

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. Section 8.1.2.A of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

8.1.2 Resource Conservation Area

...

A) Establishment of RCA

1) *Off-site RCA.* RCA may be established outside of the limits of the development site provided that all of the following criteria are met by the off-site RCA:

a) The area ~~must~~ **shall** include one or more of the RCA categories listed in ~~Sec. 8.1.2.B.1~~ **below:**

- (i) **Undisturbed area within Zone 2 and/or Zone 3 of riparian buffers as defined in Sec. 6.1.11 Riparian Buffers.**
- (ii) **Undisturbed steep slopes equal to or greater than 3:1 (30%) and other erosion prevention and control measures, including, but not limited to, protection of natural drainage channels.**
- (iii) **Preservation of undisturbed forested areas (including trees less than 18" caliper in size), or individual specimen (hardwood) trees 18" caliper and larger.**
- (iv) **Undisturbed wildlife and plant habitat areas.**
- (v) **Preservation of other significant site elements such as, but not limited to, historic and cultural sites and structures, scenic views, farm ponds, rock outcroppings, and cemeteries.**
- (vi) **Undisturbed, non-vegetated land that meets the minimal size standards for RCA and that is planted to achieve a diversified indigenous plant population including a large canopy tree layer and a small understory tree layer by one of the following methods:**
 - (a) **Within 50 feet of a property line or public right-of-way, the large canopy layer must consist of large-type native deciduous and large-type native evergreen trees and must represent at least 75% of the planted area; the understory tree layer must represent the remaining 25% of the planted area. Planted RCA must be completely mulched with triple-shredded**

hardwood mulch at least two (2) inches, but no more than three (3) inches thick. Plants must meet or exceed the following minimum container sizes and quantities (each unit represents a planted area of 200 square feet):

- (1) One (1) large type deciduous tree: 15-gallon and at least 5 feet tall
- (2) Two (2) large type evergreen trees: 5-gallon and at least 3 feet tall
- (3) Two (2) small understory trees: 5-gallon and at least 3-feet tall

(b) For areas more than 50 feet from a property line or public right-of-way, a reforestation plan prepared by a SAF (Society of American Foresters) Certified Forester shall be approved by the Planning Director or designee. The plan shall provide between 400-700 bare root seedlings per acre that includes a mix of deciduous and evergreen tree species. The number of seedlings per acre shall be based on the existing nearby tree canopy as well as the slope, size, and width of the area to be planted. The seedlings shall be planted during the months of October to December.

b) The area ~~must~~ shall be located within the Town of Apex's corporate limits or extra-territorial jurisdiction.

c) The area ~~must~~ shall meet one (1) of the following criteria: be

- 1) Located directly adjacent to existing RCA, existing public parks, existing conservation easements, or other publicly held land with environmental preservation or wildlife habitat preservation as its primary function (such as wetland mitigation); ~~or~~
- 2) be a A minimum size of two (2) acres and a minimum width of 30 feet; ~~or~~
- 3) Adjacent to a control of access highway with an average width of at least 30 feet.

d) The area shall not be located within an existing public or private easement or within a future transportation or utility corridor as identified on the Thoroughfare and Collector Street Plan map, Master Sewer Plan, and Water System Master Plan.

~~d)e)~~ The provision of ~~o~~Off-site RCA shall be provided at a rate of ~~1.5 times~~ equal to the on-site RCA requirement. If the off-site RCA is located

adjacent to an existing or planned public park facility and the land is deeded to the Town of Apex, the rate of off-site RCA shall be reduced to 0.75 times the on-site RCA. However, In no case shall the on-site RCA ~~cannot~~ be reduced more than 50% through the provision of off-site RCA.

e)f) Prior to approval of the Master Subdivision Final Plat or Site Plan Final Plat for the development, ¶the off-site RCA must either be 1) deeded to the Town of Apex or another qualified land management agency, such as but not limited to the Triangle Land Conservancy, or 2) recorded as a conservation easement in favor of the State of North Carolina or another qualified land management agency.

...

Section 2. Section 1.2.2 of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

1.2.2 Authority to Regulate Zoning, Subdivision And Building Practices in ETJ
Pursuant to the North Carolina General Statutes, the Town Council establishes the boundaries of the Town’s extraterritorial jurisdiction to enforce the following regulations: zoning ordinance; subdivision regulations; North Carolina State Building Code; minimum housing standards code; and ordinances creating the Town’s Planning Board, Planning and Community Development Department and Building Inspections and Permitting Department. The boundaries for the Town’s extraterritorial enforcement area (hereinafter “ETJ”) are delineated on the map entitled “Corporate Limits and Extraterritorial Jurisdiction Town of Apex, North Carolina,” which is incorporated herein by reference. A copy of this map and this subsection shall be on record in the office of the Town Clerk for inspection by the general public during normal business hours. ~~The Town Clerk shall cause signs, signposts, or similarly readily identifiable markers to be installed at all points of intersection of the ETJ boundary along appropriate roads, streets, highways and railroads.~~

Section 3. Section 2.1.9.A of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

2.1.9 Apex Environmental Advisory Board

A) Powers and Duties

The Environmental Advisory Board shall have the following powers and duties under the provisions of this Ordinance:

- 1) Advise the Environmental Committee of the Apex Town Council regarding suggested changes to the Unified Development Ordinance related to the natural environment and the Planning Committee of the Apex Town Council regarding suggested changes to the Unified Development Ordinance related to the impacts of development upon the natural environment.

2) Review, with applicants, during the pre-application phase of a proposal, all **certain** requests for conditional rezoning and recommend zoning conditions to the applicant and Town Council that will mitigate anticipated impact to the natural environment as a result of the project under consideration. **The following conditional rezoning requests shall be exempt from review by this Board:**

a) **Rezoning to amend zoning conditions which have no environmental impact on a site including but not limited to revisions to architectural standards, building height, setbacks, and uses;**

b) **Rezoning to resolve nonconformities;**

c) **Rezoning of one (1) acre or less; and**

d) **Rezoning within the Small Town Character Overlay District.**

Section 4. Sections 4.3.2.I and 4.4.2.G 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:

4.3.2 *Use Classifications, Public and Civic Uses*

...

l) *Government Service*

Buildings or facilities owned or operated by a government entity that provide services for the public, excluding utility and recreational services. Typical uses include administrative offices of government agencies, post offices, public libraries, and police and fire stations, **EMS stations, and transit stations.**

...

4.4.2 *Supplemental Standards, Public and Civic Uses*

...

G) *Government Service*

1) Government service in the B2 Downtown Business District shall be freestanding.

2) **Outdoor storage for such use shall comply with the standards for Industrial Uses found in Sec. 4.1.2 Outside Storage and Sales.**

3) **A minimum 40' Type A buffer with an opaque fence at least six (6) feet in height shall be provided along all outdoor storage areas adjacent to a conforming residential use or vacant land within a Residential zoning district.**

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Section 5. Sections 6.1.15 and 11.4.4 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:

6.1.15 Civil Penalties

A) **Notification Notice of Violation**

When any subdivision, development, and/or land use is found to be in violation of any provision of Sec. 6.1 *Watershed Protection Overlay Districts*, the person responsible for the violation shall be notified by the Environmental Engineering Manager, **or designee**. Such notification shall take the following form:

- 1) It shall be made in writing.
- 2) It shall indicate the nature of the violation.
- 3) It shall order any of the following that is applicable:
 - a) The discontinuance of the illegal use of land, buildings or structures,
 - b) The removal of illegal buildings or structures,
 - c) The removal of additions, alterations, or structural changes to illegal buildings or structures,
 - d) The discontinuance of any illegal work being done, or
 - e) Any other action, **including issuance of a stop work order**, that is deemed necessary at that time to correct the violation.

Any person who is served a notice of violation pursuant to this Section may appeal that determination to the Board of Adjustment within 30 days of the date of the receipt of the notice of violation. If a person who receives a notice of violation does not appeal the determination within the time established in this Section, then that person may not later appeal to the Board of Adjustment the subsequent imposition of any remedy or penalty provided in this article.

B) **Civil Penalties**

Following ~~Any person who, after being issued a notification notice~~ of a violation of Sec. 6.1 *Watershed Protection Overlay Districts*, **does not comply with this Ordinance within the time period set forth in the notice of violation shall be subject to** civil penalties ~~may be imposed by the Water Resources Director as set forth in this Section. on the person responsible for the violation. Civil penalties will be imposed in accordance with Sec. 11.4.4 Civil Penalties.~~

In determining the amount of the penalty, the Water Resources Director or designee shall consider:

- 1) The degree and extent of harm caused by the violation.
- 2) The cost of rectifying the damage including Town staff time.
- 3) The duration of the violation.
- 4) The amount of money the violator saved by non-compliance.
- 5) Whether the violation was committed willfully.
- 6) Prior record of the violator in complying or failing to comply with requirements. (Note: For first time offenders, upon correction of the violation, the Water Resources Director may impose a reduction of the assessed civil penalty.)

A civil penalty of up to \$100 per violation per day shall be assessed. If civil penalties are to be assessed, a notice of civil penalty assessment will be issued containing a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection. Penalties are due within 30 days of receipt of the notice of civil penalty assessment. Civil penalties collected pursuant to this Ordinance shall be used or disbursed as directed by law.

C) Continuing Violation

The notice of violation shall provide at least 10 days but not more than 30 days for the violation to be corrected, based upon the type and degree of the violation. If a violation is not corrected within the amount of time prescribed, then civil penalties accrue starting on the day after the end of the time period provided in the notice of violation and accrue through and until the violation is corrected. A person receiving a notice of civil penalty assessment shall pay all accrued civil penalties to the Town within 30 days of receipt of the notice of civil penalty assessment. If the person fails to pay the accrued civil penalties within 30 days of receipt of the notice of civil penalty assessment, then the civil penalties, including all further accruing penalties for a continuing violation, shall be collectible for the Town through a civil action in the nature of debt. Each day that any violation continues shall constitute a separate violation for the purpose of assessing civil penalties. A notice of a violation need only be given once for a continuing violation. The Environmental Engineering Manager, Water Resources Director, or their respective designees, may deliver a notice of violation or civil penalty assessment personally, by the Town Police Department, by certified or registered mail, return receipt requested, by the Wake County Sheriff's Department, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

11.4.4 Civil Penalties

Except as provided in Sec. 6.1.15, the following civil penalties may be imposed on a person who violates this Ordinance:

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Section 6. The amendments in Section 4 shall not apply to projects for which an application for development approval has been submitted before the effective date of this ordinance.

Section 7. The Planning Director 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 8. 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 8. The ordinance shall be effective upon enactment on the _____ day of December 2020.

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