

A RESOLUTION CALLING A PUBLIC HEARING ON AN ORDINANCE  
AMENDING THE CARRBORO TOWN CODE AND LAND USE ORDINANCE  
TO COMPLY WITH RECENT CHANGES TO THE  
NORTH CAROLINA GENERAL STATUTES  
Resolution No. 21/2006-07

WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to consider modifications to existing policies and regulations; and

NOW, THEREFORE BE IT RESOLVED that the Board of Aldermen calls a public hearing on October 24, 2006 to consider adopting "AN ORDINANCE AMENDING THE CARRBORO TOWN CODE AND LAND USE ORDINANCE TO COMPLY WITH RECENT CHANGES TO THE NORTH CAROLINA GENERAL STATUTES ."

BE IT FURTHER RESOLVED that the draft ordinance is referred to Orange County for review per the Joint Planning Agreement and to the Town of Carrboro Planning Board for its recommendations.

BE IT FURTHER RESOLVED that the draft ordinance is also referred to the following advisory boards and commissions for consideration and recommendation prior to the specified public hearing date:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Appearance Commission              | <input type="checkbox"/> Recreation and Parks Commission                        |
| <input checked="" type="checkbox"/> Transportation Advisory Board      | <input checked="" type="checkbox"/> Northern Transition Area Advisory Committee |
| <input checked="" type="checkbox"/> Environmental Advisory Board       | <input type="checkbox"/> _____  |
| <input checked="" type="checkbox"/> Economic Sustainability Commission | <input type="checkbox"/> _____  |

## Summary of 2005 Changes to the North Carolina Planning and Development Statutes

\*The following is adapted from a chart prepared by Professor David Owens with the UNC School of Government.

### Zoning Regulation

Item	Topic	Statute	Explanation	Proposed Changes to Carrboro Town Code/Land Use Ordinance
1.	SUP/CUP voting	G.S. 160A-381(c)	Requires that only simple majority vote is needed for planning board and governing board approval of SUP/CUP; requires that vacant seats and disqualified members are not counted in computing majority.	No LUO amendment is necessary; already covered by LUO provisions
2.	Special and conditional use permits	G.S. 160A-381(c)	Allows planning boards to decide SUP/CUP.	No LUO amendment is necessary. The LUO currently provides that the Board of Adjustment considers special use permit applications and the Board of Aldermen considers conditional use permits applications.
3.	SUP/CUP procedures	G.S. 160A-381(c)	Requires use of quasi-judicial procedures for all SUP/CUPs by all decision-making boards.	No LUO amendment is necessary; already covered by LUO provisions
4.	Governing board conflict of interest	G.S. 160A-381(d)	Prohibits participation on any zoning amendment decision by member with direct, substantial financial interest.	Mandated by statute. LUO § 15-324 will be amended to reflect these changes.
5.	Advisory board conflict of interest	G.S. 160A-381(d)	Prohibits participation on any zoning amendment recommendation by member with direct, substantial financial interest.	Mandated by statute. Town Code 2-35 and LUO § 15-23(d), 15-26, 15-27, 15-43 and 15-45.1 will be amended to reflect these changes.
6.	Conditional zoning	G.S. 160A-382(a)	Allows use of purely legislative conditional zoning.	Prior to the enactment of this statute, a number of N.C. municipalities had already

Item	Topic	Statute	Explanation	Proposed Changes to Carrboro Town Code/Land Use Ordinance
				<p>adopted ordinances creating conditional zoning. Carrboro has adopted conditional use districts, a combined legislative/quasi-judicial process, but not conditional zoning. This approach could be enacted if the Board of Aldermen so chooses.</p>
7.	Conditions in CUD, SUD, Conditional zones	G.S. 160A-382(b)	Requires that site specific conditions in conditional use zoning districts be limited to those needed for conformance to plan, ordinance, or to address project impacts.	<del>Not applicable to Carrboro, unless the Town adopts conditional use district zoning. Mandated by statute. LUO § 15-59 will be amended to reflect these changes</del>
8.	Statement for small-scale rezonings	G.S. 160A-382(b)	Requires statement analyzing reasonableness for all small-scale rezonings.	Mandated by statute. LUO § 15-324 will be amended to reflect these changes.
9.	Governing board statement	G.S. 160A-383	Requires written statement on all zoning amendment decisions (adoption and rejections); requires that statement address plan consistency, reasonableness, and public interests furthered.	Mandated by statute. LUO § 15-324 will be amended to reflect these changes.
10.	Planning board statement	G.S. 160A-383	Requires written recommendation from planning board on all proposed zoning amendments; requires that recommendation address plan consistency.	Mandated by statute. LUO § 322 will be amended to reflect these changes.
11.	Published hearing notices	G.S. 160A-384(b)	Reduces required alternative half-page published notices for large rezonings from four to two times.	Optional authority not previously adopted by Carrboro. LUO § 15-323 will be amended to add this authority.
12.	Posted hearing notices	G.S. 160A-384(c)	Requires on-site posting for all proposed zoning map amendments.	Mandated by statute. LUO § 15-323 will be amended to reflect these changes.
13.	Protest petition applicability	G.S. 160A-385(a)(1)	Requires that protest petitions only apply to zoning map amendments; no longer applicable to text amendments.	Mandated by statute. LUO § 15-326 will be amended to reflect these changes.

Item	Topic	Statute	Explanation	Proposed Changes to Carrboro Town Code/Land Use Ordinance
14.	Protest petition voting	G.S. 160A-385(a)(1)	Requires that vacant seats and members who are recused from voting not be considered in calculation of three-fours majority.	Mandated by statute. LUO § 15-326 will be amended to reflect these changes.
15.	Protest petition qualifying area	G.S. 160A-385(a)(2)	Requires that area for valid protest be 20% of area included or 5% of 100-foot perimeter buffer; requires that property boundary be used to compute buffer if less than full parcel proposed for rezoning.	Mandated by statute. LUO § 15-326 will be amended to reflect these changes.
16.	Protest petition applicability	G.S. 160A-385(a)(3)	Limits applicability of protest petition for some conditional zoning amendments.	Carrboro has not adopted Conditional Use Zoning Districts, and therefore, this statutory provision is not applicable.
17.	Protest petition verification	G.S. 160A-386	Requires that petitioner can withdraw protest any time up to vote on rezoning.	Mandated by statute. LUO § 15-326 will be amended to reflect these changes.
18.	Planning board reviews	G.S. 160A-387	Requires referral of all proposed zoning amendments to planning board for review and comment.	Mandated by statute. LUO § 15-322 will be amended to reflect these changes.
19.	Bd. of Adjustment membership	G.S. 160A-388(a)	Allows alternates to vote on individual matters based on a member's temporary disqualification.	Because Carrboro does not have alternate board members, no LUO amendment is needed.
20.	Use variances	G.S. 160A-388(d); G.S. 160A-381(b1)	Specifically prohibits use variances.	While not necessary, LUO 15-92 will be amended to prevent confusion.
21.	Bd. of Adjustment voting	G.S. 160A-388(e)	Requires that vacant seats and disqualified members are not considered in calculating 4/5 votes if there are no qualified alternates.	Mandated by statute. LUO § 15-32 will be amended to reflect these changes.
22.	Bd. of Adjustment: conflicts on quasi-judicial matters	G.S. 160A-388(e1)	Prohibits and defines conflicts of interest for all quasi-judicial decisions; requires that rest of board votes to resolve objection if member does not recuse himself/herself.	Mandated by statute. LUO § 15-32 will be amended to reflect these changes.
23.	Government land	G.S. 160A-392	Repeals provision that made use of State-	No LUO amendment is necessary.

Item	Topic	Statute	Explanation	Proposed Changes to Carrboro Town Code/Land Use Ordinance
			owned land with no building involved subject to city zoning.	
24.	Forestry regulation	G.S. 160A-458.5	Limits regulation of forestry and provides for new penalties for timber harvests that are in violation of local ordinances.	Mandated by statute. A new LUO § 15-319.1 will be added to adopt these changes.

### Subdivision Regulation

Item	Topic	Statute	Explanation	Proposed Changes to Carrboro Town Code/Land Use Ordinance
1.	Standards for review	G.S. 160A- 371	Requires all standards to be used in subdivision decisions to be set out in ordinance.	No amendment is necessary. The LUO already complies with this requirement.
2.	Review procedures	G.S. 160A- 371; G.S. 160A-376 (b)	Allows for differing types of review for differing classes of subdivisions.	No amendment is necessary. The LUO already distinguishes between minor and major subdivisions.
3.	Performance guarantees	G.S. 160A-372(c)	If performance guarantees required, must provide range of options from which developer chooses for individual project.	Mandated by statute. LUO § 15-60 will be amended to reflect these changes.
4.	Plat approval	G.S. 160A-373	Allows staff member and committees to approve subdivisions.	No LUO amendment is necessary.
5.	Enforcement	G.S. 160A-375(a)	Expands enforcement options for subdivision violations to include building permit denial and any other appropriate actions.	Mandated by statute. LUO § 15-115 will be amended to reflect these changes.
6.	Pre-sale contracts	G.S. 160A-375(b)	Allows subdivider to enter into contracts to sell or lease based on plats with preliminary approval.	No LUO amendment is necessary.

Item	Topic	Statute	Explanation	Proposed Changes to Carrboro Town Code/Land Use Ordinance
7.	Definition	G.S. 160A-376(a)	Revises the definition of "subdivision," providing that first lot out from parent tract is a subdivision.	Mandated by statute. LUO § 15-15(128) will be amended to reflect these changes.

## Other

Item	Topic	Statute	Explanation	Proposed Changes to Carrboro Town Code/Land Use Ordinance
1.	Regulation of flags	G.S. 144-7	Limits regulation of official national and state flags; allows reasonable regulation of flag size, number of flags, and location and height of flagpoles.	Because LUO § 15-272 currently exempts governmental flags from most Town regulations, no amendment is necessary.
2.	Unified development ordinance	G.S. 160A-363(d)	Allows definitions, procedures, organizations for all land use regulations to be combined.	No amendments are necessary. Carrboro has already combined its zoning and subdivision ordinances into Town Code Chapter 15.
3.	Moratoria	G.S. 160A-381(e)	Requires hearing procedure for moratoria if no imminent threat to health or safety; requires statement of rationale from board at time of adoption; sets projects exempted from coverage; limits extensions; provides for prompt judicial review.	No LUO amendment is necessary.
4.	Development agreements	G.S. 160A-400.22 through 160A-400.32	Allows use of binding development agreements that lock in regulations and infrastructure provision for up to 20 years.	No LUO amendments are necessary. Carrboro can take advantage of this new statutory authority without adopting new LUO ordinances.
5.	Infrastructure Agreements	G.S. 160A-499, 160A-309, 160A-320	Allows local governments to enter into infrastructure construction agreements with developers.	A local ordinance must be adopted to use this new authority. Further discussion of this topic seems appropriate prior to developing a draft ordinance provision to allow it.

AN ORDINANCE AMENDING THE CARRBORO TOWN CODE AND  
LAND USE ORDINANCE TO COMPLY WITH RECENT CHANGES  
TO THE NORTH CAROLINA GENERAL STATUTES.

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

**Section 1.** Subsection 2-35(a) and (b) of the Carrboro Town Code are hereby amended to read as follows:

(a) Pursuant to N.C. Gen. Stat. 160A-75, no member shall be excused from voting except upon matters involving the consideration of that member's own financial interest or official conduct or on matters on which the member is prohibited from voting under N.C. Gen. Stat. 14-234, 160A-381(d), or 160A-388(e1).

(b) In any case where a member of the Board seeks to be excused from voting under the circumstances specified in subsection (a) of this section, that member may direct a request to be excused to the remaining board members, who may allow the requesting member to be excused upon a majority vote. In all other cases, a failure to vote by a member who is physically present or who has withdrawn without being excused by a majority vote of the remaining members present shall be recorded as an affirmative vote.

**Section 2.** Article VIII of Chapter 3 of the Town Code is hereby amended to add a new section 3-42 that reads as follows:

Section 3-42 Advisory Board Members Voting on Zoning Matters.

Members of an appointed advisory board or commission that provide advice to the Board of Aldermen shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

**Section 3.** Land Use Ordinance Section 15-59 is hereby amended as follows:

Section 15-59 Additional Requirements on Special Use and Conditional Use Permits.

(a) Subject to subsection (b), in granting a special or conditional use permit, the board of adjustment or Board of Aldermen, respectively, may attach to the permit such reasonable requirements in addition to those specified in this chapter as will ensure that the development in its proposed location:

- (1) Will not endanger the public health or safety;
- (2) Will not injure the value of adjoining or abutting property;



- (3) Will be in harmony with the area in which it is located; and
- (4) Will be in conformity with the Carrboro Land Use Plan, Thoroughfare Plan, or other plan officially adopted by the Board.

(b) The permit-issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

(c) Without limiting the foregoing, the board may attach to a permit a condition limiting the permit to a specified duration.

(d) In the case of a conditional use zoning district, specific conditions may be proposed by the petitioner or the Town or its agencies, but only those conditions mutually approved by the Town and the petitioner may be incorporated into the permit requirements. Conditions and site-specific standards imposed in a conditional use permit as a part of a conditional use zoning district shall be limited to those that address the conformance of the development and use of the site to Town ordinances and any officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

[The remaining subsections are relettered accordingly.]

**Section 4.** Land Use Ordinance Section 15-15(128) is hereby amended as follows:

(128) **SUBDIVISION.** The division of a tract of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and including all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations of this chapter applicable strictly to subdivisions: *(i)* the combination or recombination of portions of previously-plotted subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this chapter, *(ii)* the division of land into parcels greater than ten acres where no street right-of-way dedication is involved; or *(iii)* the public acquisition by purchase of strips of land for widening or opening of streets or for public transportation system corridors; or *(iv)* the division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the minimum standards set forth in this chapter.

**Section 5.** Land Use Ordinance Section 15-26 is hereby amended to add a new subsection (d) that reads as follows:

(d) If an advisory committee provides direct advice to the Board of Aldermen (i.e. it does not report to the planning board), a member of that board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

**Section 6.** Land Use Ordinance Section 15-32 is hereby amended to read as follows:

Section 15-32 Voting.

(a) The concurring vote of a four-fifths majority of the members of the board present at a meeting and not excused from voting (a quorum being present), shall be necessary to reverse any order, requirement, decision, or determination of the administrator or to grant any variance. All other actions of the board, including decisions relating to special use permits, shall be taken by majority vote of those present and not excused from voting, a quorum being present.

(b) Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection (c) or (d) or has been allowed to withdraw from the meeting in accordance with subsection ~~(d)~~ (e).

(c) A member shall not participate in or vote on any quasi-judicial matter if that member's participation would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to,

(1) a member having a fixed opinion prior to hearing the matter that is not susceptible to change,

(2) undisclosed ex parte communications,

(3) a close familial, business, or other associational relationship with an affected person, or

(4) a financial interest in the outcome of the matter.

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.

~~(d)~~ (e) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:

~~(1) If a member has a direct financial interest in the outcome of the matter at issue; or~~

- ~~(2)~~(1) If the matter at issue involves the member's own official conduct; or
- ~~(3)~~(2) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; ~~or~~
- ~~(4)~~—If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

~~(d)~~ (e) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

~~(e)~~(f) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

~~(f)~~(g) A roll call vote shall be taken upon the request of any member.

**Section 7.** Land Use Ordinance Section 15-53 is hereby amended to read as follows:

Section 15-53 Performance Guarantee Bond to Ensure Compliance with Zoning Permit.

In cases when, because of weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning permit recipient to comply with all of the requirements of this chapter prior to commencing the intended use of the property or occupying any buildings, the administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this chapter are concerned) if the permit recipient provides a performance surety bond, letter of credit or other security satisfactory to the administrator to ensure that all of the requirements of this chapter will be fulfilled within a reasonable period (not to exceed ten months) determined by the administrator. The developer shall choose which of the above-listed performance guarantees to use.

**Section 8.** Land Use Ordinance Section 15-60 is hereby amended to read as follows:

Section 15-60 Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use or Conditional Use Permits.

(a) In cases when, because of weather conditions or other factors beyond the control of the special use or conditional use permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of this chapter before commencing the intended use of the property or

occupying any buildings or selling lots in a subdivision, the board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this chapter are concerned) if the permit recipient provides a ~~performance~~ surety bond, letter of credit or other security satisfactory to the manager to ensure that all these requirements up to \$100,000 in value will be fulfilled within a reasonable period (not to exceed ten months). The developer shall choose which of the above-listed performance guarantees to use. The manager may approve such security for incomplete items up to \$100,000 in value, or may refer such approval to the board. The board may approve security for items referred by the manager as well as security for items that exceed \$100,000 in value.

(b) When the board imposes additional requirements upon the permit recipient in accordance with Section 15-59 or when the developer proposes in the plans submitted to install amenities beyond those required by this chapter, the board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if the board specifies a certain date by which or a schedule according to which such requirements must be met or each amenity installed and if the board concludes that compliance will be ensured as the result of any one or more of the following:

- (1) At the election of the developer, a ~~A~~ performance surety bond, letter of credit or other security satisfactory to the town manager is furnished;
- (2) A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring the permit recipient's compliance will be reviewed when application for renewal is made; or
- (3) The nature of the requirements or amenities is such that sufficient assurance of compliances given by Section 15-114 (Penalties and Remedies For Violations) and Section 15-115 (Permit Revocation).

If a request for approval under this subsection is submitted at a time when no regular meeting of the board is scheduled for a period of more than 21 days following the submission of the request, then the manager may approve the request.

(c) With respect to residential and non-residential subdivisions in which the developer is selling only undeveloped lots and with respect to residential subdivisions in which the developer is selling developed lots, the town manager may authorize final plat approval and the sale of lots before all the requirements of this chapter are fulfilled if the subdivider provides a ~~performance~~ surety bond, letter of credit or other security satisfactory to the town manager to ensure that all of these requirements will be fulfilled within not more than ten months after final plat approval. The developer shall choose which of the above-listed performance guarantees to use. In the case of subdivisions where the developer is an entity in which all of the initial purchasers of lots within that subdivision have an interest, the manager may extend the ten-month deadline (upon the

posting of satisfactory security) for two additional successive periods of up to twelve months each with respect to required improvements other than streets and utilities.

**Section 9.** Land Use Ordinance subsection 15-92(b)(6) is amended to read as follows:

(6) The variance will ~~neither~~ not result in the extension of a nonconforming situation in violation of Article VIII, ~~nor~~ authorize the initiation of a nonconforming use of land, or change the uses permitted for the property.

**Section 10.** The title of Land Use Ordinance Section 15-115 is hereby amended, and a new subsection (e) is hereby added to Section 15-115. The amendments read as follows:

Section 15-115 Permit Revocation and Building Permit Denial.

. . . (e) Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. No building permit may be denied, however, if the permit applicant can show that he purchased the lot in good faith (i.e. he did not know and had no reasonable way of knowing that the lot was illegally subdivided) and for value.

**Section 11.** A new Section 15-319.1 is hereby added to the Land Use Ordinance, reading as follows:

Section 15-319.1 Regulation of Forestry Activities.

(a) The terms “forestry,” “forestry activity,” “forestland,” “forest management plan” and “timber harvest” shall be defined by and used in the same manner as in G.S. 160A-458.5.

(b) Notwithstanding any other provisions of this chapter, this chapter does not regulate either:

- (1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under G.S. Chpt. 105, Art. 12; or
- (2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with G.S. Chpt. 89B.

(c) Notwithstanding subsection (b) above, the Town may deny a zoning, special use, conditional use, or building permit for a tract of land for a period of up to three years after the completion of a timber harvest if the harvest results in the removal from that tract of all or substantially all of the trees protected by this chapter. If the

removal of such trees was in willful violation of the requirements of this chapter, then such permits may be refused for a period of five years.

**Section 12.** Land Use Ordinance Section 15-322 is hereby amended as follows:

Section 15-322 Planning Board and Other Advisory Board Consideration of Proposed Amendments.

(a) If the Board sets a date for a public hearing on a proposed amendment, it shall also refer the proposed amendment to the planning board for its consideration and may refer the amendment to the appearance commission if community appearance is involved, and may refer the amendment to the transportation advisory board if the amendment involves community transportation issues.

~~(b) — The planning board shall endeavor to review the proposed amendment in such a timely fashion that any recommendations it may have can be presented to the Board at the public hearing on the amendment. However, if the planning board is not prepared to make recommendations at the public hearing, it may request the Board to delay final action on the amendment until such time as the planning board can present its recommendations.~~

~~(c) — The Board need not await the recommendations of the planning board before taking action on a proposed amendment, nor is the Board bound by any recommendations of the planning board that are before it at the time it takes action on a proposed amendment.~~

(b) The planning board shall advise and comment on whether the proposed amendment is consistent with the Land Use Plan, Thoroughfare Plan, or other applicable plans officially adopted by the Board of Aldermen. The planning board shall provide a written recommendation to the Board of Aldermen that addresses plan consistency and other matters as deemed appropriate by the planning board. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the Board of Aldermen may proceed in its consideration of the amendment without the planning board report.

(c) A comment by the planning board that a proposed amendment is inconsistent with the Land Use Plan, Thoroughfare Plan or other officially adopted plan shall not preclude consideration or approval of the proposed amendment by the Board of Aldermen, and the Board of Aldermen is not bound by the recommendations of the planning board.

(d) A member of the planning board and any other advisory committee that provides direct advice to the Board of Aldermen (i.e. it does not report to the planning board) shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

**Section 13.** Land Use Ordinance Section 15-323 is hereby amended to read as follows:

Section 15-323 Hearing Required; Notice.

(a) No ordinance that amends any of the provisions of this chapter may be adopted until a public hearing has been held on such ordinance.

(b) The planning staff shall publish a notice of the public hearing on any ordinance that amends the provisions of this chapter once a week for two successive weeks in a newspaper having general circulation in the Carrboro area. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the hearing. This period is to be computed in accordance with G.S. 160A-364, which provides that the date of publication is not counted but the date of the hearing is.

(c) With respect to all map amendments, the planning staff shall mail, by first class mail, written notice of the public hearing to the record owners of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties any portion of which is within 1000 feet of the property rezoned by the amendment. For purposes of this section the term "owners" shall mean the persons shown as owners on Orange County's computerized land records system. The planning staff shall also make reasonable efforts to mail a similar written notice to the non-owner occupants of residential rental property located within 1,000 feet of the lot that is the subject of the rezoning. The notices required by this subsection shall be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The staff member mailing such notices shall certify to the board that the notices have been mailed, and such certificate shall be deemed conclusive in the absence of fraud.

(d) The first class mail notice required under subsection (c) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to either make the mailed notice provided for in subsection (c) of this section or may, as an alternative, elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half (1/2) of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Orange County property tax listing for the affected property, shall be notified according to the provisions of subsection (c) of this section.

~~(d)-(e) For proposed zoning map amendments, the The planning staff shall also post notices of the public hearing in the vicinity of the property rezoned by the proposed amendment and take any other action deemed by the planning staff to be useful or appropriate to give notice of the public hearing on any proposed amendment.~~

prominently post a notice of the public hearing on the site proposed for a rezoning or an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the planning staff shall post sufficient notices to provide reasonable notice to interested persons.

(f) The planning staff shall take any other action deemed by the Planning Department to be useful or appropriate to give notice of the public hearing on any proposed amendment.

~~(e)~~(f) The notice required or authorized by this section shall:

- (1) State the date, time, and place of the public hearing.
- (2) Summarize the nature and character of the proposed change.
- (3) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment.
- (4) State that the full text of the amendment can be obtained from the town clerk.
- (5) State that substantial changes in the proposed amendment may be made following the public hearing.

~~(f)~~(g) The planning staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Board's intention that no failure to comply with any of the notice provisions [except those set forth in subsection (b)] shall render any amendment invalid.

**Section 14.** Land Use Ordinance Section 15-324 is hereby amended to add new subsections (d) and (e) that read as follows:

(d) Prior to adopting or rejecting any zoning amendment, the Board shall adopt a statement describing whether its action is consistent with the Land Use Plan, Thoroughfare Plan, or other applicable plan officially adopted by the Board and explaining why the Board considers the action taken to be reasonable and in the public interest. This statement is not subject to judicial review.

(e) A Board member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. (See also Carrboro Town Code Section 2-35)



**Section 15.** Land Ordinance Section 15-326 is hereby amended to read as follows:

Section 15-326        Protests to Zoning District Changes Map Amendments.

(a) If a petition opposing a change in the zoning classification an amendment to the zoning map is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the Board membership. For the purposes of this subsection, vacant positions on the Board and members who are excused from voting shall not be considered "members of the Board" for calculation of the requisite supermajority.

(b) To trigger the three-fourths vote requirement, the petition must:

~~(1) Be signed by the owners of twenty percent or more of the area either of (i) the lots included in a proposed change, or (ii) the lots within 100 feet of either side or the rear of the tract to be rezoned, or (iii) the lots directly opposite the tract to be rezoned and extending 100 feet from the street frontage of such opposite lots.~~

(1) Be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Town may rely on the Orange County tax listing to determine the "owners" of potentially qualifying areas.

(2) Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.

(3) Be received by the town clerk in sufficient time to allow the town at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.

(4) Be on a form provided by the town clerk and contain all the information requested on this form.

(c) A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.

(d) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of this chapter as a result of annexation or otherwise.

**Section 16.** All provisions of any town ordinance in conflict with this ordinance are repealed.

**Section 17.** This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this \_\_\_\_ day of \_\_\_\_\_, 2006.

Ayes:

Noes:

Absent or Excused: