- b) **Vehicle storage areas shall be screened from off-site view according to the standards found in Sec. 4.1.2.D.**

...

Section 4. The Director of Planning and Community Development and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future amendments as long as doing so does not alter the terms of this ordinance.

Section 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to such section, paragraph, subdivision, clause or provision so adjudged and the remainder of the ordinance shall be deemed valid and effective.

Section 6. The ordinance shall be effective upon enactment on the ____ day of _____ 2021.

Introduced by Council Member _____

Seconded by Council Member _____

Attest:

TOWN OF APEX

Donna Hosch, MMC, NCCMC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe
Town Attorney