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# Chapter 10

# Authorities

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## CHAPTER 10: AUTHORITIES

- A. Overview. As identified in Chapter 2: Procedures, the following review authorities have powers and responsibilities for administering this Ordinance, especially with regard to procedures related to development applications:
1. City Council;
  2. Planning and Zoning Commission (P&Z);
  3. Board of Adjustment (BOA);
  4. Historic Preservation Commission (HPC);
  5. Technical Review Committee (TRC);
  6. Planning Director;
  7. Engineering Director;
  8. Zoning Administrator; and
  9. Stormwater Administrator.
- B. City Council. In order to exercise the authority granted to the City Council by State law, the City Council shall have the following powers and duties under this Ordinance:
1. Application Review and Decision. To Initiate, review, and decide applications for:
    - a. Comprehensive Plan Amendments;
    - b. Conditional Rezoning;
    - c. Development Agreements;
    - d. Planned Development Districts;
    - e. Rezoning (Zoning Map Amendments);
    - f. Text Amendments;
    - g. Vested Rights Certificates; and
    - h. Major Watershed Variances.
  2. Other Powers and Duties. The City Council shall have the following other powers and duties:
    - a. To approve, by resolution, a schedule of fees governing:
      - 1) Applications for permits and other development approval reviews under this ordinance; and
      - 2) Civil penalties for violations of this Ordinance.
    - b. To take any other action not delegated to the P&Z, BOA, HPC, TRC, Planning Director, Engineering Director, as the City Council may deem desirable and necessary to implement the provisions of this Ordinance.
  3. Conflict of Interest
    - a. For legislative matters, a member shall not participate in or vote on any matter that has a direct, substantial, and readily identifiable financial impact on the them or an immediate family member.

- b. For quasi-judicial matters, a member shall not participate or vote on any 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.
  - c. If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall, by majority vote, rule on the objection.
- C. Planning and Zoning Commission (P&Z). The P&Z is hereby established in accordance with Section 160A-361 and Section 160A-387 of the North Carolina General Statutes. The following sections set out the P&Z's powers and duties, composition, and rules of procedure:
- 1. Powers and Duties
    - a. Recommendation Authority. To make recommendations to the City Council on the following applications:
      - 1) Comprehensive Plan Amendments;
      - 2) Conditional Rezoning;
      - 3) Development Agreements;
      - 4) Planned Development Districts;
      - 5) Rezoning (Zoning Map Amendments); and
      - 6) Text Amendments.
    - b. Other Powers and Duties. The P&Z shall have the following other powers and duties:
      - 1) To make studies of the City's planning jurisdiction and surrounding areas;
      - 2) To determine objectives to be sought in the development of the City;
      - 3) To prepare and adopt plans for achieving these objectives;
      - 4) To develop and recommend policies, ordinances, administrative procedures and other means for carrying out plans that the City Council may direct;
      - 5) To advise the City Council concerning the use and amendment of means for carrying out plans;
      - 6) To exercise any functions in the administration and enforcement of various means for carrying out plans that the City Council may direct;
      - 7) To perform any other related duties that the City Council may direct;
      - 8) To conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of adopted or proposed plans and before recommending any such plans to the City Council; and
      - 9) To promote public interest in and an understanding of its recommendations, and to that end, publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.

2. Composition
  - a. Membership
    - 1) The P&Z shall consist of 12 members.
  - b. Residence Location and Appointment:
    - 1) Six members shall be citizens and residents of the City and shall be appointed by the City Council;
    - 2) Six members shall be citizens of the county who reside outside the City but within the extraterritorial jurisdictional boundaries of the City and shall be appointed by the Board of County Commissioners.
  - c. Member Terms
    - 1) The terms of office of the members of the Planning and Zoning Commission shall be three years.
    - 2) Each member's term shall commence on July 1 of the year of appointment and shall expire on June 30 of the last year of the member's term.
    - 3) The members of the Planning and Zoning Commission shall not succeed themselves after serving three full terms without an intervening period of one year. In the event a member is appointed to serve a partial term, it shall not be considered as a full term for the purposes of the limitation of succession as hereinafter set forth.
    - 4) If a sufficient number of qualified applicants are not available to fill vacant seats, then the City Council or Board of County Commissioners, in its discretion, may extend the term of a current member for a term of one year until a sufficient number of qualified candidates are available for service and are duly appointed.
    - 5) An individual shall be eligible to serve on only one City board or commission at any one time and concurrent membership on multiple city boards and commissions shall not be permitted.
  - d. Vacancies
    - 1) Vacancies in the membership of the Planning and Zoning Commission occurring for reasons other than expiration of term shall be filled as they occur for the unexpired remainder of the term either by the City Council or the County Commissioners, depending upon the area represented.
  - e. Officers
    - 1) The P&Z shall elect, from its members, a Chair and create and fill such other offices as it may determine.
    - 2) The term of the Chair and other officers shall be one year, with eligibility for reelection.
3. Rules of Procedure
  - a. The P&Z shall adopt rules necessary to conduct its affairs and establish its organization, committees, procedures, meeting notice, and meeting conduct. The P&Z's rules of procedure shall be made available for public inspection.
  - b. Schedule
    - 1) The P&Z shall establish a regular meeting time and place.
    - 2) The P&Z may elect to change and/or delete meeting dates, times and/or locations of its regular meetings.

c. Publication of Notice

- 1) Notice of all meetings shall be provided in accordance with State law.

d. Open Meetings

- 1) All hearings shall be open to the public.

e. Official Record

- 1) The P&Z shall keep minutes of its proceedings, showing the vote of each member upon every action or, if absent or failing to vote, indicate such fact.
- 2) The P&Z shall keep records of its examinations and other official actions.
- 3) Unless otherwise provided by law, all records and minutes shall be public record.

f. Quorum

- 1) No official business of the P&Z may be conducted without a quorum present.
- 2) For taking action on any matter pertaining to the extraterritorial zoning area, there shall be present a quorum of four City and four extraterritorial jurisdiction members present. For city matters only, a quorum of four City members shall be required.

g. Voting

- 1) An affirmative vote of the majority of P&Z members present and constituting a quorum is required for all decisions.
- 2) The Chair shall vote as any other member.
- 3) The six members appointed to the P&Z by the Board of County Commissioners as representatives of the extraterritorial area outside the City shall have equal rights, privileges and duties with the other members of the commission in all matters pertaining to the regulation of the extraterritorial area. On all matters pertaining to the regulation of the area within corporate limits, only those commission members appointed by the City Council to represent the area within the corporate limits shall vote.

h. Attendance

- 1) Members shall inform the Planning Director of any anticipated absence immediately after receipt of the agenda.
- 2) Faithful attendance at meetings of the P&Z shall be a prerequisite to continued membership, and the appointing authority may remove and replace any member continually delinquent to their duty to attend.

i. Conflict of Interest

- 1) A member shall not participate in or vote on any matter that has a direct, substantial, and readily identifiable financial impact on them or an immediate family member.
- 2) If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the objection.

D. Board of Adjustment (BOA)

1. The Board of Adjustment is hereby established in accordance with Section 160A-388 of the North Carolina General Statutes.

2. Powers and Duties. The BOA shall have the following powers and duties:
  - a. Decision-Making Authority. To review and decide applications for:
    - 1) Appeals of decisions by other City staff members deciding applications under this Ordinance;
    - 2) Reasonable Accommodations;
    - 3) Special Use Permits; and
    - 4) Variances.
  - b. Other Powers and Duties
    - 1) To exercise other powers and authority provided to it by the City Council, this Ordinance, or State law.
3. Membership, Appointments, and Terms of Office
  - a. Appointment of Regular Members
    - 1) The BOA shall consist of five regular members. Four members shall be citizens and residents of the City and shall be appointed by the City Council;
    - 2) One member shall be a citizen of Alamance County and reside outside the City but within the extraterritorial jurisdiction boundaries of the City and shall be appointed by the Board of Commissioners of Alamance County.
    - 3) The initial term of the members shall be staggered with one member to serve a one-year term; two members to serve a two-year terms, and two members to serve three-year terms.
    - 4) Upon the expiration of the terms of these members, their successors shall serve three year terms.
  - b. Appointment of Alternate Members
    - 1) In addition to regular members, the BOA shall have four alternate members.
    - 2) Two members shall be citizens and residents of the City and shall be appointed by the City Council.
    - 3) Two members shall be citizens of Alamance County and reside outside the City but within the extraterritorial jurisdiction boundaries of the City and shall be appointed by the Board of Commissioners of Alamance County.
    - 4) Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members.
    - 5) Each alternate member, while attending any regular or special meeting of the BOA and serving in the absence of any regular member, shall exercise all the powers and duties of a regular member. City alternate members shall only replace regular City members and extraterritorial alternate members shall only replace regular extraterritorial members.
  - c. Terms
    - 1) Members of the BOA shall not succeed themselves after serving three full terms of three years each without an intervening period of one year. Each member's term shall commence on July 1st of the year of appointment and shall expire on June 30th of the last year of said member's term.

- 2) In the event a new board member is appointed to serve a partial term, the partial term shall not be considered as having served a full term for the purposes of the limitation of succession.
  - 3) If a sufficient number of qualified applicants is not available to fill the vacant seats, the City Council or Alamance County Board of Commissioners may then extend the term of a current member at its discretion for a term of one year that may be extended for an additional term of one year or until an applicant is appointed to fill the vacant seat as may be determined by the City or County.
  - 4) An individual shall be eligible to serve on only one City board or commission at any one time. Concurrent membership on more than one City board or commission is prohibited.
  - 5) Vacancies occurring for reasons other than expired terms shall be filled as they occur for the unexpired remainder of the term either by the City Council or the County Commissioners of Alamance County, depending upon the area represented.
  - 6) Faithful attendance at meetings of the BOA is considered a prerequisite to continued membership, and the appointing authority may remove and replace any member continually delinquent in his duty to attend.
  - 7) Members of the BOA shall receive no compensation for their services.
4. Officers, Rules, Regulations, Jurisdiction, Meetings and Voting
- a. Officers
    - 1) The BOA shall elect a Chair and Vice-Chair and create and fill such other offices as it may determine. The term of the Chair and other officers shall be one year, with eligibility for re- election.
  - b. Rules
    - 1) The BOA shall adopt rules for the transaction of its business and shall keep a record of its members' attendance and its resolutions, discussions, findings and recommendations, which record shall be a public record.
  - c. Jurisdiction
    - 1) The members appointed to the BOA by the Board of Alamance County Commissioners as representatives of the extraterritorial area outside the City shall have equal rights, privileges and duties with the other members of the BOA regardless of whether the matters at issue arise within the City or within the extraterritorial area.
  - d. Meetings
    - 1) Unless there is no business to be conducted, the BOA shall hold at least one meeting monthly, and all of its meetings shall be open to the public. The BOA shall keep minutes of its proceedings showing the vote of each member upon each question and the absence or failure of any member to vote.
  - e. Voting
    - 1) The concurring vote of four-fifths of the BOA shall be necessary to grant a variance. A simple majority of the members shall be required to decide any other matter. For taking action on any matter pertaining to non-quasi-judicial matters, there shall be present a quorum of three members from the entire BOA.



## f. Conflict of Interest

- 1) A member of the BOA shall not vote, nor participate in any manner that would violate an affected person's constitutional rights to an impartial decision maker; including, but are not limited to:
  - a) A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
  - b) Undisclosed ex-parte communication;
  - c) A close familial, business, or other associational relationship with an affected person; or
  - d) Financial interest in the outcome of the matter.
- 2) If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

## E. Historic Preservation Commission (HPC)

1. The Historic Preservation Commission is hereby established in accordance with Section 160A, Article 19, Part 3C of the North Carolina General Statutes.
2. Powers and Duties. The HPC shall have the following powers and duties:
  - a. Application Review and Decision
    - 1) To review and decide applications for certificates of appropriateness.
  - b. Other Powers and Duties
    - 1) Undertake an inventory of properties of historical, architectural, archaeological, and/or cultural significance.
    - 2) Recommend to the P&Z districts or areas to be designated in the ordinance as historic districts or landmarks.
    - 3) Recommend to the P&Z that designation of any district or area as a historic district or part thereof be revoked or removed for just cause.
    - 4) Recommend to the City Council individual structures, buildings, sites, areas or objects to be designated by ordinance as historic landmarks.
    - 5) Recommend to City Council that designation of any building, structure, site, area or object as a historic landmark be revoked or removed.
    - 6) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as historic, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.
    - 7) Restore, preserve and operate historic properties.
    - 8) Conduct an educational program with respect to historic properties and districts within its jurisdiction.
    - 9) Publish information about, or otherwise inform the owners of property within the district or of designated historic properties, of any matters pertinent to its duties, organization, procedures, responsibilities,

- functions or requirements.
- 10) Cooperate with the State, Federal and local governments in pursuance of the purposes of this Ordinance. The HPC, when authorized by the City Council, may contract with the State or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or Federal law, for services or funds.
  - 11) Recommend to the City Council and the State of North Carolina structures, sites, objects or districts worthy of national, state or local recognition.
  - 12) Communicate with other boards or commissions or agencies of the City or other governmental units to offer or request assistance, aid, guidance, or advice concerning matters under its purview or of mutual interest.
  - 13) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof.
  - 14) Prepare and recommend the official adoption of a preservation element as part of the City's comprehensive plan.
  - 15) Act as, establish or designate a group, body or committee to give advice to property owners concerning the treatment of the historical and visual characteristics of their properties, such as fenestration, architectural, and landscape features.
  - 16) Establish guidelines under which the City staff may approve applications for COA for minor modifications of historic properties or building structures or sites in a historic district on behalf of the Commission, provided no application shall be denied by the staff without first being considered by the Commission.
  - 17) Undertake programs of information, research, or analysis relating to any matters under its purview.
  - 18) Report violations of this Ordinance, or related ordinances.
  - 19) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation when such an action is reasonably necessary or appropriate.
  - 20) Take steps during the period of postponement of demolition of any historic property to ascertain what the City Council can or may do to preserve such properties, including consultation with private civic groups, interested private citizens and other public boards or agencies and including investigation of potential acquisition by the City when the preservation of a given historic property is clearly in the interest of the general welfare of the community and such property is of certain historic, architectural, and archaeological significance.
  - 21) Assist City staff in obtaining the services of private consultants to aid in carrying out programs of research or analysis.
  - 22) Propose to the City Council changes to this or any other ordinance and propose new ordinances or laws relating to historic properties and historic districts or relating to a total program for the protection and/ or development of the historic resources of the City and its environs.

- 23) Exercise such other powers and perform such other duties as are required elsewhere by this ordinance, the General Statutes of North Carolina or by the City.
  - 24) Accept funds granted to the HPC for preservation purposes from private individuals and organizations.
3. Membership, Appointment, and Terms of Office
    - a. The HPC shall consist of at least five members but no more than 12 members. All members of the HPC shall reside within the territorial jurisdiction of the City. In addition, a majority of the members of the HPC shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields.
    - b. The terms of the commissioners shall be three years.
    - c. The members of the Commission shall be appointed by the City Council. Commissioners may be reappointed for additional terms at the discretion of the City Council.
    - d. The HPC shall elect from among its members a Chair, Vice-Chair, and treasurer, who shall be elected annually by the HPC.
    - e. A staff member of the Planning Department may be appointed to serve as a secretary or an administrative advisor for the HPC.
    - f. The HPC may appoint advisory bodies and committees as appropriate.
    - g. Any member of the HPC who misses more than three consecutive regular meetings shall be replaced or reappointed by the City Council pursuant to this Ordinance.
    - h. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the HPC, except that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.
  4. Rules of Procedure
    - a. The HPC shall adopt rules of procedure for the conduct of its business.
  5. Annual Report Required
    - a. Each year the HPC shall prepare and submit an annual report to the City Council.
    - b. The report shall include a comprehensive and detailed review of the activities, problems and actions of the HPC as well as any budget requests or recommendation which need to be described to maintain the City's designation as a Certified Local Government (CLG) as required by the State Historic Preservation Officer.
    - c. Within its annual budget as may be appropriated by the City Council, the HPC is authorized to employ such staff as it may require and shall determine their qualifications, duties and compensation.
  6. Meetings
    - a. All regular and special meetings of the historic district commission shall be open to the public and shall conform to the North Carolina Open Meetings Law, Chapter 143, Article 33B of the North Carolina General Statutes.
    - b. Regular meetings of the HPC shall be held once every two months unless there is not sufficient business to warrant a meeting; not more than four months shall elapse without a regular or special meeting of the HPC.

c. The HPC shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations, and actions. The minutes of the HPC shall be a public record.

7. Voting

a. A majority of the members of the HPC shall constitute a quorum. The concurrence of at least a majority of those members present will be required before any recommendation or action is made on any matter considered by the commission.

F. Technical Review Committee (TRC)

1. The Technical Review Committee (TRC) is hereby established in accordance with Section 160A- 361 of the North Carolina General Statutes.

2. Powers and Duties. The TRC shall have the following powers and duties:

a. Application Review and Decision. To review and decide applications for the following:

- 1) Preliminary plats; and
- 2) Site plans not associated with conditional rezoning applications.

b. Application Review and Comment. To review and comment on applications for the following:

- 1) Conditional Rezonings;
- 2) Planned Development Districts;
- 3) Site Plans associated with conditional rezoning applications; and
- 4) Special Use Permits.

c. Other Powers and Duties

- 1) To provide for a continuing, coordinated, and comprehensive review of the technical aspects of this Ordinance and for the approval of certain technical aspects of development proposals.
- 2) To review technical aspects of development occurring within the City.
- 3) To perform any other related duties that the City Manager may direct.
- 4) To exercise other powers and authority provided to it by the City Council, this title, or state law.

3. Membership and Appointment

a. General

- 1) The TRC shall be composed of department heads, or their designated representatives, from the following City departments:
  - a) Planning;
  - b) Transportation;
  - c) Public Works;
  - d) Engineering; and
  - e) Building Inspections.
- 2) Representatives from other departments, such as Police, Fire, and Parks and Recreation; private utility companies; and public or private school systems may also attend.

- b. Chair
  - 1) The Planning Director shall serve as Chair of the TRC, and shall schedule committee meetings, coordinate the committee's activities, preside over committee meetings, prepare committee reports, and serve as liaison to the departments and agencies involved for clarification of issues and resolution of conflicts.
- 4. Meetings
  - a. The TRC shall establish a regular meeting schedule. The Planning Director may invite applicants to attend TRC meetings.
- G. Planning Director
 

The Planning Director shall have the following powers and duties:

  - 1. Application Review and Decision. To review and decide applications for the following:
    - a. Certificates of appropriateness (minor work);
    - b. Final Plats; and
    - c. Minor Plats.
  - 2. Application Recommendation Authority. To review and provide a recommendation for the following:
    - a. Comprehensive Plan Amendments;
    - b. Conditional Rezonings;
    - c. Development Agreements;
    - d. Interpretations;
    - e. Planned Development Districts;
    - f. Reasonable Accommodation; and
    - g. Rezonings.
  - 3. Application Comment Authority. To review and comment on the following:
    - a. Administrative Adjustments;
    - b. Text Amendments; and
    - c. Vested Rights Certificates.
  - 4. Other Powers and Duties. The Planning Director shall have the following other duties:
    - a. Investigate violations and enforce this Ordinance in accordance with **Section <>: Enforcement**;
    - b. Establish application content requirements and a submission schedule for review of applications and appeals;
    - c. Ensure proper public notification regarding pending development applications is provide in accordance with state law;
    - d. Review development applications for compliance with this Ordinance and submit staff reports to review and decision-making bodies;
    - e. Issues permits and certificates in accordance with this Ordinance;
    - f. Maintain the Official Zoning Map and related materials;
    - g. Provide expertise and technical assistance to the City's review and decision-making bodies, upon request;

- h. Maintain all records pertaining to the provisions of this Ordinance and make records available for public inspection; and
    - i. Perform other duties as may be assigned by the City Manager.
- H. Engineering Director. The Engineering Director shall have the following powers and duties:
  - 1. Application Review and Decision. To review and decide applications for the following:
    - a. Floodplain Permit; and
    - b. Grading Permit.
  - 2. Duties as Floodplain Administrator
    - a. The Engineer Director is designated as the Floodplain Administrator. The duties of that position are identified in [Section <>, Flood Damage Prevention](#).
  - 3. Other Powers and Duties
    - a. The Engineer Director shall carry out and other powers and duties delegated by the City Council or City Manager, that are consistent with this ordinance and state law.
- I. Zoning Administrator
  - 1. The Zoning Administrator shall have the following powers and duties:
    - a. Application Review and Decision. To review and decide the applications for the following:
      - 1) Administrative Adjustment;
      - 2) Interpretation;
      - 3) Sign Permit; and
      - 4) Temporary Use Permit.
  - 2. Other Powers and Duties
    - a. The Zoning Administrator shall carry out other powers and duties delegated by the City Council or City Manager, that are consistent with this Ordinance and state law.
- J. Stormwater Administrator
  - 1. The Stormwater Administrator shall have the following powers and duties:
  - 2. Application Review and Decision. To review and decide the applications for the following:
    - 1) Stormwater Permit;
    - 2) Watershed Protection Permit; and
    - 3) Watershed Variance, Minor.
  - 3. Application Review and Recommendation
    - 1) Watershed Variance, Major.
  - 4. Other Powers and Duties
    - a. The Stormwater Administrator shall carry out other powers and duties delegated by the City Council or City Manager, that are consistent with this Ordinance and state law.