

STAFF REPORT

Amendments to the Unified Development Ordinance

May 10, 2022 Town Council Meeting



Requested by Planning Committee of Town Council:

1. **Amendments to Sec. 4.4.5.G.13 *Supplemental Standards, Commercial Uses, Retail Sales and Service, Retail sales, general* to require that vape and tobacco stores be located at least 1,000 feet from any public or private school.**

4.4.5.G Supplemental Standards, Commercial Uses, Retail Sales and Service

...

13) Retail sales, general.

a) Vape and tobacco stores shall be located at least 1,000 feet from any public or private school.

b) Retail sales, general in the TF Tech/Flex District and LI Light Industrial District are permitted as follows:

~~a)~~**(i)** Within the TF District, the floor area of the Retail sales, general use(s) shall not occupy more than 30% of the gross floor area of a development.

~~b)~~**(ii)** Within the LI District, the floor area of the Retail sales, general use(s) shall not occupy more than 30% of the gross floor area of the building and shall be associated with the principal industrial use on the site.

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.

This amendment was heard at the January 11, 2022 Town Council meeting and was referred to the Planning Committee of Town Council for further discussion. The Planning Committee, on a split vote, returned the amendment for consideration with no changes.

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,** 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).**

...

3. Amendments to Sec. 7.5.14 Defects Guarantee in order to set a different guarantee periods for residential and non-residential subdivisions.

7.5.14 Defects Guarantee

- A) The Town shall require a guarantee (enforceable at the sole discretion of the Town) for utility taps, curbs, gutters, street pavement, sidewalks, greenways, drainage facilities, water and sewer lines, and other improvements against defects for one (1) year. **For residential subdivisions,** All a guarantees must remain in force in the Town's favor for a period of no less than the longer of 1) one year from the satisfactory completion of the performance inspection, or 2) until ~~60~~**75%** of the **residential** lots in the bonded phase have been issued a Certificate of Occupancy. **For non-residential subdivisions, the guarantees must remain in force in the Town's favor for a period of no less than the longer of 1) one year from the satisfactory completion of the performance inspection, or 2) until 50% of the lots in the bonded phase have been issued a Certificate of Occupancy.** If during the ~~one-year~~ defects period substantial corrections to the required improvements are made, then such corrections must be guaranteed for an additional one (1) year after acceptance by the Town. Substantial corrections are defined as follows:

- 1) *Roadway.* Total repair area exceeds 15% of the original construction.
- 2) *Curb and gutter.* Total linear feet of repairs exceeds 15% of the original construction.
- 3) *Water system.* The system experiences two (2) or more failures with the piping or any associated components.
- 4) *Sewer system.* The system experiences two (2) or more failures with the piping or any associated components.
- 5) *Storm water collection system.* The system experiences two (2) or more failures with the piping or any associated components.

- B) This guarantee shall be in the amount determined by the Water Resources Director or Public Works and Transportation Director, as appropriate.

4. Amendments to Sec. 5.1.5 Small Town Character Overlay District in order to clarify the maximum height allowed for buildings in the Central Business District that don't qualify for additional height according to footnote 1 of that section.

Background: When the standards for additional building height were added as Footnote 1, the maximum height in the table was incorrectly changed. This amendment sets the maximum height for buildings not meeting the standards for additional height to the previous standard.

5.1.5 Small Town Character Overlay District

Use	Average Lot Size	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Up Area (%) [*]	Max. Density (Gross Units per Acre)	Additional Regulations
			Front	Side	Rear	Corner Side				
Central Business District	—	—	10 max.	0	10	10 max.	<u>2 stories and 36 or 3 stories and 50⁺ per footnote 1</u>	100	—	—
Non-Residential	—	—	25 max.	8	10	25 max.	36	70	—	—
Single-family	—	60	20	8, 10 on side with driveway in front yard	15	10	36	50	6	—
Multi-family / Condominium	—	60	20 ²	10 ²	15 ²	10 ²	36	60	14	—
Townhouse	—	20	20 ²	0	15 ²	15	36	50	12	10' aggregate setback between buildings; Sec. 2.3.4
Townhouse, detached	—	26	10 min./15 max.	3	5	15	36	70	7	Sec. 2.3.4; Sec. 4.4.1.J
Government services	—	—	25 max.	8	10	10	70	70	—	—

^{*} See Sec 6.1 Watershed Protection Overlay Districts.

¹ Building height may be increased to 3 stories and 50 feet if the following conditions are met:

- a. The existing structure is not contributing to the historic district.
- b. The existing or proposed building shall be located on Salem Street.
- c. The existing or proposed building is located on the corner of 2 public streets or a public street and a public alley.
- d. The 3rd story shall be set back at least 18 feet from the property line along the front façade.
- e. Open air rooftop dining shall be exempt from the height calculation.

² These setbacks are for the perimeter of the entire project only, not setbacks between units or buildings.

PLANNING STAFF RECOMMENDATION:

Planning staff recommends approval of the proposed UDO amendments.

PLANNING BOARD RECOMMENDATION:

The Planning Board heard amendments 1, 3, and 4 at their April 11, 2022 meeting and unanimously recommended approval. The Planning Board heard Amendment 2 at their December 13, 2021 meeting and unanimously recommended approval.

PLANNING BOARD REPORT TO TOWN COUNCIL
Unified Development Ordinance Amendments: Various amendments

Planning Board Meeting Date: April 11, 2022



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: To recommend approval as presented.

Introduced by Planning Board member: Mark Steele

Seconded by Planning Board member: Ryan Akers

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

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 11th day of April 2022.

Attest:

A handwritten signature in black ink, appearing to read "Reginald Skinner".

Reginald Skinner, Planning Board Chair

Dianne Khin

Digitally signed by Dianne Khin
Date: 2022.04.11 20:31:36
-04'00'

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 Committee of Town Council:

1. Amendments to Sec. 4.4.5.G.13 *Supplemental Standards, Commercial Uses, Retail Sales and Service, Retail sales, general* to require that vape and tobacco stores be located at least 1,000 feet from any public or private school.

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).
3. Amendments to Sec. 7.5.14 *Defects Guarantee* in order to set a different guarantee periods for residential and non-residential subdivisions.
4. Amendments to Sec. 5.1.5 *Small Town Character Overlay District* in order to clarify the maximum height allowed for buildings in the Central Business District that don't qualify for additional height according to footnote 1 of that section.

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

Town Council Public Hearing Date and Time: May 10, 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 Office of the Town Clerk (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

Published Dates: April 19-May 10, 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:

Solicitado por el Concejo de Planificación del Ayuntamiento:

1. Enmienda a la Sección 4.4.5.G.13 *Normas Suplementarias, Usos Comerciales, Ventas y Servicios al por menor, Ventas minoristas en general* "para exigir que las tiendas de vapeo y tabaco estén ubicadas al menos a 1,000 pies de distancia de cualquier escuela pública o privada."

Solicitado por el personal de planificación:

1. Enmienda a las Secciones 6.1.12.B *Medidas de Control de Aguas Pluviales (SCMs), Diseño, Ubicación, y paisajismo de SCMs* y 8.2.7 *Cercas, Muros, y bermas* con el fin de permitir que las cercas encierren completamente a una Medida de Control de Aguas Pluviales (SCM) incluso si alguna o todas las medidas de control de aguas pluviales se dedican o se proponen como Área de Conservación de Recursos (RCA).
2. Enmienda a la Sección 7.5.14 *Garantía de Defectos* a fin de establecer períodos de garantía diferentes para fraccionamientos residenciales y no residenciales.
3. Enmienda a la Sección 5.1.5 *Distrito de Superposición de Carácter de Pueblo* con el fin de aclarar la altura máxima permitida para los edificios en el Distrito Comercial Central que no califican para altura adicional de acuerdo con la nota 1 al pie de esa sección.

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: 10 de mayo 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 oficina del Secretario Municipal (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

Fechas de publicación: 19 de abril – 10 de mayo de 2022



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