ORDINANCE NO. (2010) 706 TC 331 (Corrected)
TC-1-10

AN ORDINANCE TO AMEND CHAPTERS 2 AND 3 OF PART 10 OF THE RALEIGH CITY CODE TO CONFORM TO SESSIONS LAWS 2009-421 (SENATE BILL 44)

Whereas, Sessions Law 2009-421 codifies when quasi-judicial evidentiary hearings are required for site plans and subdivisions, what lay witness testimony is competent and who has standing to appeal decisions from quasi-judicial hearings and administrative approved subdivisions to Superior Court, and

Whereas, the site plan and subdivision regulations of the City Code as they existed on January 1, 2010 do not conform to Session Law 2009-421, and it is necessary for the City Council to adopt new notice, hearing and appeal procedures.

NOW THERERORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA: that

Section 1. Amend Raleigh City Code section 10-2132.1(a)(8) by deleting subsection c. in its entirety.

Section 2. Repeal subsections (a), (b), (c) and (d) of Raleigh City Code section 10-2132.2 in their entirety, and in lieu thereof, substitute the following:

"(a) General Procedures.

For all uses that do not require a *plot plan*, a preliminary *site plan*, a final *site plan*, or both is required. If both a preliminary and a final *site plan* are required, applicants *may* choose to include final *site plan* data on their preliminary *site plans* provided such choice is clearly shown on the *site plan* to the reviewing body.

No preliminary or final *site plan* will be approved unless it conforms to all *street*, sidewalk, open space, drainage, and utility dedication, and improvement requirements of Part 10, chapter 3 of this Code. If an application for any preliminary *site plan* is disapproved, the applicant *shall* be notified *in writing* of the reasons for the disapproval. *Site plans may* be approved by the *City Council*, the Planning Commission or the City Administration depending on the regulations of §10-2032 et seq.

Except for site plans that are:

(1) located within Transit Oriented Development Overlay Districts.
(2) located within a Planned Development Conditional Use Overlay District that has an approved Master Plan.
(3) located within the Downtown Overlay District and are less than ten thousand (10,000) square feet for new structures and for expansions and additions to

existing structures that contain a combined area of less than ten thousand (10,000) square feet. Provided this exception shall not apply to properties subject to §10-2132.2(b)(4) *site plans*.

All *site plans* listed in subsection (b) below, and all *mixed use development Master Plans* are required to be preliminarily approved by either the Planning Commission or the City Council. Notice of all *mixed use development* Master Plans and preliminary *site plans* pending before the Planning Commission or the *City Council shall* be posted on the Raleigh Department of Planning website at least four (4) days prior to the date of the scheduled meeting, together with a verbatim copy of Raleigh City Code §10-2132.2(c) and (d).

Final *site plans* are required to be reviewed by the City staff for all preliminary *site plans* approved by the Planning Commission or the *City Council*. For those *site plans* exempted by subsections (1), (2) or (3) above, a final *site plan* approved by the City staff is required.

Annotation: *Site plan* approval. A motorized vehicle from which goods and services or merchandise are sold or stored or from which a business is conducted *may* not be located without first obtaining *site plan* approval. A-23-81 Brantley, Board of Adjustment (Feb. 9, 1981).

(b) ***Mixed Use Development Master Plans and*** **Preliminary** ***Site Plans*** **not approved by the City Staff**

Subject to the procedures of subsection (c) and applicable approval standards, all *mixed use development Master Plans* and all of the following *site plans*, not otherwise exempted by subsection (a), *shall* be approved by either the Planning Commission or the *City Council*.

(1) *Shopping centers* and *Shopping areas*:

a. That singularly or collectively are equal to or greater than one hundred thirty thousand (130,000) square feet in *floor area gross*; or

b. That are located within four hundred (400) feet of any *residential district*, or any *lot* line of any *lot* containing any *dwelling, congregate care or congregate living structure*, or both.

(2) The *following* uses:

a. That singularly or cumulatively are greater than seventy thousand (70,000) square feet in floor area gross; or

b. That are located within four hundred (400) feet of any *residential district*, or the *lot* line of any *lot* containing any *dwelling, congregate care or*

- Bank - with drive-thru and/or automated teller machine (detached);
- Bar, nightclub, tavern, lounge;

- *Eating establishment* (all categories), except as approved as a *Nonresidential Related Service* within the O&I-1, O&I-2, O&I-3 districts;
- *Food store - retail;*
- Movie theater-indoor;
- Movie theater-outdoor within the Thoroughfare, Industrial-1, and Industrial- 2 districts;
- Plant nursery, fruit and vegetable stand except in the Rural Residential district;
- *Recreation outdoor use* - commercial within the Thoroughfare, Industrial-1and Industrial-2 districts;
- *Retail sales* as shown on §10-2071, **Schedule of Permitted Land Uses in Zoning Districts**, including *vehicular display areas.*

(3) *Buildings* eighty (80) feet or more in height which contain any occupiable room as defined in the **North Carolina State Building Code.**

(4) All *Site plans* within an area bounded by Peace Street, Person Street and Boundary Street on the north, East Street on the east, Martin Luther King, Jr. Boulevard on the south, and on the west, north on Person Street, west on South Street to the western edge of the East Raleigh - South Park National Register Historic District and to continue in a north - northeasterly direction by following the western edge of the East Raleigh -South Park National Register Historic District to Bloodworth Street, north on Bloodworth Street, west on Edenton Street, north on Person Street, west on Jones Street, north on Blount Street, west on Lane Street, north along the western boundaries of 301 and 309 N. Blount Street (DB 5012/PG 370), west on North Street, north on Wilmington Street to Peace Street, except:

a. *Site plans* containing six (6) or fewer dwelling units or rooming units; provided that no *City Council site plan* is approved in accordance with §10-2051(e)(2)a.; or

b. *Site plans* located on the following properties: 121 E. South Street (DB 7178/PG 817), 125 E. South Street (DB 7255/PG 548), 301 E. South Street (DB 5039/PG 575), 0 E. Lenoir Street (DB 11036/PG 161), 222 E. Lenoir Street (DB 10857/PG 824), 309, 313, 317 E. Lenoir Street and 0, 526 S. Bloodworth Street (DB 11036/PG 161), 521 S. Person Street (DB 11246/PG 754), 525 S. Person Street (DB 8100/PG 209) and 527 S. Person Street (DB 8187/PG 1702).

GRAPHIC LINK:(Map of) HISTORIC DOWNTOWN EAST: PRELIMINARY SITE PLAN APPROVAL BY CITY COUNCIL

(5) Power plants relying on wind, solar or water, located within a *residential district*.

(6) *Emergency shelter type A.*

(7) *Site plans* and subdivisions within Metro-Park Protection Overlay Districts, other than *site plans* and subdivisions for *single-family detached dwellings* their *accessory uses* , and recreational uses related to and used exclusively by a single-family development, such as a clubhouse, and *site plans* for temporary events approved in accordance with §10-2072(b).

(8) Downtown Overlay District and Pedestrian Business Overlay Districts - additional residential density up to 320 dwelling units per acre, additional residential density for conversions of *building(s*) to *dwelling(s)* or congregate *care* or *congregate living structures* up to 320 dwelling units per acre, reductions in *net lot area* and width and depth dimensions required by chapters 2 and 3 of Part 10 of this Code for *dwelling units and equivalent dwelling units*, allow *dwellings* and *lodging units* within new and existing hotels and motels up to 320 dwelling units per acre, allow *dwellings, congregate care and congregate living structures, lodging units* and *equivalent dwelling units* within underlying industrial zoning districts up to 320 dwelling units per acre, and allow retail uses listed under the COMMERCIAL land use category within §10-2071, SCHEDULE OF PERMITTED LAND USES IN ZONING DISTRICTS, when the property is zoned Office and Institution-1 or Office and Institution-2, located within the Downtown Overlay District [with the exception of those properties located within one hundred (100) feet of the perimeter boundary of the Downtown Overlay District] and proposes residential densities in excess of that permitted by the underlying zoning district – all subject to §10-2051 *et. seq.*

(9) *Site plans* within the Downtown Overlay District for new structures ten thousand (10,000) square feet or greater and *site plans* for expansions and additions to existing structures containing a combined area of ten thousand (10,000) square feet or more, and all other *site plans* located within both the Downtown Overlay District and the area described by §10-2132.2(b)(4) above, excluding the exceptions provided for in §10-2132.2(b)(4)a. and b.

(10) *Site plans* within the Downtown Overlay District for changes of use to *buildings* in excess of ten thousand (10,000) square feet.

(11) *Site Plans* and subdivisions within the Downtown Overlay District requested by landowners for an exception to maximum *floor area ratios*, maximum *building lot coverage*, minimum zoning district yard setbacks, required open space, maximum height and minimum number of off-street parking pursuant to §10-2051(a).

Cross reference: Applicable §10-2051(a) exemption standards are: §10-2051(d)(2) for *floor area ratio* and *building lot coverage*, §10-2051(d)(3)c. for yard setback, §10-2051(d)(4)b for building height, §10-2051(d)(5)b. for open space and §10-2051(e)(1)g. for off-street parking

(12) *Multifamily dwelling* developments, *townhouse developments*, residential *unit-ownership*, other than conversions of existing residential structures, and *group housing developments* which are proposed to be located within a *residential zoning district* on any *lot* less than two (2) acres in area.

(13) *Multifamily dwelling developments*, townhouse developments, residential unit ownership, other than conversions of existing residential structures, and *group housing developments* which are located within a *residential district*, which are less than five (5) acres in area, and at least sixty-six (66) per cent of the "periphery" of the development, including public right-of-way, abuts existing residential building *lots* containing a *single family* detached *dwelling* or a structure which was originally constructed as a *single family* detached *dwelling*. "Periphery" includes for purposes of this subsection *properties* both immediately abutting and across a public minor residential *street*, residential *street*, residential collector *street*, or collector *street* from the proposed development, all as defined in Part 10, Chapter 3.

(14) Banks with no drive-thru or auto teller machines, post offices and office uses and institution/civic/service uses as shown on §10-2071, **Schedule of Permitted Land uses In Zoning Districts**, that are greater than twenty-five thousand (25,000) square feet, and are located within four hundred (400) feet of any *residential district*, or any *lot* line of any *lot* containing any *dwelling, congregate care or congregate living structure*, or both, except:

1. Accessory fund raising activity for *residential institutions*;
2. *Accessory structure*;
3. Cemetery;
4. Correctional/penal facility;
5. *Day care facility* in a *residential district*;
6. *Specialty school* in a *residential district* or Residential Business District;
7. Temporary event;
8. *Veterinary hospital* with a kennel/cattery.

Cross references: Board of Adjustment special use permits for day care facilities in residential districts, limited home businesses with specialty schools and veterinary hospitals with a kennel/cattery,§10-2144; City Council special use permit for correctional/penal facility, §10-2145.

(15) *Hotels or motels* that are greater than twenty-five thousand (25,000) square feet and are located within four hundred (400) feet of a *residential district*, or a lot line of any *lot* containing any *dwelling, congregate care* or *congregate living structure*, or both.

(16) *Residential institution* in a *residential district* which cannot be approved by the *City* administration in accordance with §10-2072(b). If the *residential institution* is a *day care facility* for which a special use permit is required, then upon a finding, by the Planning Commission or by the *City Council* when *Council* approval is required, that the requirements of 10-2144(b) " *Day Care Facility* (child or adult)", standards (2) through (10) inclusive are met, no special use permit issuance by the Board of Adjustment is required. If the *residential institution* is a private/parochial school for which a special use permit is required, then upon a finding, by the Planning Commission or by the *City Council* when *Council* approval is required, that there is a minimum of five hundred (500) square feet of total land area per enrolled pupil, no special use permit by the Board of Adjustment is required.

(17) The singular or collective expansion(s) of an approved or existing *building*, structure or use listed in this subsection (b), which cannot be approved by the *City* administration in accordance with §10-2132.2(i)(2).

(18) Residential developments which either exceed fifteen (15) *dwelling units* per acre within the Office & Institution-1, Office & Institution-2 and Shopping Center zoning districts or which exceed twenty (20) *dwelling units* per acre within the Thoroughfare zoning district.

(19) *Vehicular surface areas* and parking deck/garage that do not otherwise qualify as a plot plan under section 10-2132.1, that are located within four hundred (400) feet of a *residential district*, or a *lot* line of any *lot* containing any *dwelling, congregate care or congregate living structure*, or both.

(20) All nonresidential *site plans* less than two (2) acres in size located adjacent to or within fifty (50) feet of a *thoroughfare* containing a *basal area* of thirty (30) square feet that fails to provide either:

1. A fifty (50) foot-wide *natural protective yard* along the *thoroughfare*; or
2. A minimum average *natural protective yard* of fifty (50) feet wide along hundred (100); provided, that the number of trees five (5) inches *DBH* or greater (15.625 inches in circumference or greater measured four and one-half (4 1/2) feet above the ground) situated in the proposed average yard, as determined by a tree survey submitted to the City, is not less

than the number of such trees located within the required uniform fifty (50) foot wide *natural protective yard* of subsection (1) above; or

3. Tree conservation area pursuant to §10-2082.14 *et seq*.

(21) All non residential *site plans* less than two (2) acres in size located within the fifty (50) foot wide buffer area for areas directly adjacent to any riparian surface water, as defined in Part 10 chapter 9, that fails to provide a fifty (50) foot wide *natural protective yard* in the riparian buffer.

(c) Approval procedure.

(1) Review by the Planning Commission.

a. Planning Commission hearing

The Planning Commission *shall* conduct a hearing, without the formalities of a quasi-judicial hearing, on each preliminary *site plan* listed in 10-2132.2(b). At the hearing, the city staff, the applicant, and all proponents and opponents to the preliminary *site plan* will be given an opportunity to address the Planning Commission. The hearing *shall* be limited to showing how the *site plan* complies or fails to comply with the standards of §10-2132.2(d). The applicant *shall* demonstrate how the preliminary development plan conforms to all applicable Code standards, including those set forth in §10-2132.2(d) and for §10-2132.2(b)(11) *site plans* the exception standards of §10-2151.

No more than fifteen (15) days and no less than ten (10) days prior to the Planning Commission hearing, the *City shall* send notice by first class mail, registered mail, or certified mail return receipt requested to all fee *owners* of the *property* within four- hundred (400') feet on all sides of the *property* boundaries of the proposed development preliminary *plan*. Such mailings *shall* advise that the applicant has filed a development plan affecting the subject property, the general nature of the questions involved, the city file number and telephone number and website of the Planning Department where additional information can be obtained, the time and place of the hearing and a verbatim copy of the appeals procedures of §10-2132.2(c)(1)c below. All mailings are for convenience of the public and any defective mailing *shall* not invalidate the proceeding. No more than fifteen (15) days and no less than ten (10) days of the Planning Commission hearing, the *City* will also post sign(s),not less than 18 by 24 inches, on each block of the *property* to provide visibility to *property owners* concerned with or affected by the proposed *development* plan. Such postings *shall* advise that a proceeding has been filed and direct further inquiry at a listed telephone number. All postings are for the convenience of the public and any defective posting *shall* not invalidate

the proceeding. Notice of each Commission hearing *shall* be posted on the Raleigh Department of Planning website at least three (3) days prior to the scheduled hearing date and the decision of the Commission *shall* be posted on the Raleigh Department of Planning website within three (3) days following the date of the Commission hearing. The appeals provisions of §10-2132.2(c)(1)c *shall* appear verbatim on the website posting.

b. Certified action.

Following the hearing, subject to the appeal provisions of §10-2132.2(c) (1)c below, with eight (8) or more members of the Planning Commission both present and voting for the motion, the Planning Commission *may* approve, deny, or approve with conditions the preliminary *site plans* listed in §10-2132.2(b) above. Every decision of the Planning Commission *shall* include the vote, abstention from voting, or absence of each Commissioner. The decision of the Planning Commission *shall* be filed in the Planning Department. A written copy *shall* be delivered to the applicant, the owner of the subject property and to any *person* who has filed a request for such copy with the Planning Department or with the chairperson of the Planning Commission at the hearing of the Planning Commission. Delivery *shall* be by first class mail or electronic mail if electronic notification is requested.

The action of the Planning Commission *shall* be set forth in *written* form as a certified action, stating the decision of the Commission. Following the end of the appeal period, the certified action *shall* be signed by both the Planning Director and the chairperson of the Planning Commission, and the signed certified action of the Planning Commission *shall* be final and effective.

c. Appeals

Within twenty (20) days after the final vote of the Planning Commission, the decision of the Commission *ma*y be appealed to the City Council. The last day of the computed appeal period is to be included, unless it is a Saturday, Sunday or legal holiday when City hall is closed for business, in which event the appeal period runs until the end of the next day which is not a Saturday, Sunday or legal holiday when City hall is closed for business. Written notice of appeal *shall* be filed with the Planning Director. All appeals before the City Council *shall* be *de novo* and *shall* be conducted in accordance with the quasi-judicial procedures of §10-2132.2(c)(2)b .

The following *persons* and entities *may* file written notice of appeal:

1. Any person or entity that has standing under G.S. 160A-393(d) subsections (1) through (3).

2. Any fee *owner* of the real property within four- hundred (400') feet on all sides of the *property* boundaries of the proposed preliminary *site plan* (counting *street* rights-of-way).
3. The Planning Director when he or she reasonably believes that a procedural irregularity occurred affecting the hearing of the Planning Commission or that the action of the Planning Commission is not in accord with either the administrative Development Plans Review Group recommendation or applicable technical handbook incorporated into the City Code.

   Where real property is owned by more than one person any owner *may* file written notice of appeal.

d. Non-certified actions

Whenever the Planning Commission acts upon the preliminary *site plan* with less eight (8) members of the Planning Commission both present and voting for the motion, the preliminary *site plan shall* be transmitted to the City Council for a *de novo* quasi-judicial hearing in accordance with §10-2132.2(c)(2)b below.

(2) City Council Review

a. Matters heard by the City Council

After conducting a quasi-judicial hearing in accordance with the procedures of subsection b below, the *City Council may* approve, deny, or approve with conditions the following development plans:

1. Where an appeal from the decision of the Planning Commission was made in accordance with §10-2132.2(c)(1)c.

2 Where the Planning Commission acted upon the preliminary site plan with less than eight (8) members of the Planning Commission both present and voting for the motion.

b. City Council quasi-judicial hearing procedures

1. No City Council quasi-judicial hearings *shall* be heard until notice of the time, place, and subject of the hearing is published in a newspaper of general circulation in the *City*. Said publication of notice *shall* be made at least seven (7) days prior to the hearing and no more than twenty-five (25) days before the date fixed for the hearing.

2. Parties in interest, including the City staff, *shall* have the right to present evidence and cross-examine witnesses, as to any competent, material, and relevant facts, inspect documents, and make oral argument.

   State Law reference: G.S. 84-2.1 and 84-4, unlawful practice of law, North Carolina State Bar formal Ethics Opinion 3, April 20, 2007.

3. The *City Council shall* act as an impartial decision-maker. No member *shall* participate in or vote on any quasi-judicial matter on a matter that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to the hearing of the matter that is not susceptible to change, undisclosed ex-parte communication, a close financial business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not excuse himself or herself, the remaining members of the board *shall* by majority vote rule on the objection.
   State Law Reference: G.S. 160A-388 (e1)

4. The *City Council shall* act as a fact-finding body and the *Council shall* approve, approve with conditions, or disapprove the application in accordance with the evidence presented before it which is substantial, competent, relevant, and material. The term "competent evidence," as used in this subsection, *shall* not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, *shall* not be deemed to include the opinion testimony of lay witnesses as to any of the following:

   i. The use of property in a particular way would affect the value of other property.

   ii The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

   iii Matters about which only expert testimony would generally be admissible under the rules of evidence.

   State Law reference: G.S. 160-393(k)(3)

5. The burden of proof is upon the developer and if the developer fails to meet its burden, the *City Council* shall deny the request.

6. Every decision *shall* include the vote, abstention from voting, or absence of each *Council* member. The decision of the quasi-judicial proceeding of the *City Council*, including findings of fact and conclusions of law, shall be filed in the Office of the City Clerk. A written copy *shall* be delivered to the petitioner, the owner of the subject property and to any *person* who has filed a request for such copy with the Office of the City Clerk or with the chairperson of the review board at the time of its hearing of the case. Delivery *shall* be by any of the following means: personal service, registered mail, certified mail, return receipt requested or electronic mail if electronic notification is requested.

(d) Standards for Approval of a *Mixed Use Development Master Plan* and a Preliminary *Site Plan* by the *City Council* and the Planning Commission.

It is recognized that sometimes particular problems are created in connection with a particular development at a particular location. No preliminary *site plan* or *mixed use development* Master Plan *shall* be approved unless the *City Council*, or the Planning Commission if the Planning Commission has authority to approve the *site plan*, first finds that the *site plan* meets all the following:

(1) The *site plan* provides for safe efficient and convenient vehicular, bicycle and pedestrian circulation, transit access, parking and load/unloading operations by considering among other things:

a. The physical character of adjacent and surrounding roads;

b. Nearby median openings or intersections and stub streets;

c. The classification of streets and plans for future improvements;

d. Proximity to pedestrian generators such as schools, transit stops and facilities, parks and greenways;

e. The accident experience near the site;

f. Bicycle, pedestrian and transit access and circulation;

g. Traffic volumes existing and projected from approved site plans;

h. Interference with any other driveway;

i. Response time of nearby emergency services such as fire and hospital;

j. The character of the traffic to be generated from the site; and

k. Opportunities to enhance street, parking lot and sidewalk connectivity.

(2) The *site plan* is in accordance with the general plans for the physical development of the *City* as embodied in the Comprehensive Plan, Redevelopment Plans; Streetscape Plans, manuals, handbooks or other *City Council* -adopted plans and standards.

(3) The *site plan* contains adequate measures to protect the development and other properties, including public corridors and facilities, from adverse effects expected from the proposed development or expansions to the existing development, including without limitation those associated with:

a. Stormwater;
b. Air or water pollutant discharges,
c. Noise, light and odor;
d. Access to air and light;
e. On and off-street parking;
f. Dust, smoke and vibration;
g. Hours of operation; and
h. Site conditions that may foster unsafe or unlawful activities.

(4) The *site plan* contains adequate measures to mitigate the impact of the development on nearby residential uses and historic resources from incompatible characteristics such as:

a. Building scale;
b. Architectural character;
c. Landscaping;
d. Amount and placement of impervious surfaces;
e. Placement of structures and vehicular surface areas; and
f. Orientation of *buildings*, uses and entranceways.

(5) The *site plan* coordinates with existing and planned public facilities such as:

a. Stormwater drainage structures;
b. Public utilities;
c. Streets, sidewalks and on-street parking;
d. Parks, greenways and recreational facilities;
e. Fire stations and community service facilities;
f. Schools;
g. Trash collection; and
h. Transit stops and facilities.

(6) The *site plan* provides for a unified development within the site and with adjoining properties when such properties are either:

a. Under similar ownership as the site,
b. Are being developed in a coordinated manner with the site, or,
c. The site shares a common relationship with surrounding properties, where establishing similar architectural elements, landscaping, shared access *street* connectivity or signage will promote good order, convenience and safety.

Situations a, b, and c may consist, among other things, of shared driveways, definitive streetscape character or block face, similar topography, both properties are located within a previously approved concept or master plan or within the same conditional use zoning ordinance.

(7) The *site plan* complies with all street, sidewalk, open space, drainage, greenway, transit, utility and other public facility dedication and improvement requirements of Part 10, chapter 3 and applicable conditional use zoning ordinances.

(8) The *site plan* conforms to previously approved subdivision plans for the site. The *site plan* meets all applicable *Code* requirements, and if there are conflicts between *Code* provisions the more restrictive *shall* be met.".

Section 3. Amend Raleigh City Code Section 10-2132.2(i) (2) to add a new last subsection, subsection h; said subsection h shall read as follows:

h. The *site plan* is not located in the area described in §10-2132.2(b)(4) unless the *site plan* is otherwise excluded by subsections a or b of §10-2132.2(b)(4).".

Section 4. Repeal Raleigh City Code Section 10-2051(a) in its entirety and rewrite and re-enact said subsection; it shall now as amended read as follows:

"**(a) Approval**.

If the use requires a *site plan*, as set forth in §10-2132.2, approval of a *site plan* is required by either the *City Council*, the Planning Commission, or the administrative staff; see §10-2132.2(b) and (c) and (e). If the use requires a *plot plan*, as set forth in §10-2132.1, administrative approval is required. For any administratively approved *plot plans* and *site plans*, the landowner pursuant to §10-2132.2(b)(11) *may* petition for exceptions to maximum *floor area ratios*, maximum *building lot coverage*, minimum zoning district yard setbacks, required open space maximum height and minimum number of required off-street parking spaces. The approving body, after approving a preliminary development plan based on the procedures and standards of §10-2132.2(c) and (d) and after making

the respect finding required in §10-2051(d)(2), (d) 3)c.,(d)(4)b., (d)(5)b. and §10-2051(e)(1)g., *may* permit the exception, deny the exception or approve the exception with conditions.".

Section 5. Repeal the opening language of Raleigh City Section 10-2051(d)(1)a. in its entirety and rewrite and re-enact said opening of subdivision a.; it shall now as amended read as follows:

"a. Those *site plans* authorized by §10-2132.2(b)(8) which are approved in accordance with §10-2132.2(c) and (d) and §10-2051 *et. seq*. and which are located either within the Downtown Overlay District or in any Pedestrian Business Overlay District may:"

Section 6. Amend the opening paragraph of Raleigh City Code Section 10-2051(d)(1)b. to replace the words "City Council" with the words "approving body".

Section 7. Amend the open space bonus standard of Tier 3 of Raleigh City Code Section 10-2051(d)(1)c.6.(i) to replace the City Code reference "subsection (5)" with "subsection (d)(5)".

Section 8. Amend Raleigh City Code Sections 10-2051(d)(2), 10-2051(d)(3)c., 10-2051(d)(4)b., 10-2051(d)(5)b., next to last paragraph, first sentence, and last paragraph, 10-2051(e)((1)e. and 10-2051(e)(1)g. to replace the City Code reference "§10-2132.2" with "§10-2132.2(c)".

Section 9. Amend Raleigh City Code Section 10-2041(d)(2) first paragraph, to insert after the words "City Council" the words "or Planning Commission".

Section 10. Amend Raleigh City Code subsection (a) of City Code Sections 10-2053, and 10-2055 to insert between the word "the" and the word "standards" the words "procedures and" and to insert at the end of subsection (a), before the period, the language "and (d)".

Section 11. Amend Raleigh City Code Section 10-2055(d)(4)b., first sentence, next to last paragraph, to replace the City Code reference "§10-2132.2" with "§10-2132.2(c)".

Section 12. Repeal the last paragraph of Raleigh City Code Section 10-2055(d)(4)b. in its entirety, and rewrite and re-enact said paragraph; it shall now as amended read as follows:

"The minimum open space required by this Code for developments located in a Pedestrian Business Overlay District *may* be reduced as part of the subdivision or *site plan* approved by the Planning Commission or the *City Council* in accordance with §10-2132.2 after a finding that such reduction in open space is in accordance with the general plans for the physical development of the *City* as embodied in the Comprehensive Plan

and after a finding that the *site plan* complies with the procedures and standards of §10-2132.2 (c) and (d)."

Section 13. Amend Raleigh City Code Section 10-2057(a) to remove the reference to subsection "(b)" from the second Code reference to read "§10-2132.2".

Section 14. Amend Raleigh City Code Section 10-2057(b)(2), last sentence, to replace the City Code reference "§10-2132.2" with "§10-2132.2(b)".

Section 15. Repeal Raleigh City Code 10-2072(b), Hotel/motel with more than one (1) of more dwelling units with cooking facilities and refrigerators of unlimited size, in its entirety. Said Code section is rewritten and re-enacted to read as follows:

"***Hotel/motel* with one (1) or more *dwelling units* with cooking facilities and refrigerators of "unlimited size." ["Unlimited size" means sizes in excess of those permitted for *lodging units*, §10-2072(b)(8).]**

Any *hotel* or *motel* containing one (1) or more *dwelling nits shall* comply with all of the *following*:

(1) A *hotel* or *motel* containing two (2) or more *dwelling units* contained in a single structure *shall* meet all of the *following:*

a. All provisions of §10-2107 et seq. are met.
b. The facility is located in a zoning district that permits *dwelling units* or the Industrial-1 or Industrial-2 district provided that the provisions of Code §10-2051(d)(1) b., b.2. and c. are met.
c. Off-street parking is provided in accordance with §10-2081(a) for each *dwelling unit.* For each rooming unit, as defined in §10-6121(c)(21), and/or *lodging unit* , not otherwise subject to conditional use standards of *hotel/motel* with one (1) or more *lodging units*, subsection (4)b.4., off-street parking is provided in accordance with §10-2081(a) for *hotel [or] motel.*
d. Minimum net lot area is provided in accordance with §10-2073 for each *dwelling unit* and *lodging unit* subject to conditional use standards of subsection (4)b., if any.

(2) A *hotel* or *motel* which contains three (3) or more *dwelling units* in multiple structures which meet the definition of §10-2002 of a *group housing development shall* comply with all of the *following*:

a. All provisions of §10-2103 et seq. are met.
b. The facility is located in a zoning district that permits *dwelling units* or the Industrial-1 or Industrial-2 district provided that the provisions of Code §10-2051(d)(1)b., b.2. and c. are met.

c. Off-street parking is provided in accordance with §10-2081(a) for each *dwelling unit.* For each rooming unit, as defined in §10-6121(c)(21), and/or *lodging units,* not otherwise subject to conditional use standards of *hotel/motel* with one (1) or more *lodging units,* subsection (4)b.4., off-street parking is provided in accordance with §10-2081(a) for *hotel, motel, rooming house, boarding house, lodging house* or *tourist home.*

d. Minimum net lot area is provided in accordance with §10-2073 for each *dwelling unit* and *lodging unit* subject to conditional use standards of subsection (4)b., if any.

(3) The facility *shall* conform to all applicable licensing laws and regulations pertaining to *hotels* and *motels.*

(4) *Hotels* and *motels* that have either a refrigerator or cooking facilities must provide a sink which *shall* be located in the cooking and eating area and *shall* be in addition to any sink provided for bathing purposes.

(5) If a *hotel* or *motel* contains both *dwelling units* and *lodging units,* then this conditional use and the conditional use for *hotel/motel* with one (1) or more *lodging units shall* be met, and if there are conflicts between any conditional use provision the more restrictive provision *shall* apply.

Cross reference: A *guest house* containing one (1) or more *dwelling units* is permitted in certain residential zoning districts in accordance with §10-2144, *guest house.”*.

Section 16. Amend Raleigh City Code Section 10-2072(b), Hotel/motel with one (1) or more lodging units, subsection (4)b.2. to insert the words *“City Council or”* between the word “the” and the words “Planning Commission” and to replace the City Code reference “§10-2132.2(c)(1)g” with “§10-2132.2(b)(18)”.

Section 17. Amend Raleigh City Code Section 10-2072(b), Water or sanitary sewer treatment plant – Community, subsection (1), to remove the reference to subsection “(c)” from Code reference “§10-2132.2”.

Section 18. Amend the legend of the Schedule of Minimum Net Lot Areas for Dwelling Units and Equivalent Dwelling Units which appears in Raleigh City Code Section 10-2073(b) and amend the third footnote which follows the Minimum Square Feet Per Dwelling Unit and Equivalent Dwelling Unit in Raleigh City Code provision 10-2073(c)(2) to remove the City Code reference “§10-2132.2(c)(1)g.” and replace it with “§10-2132.2(b)(18)”.

Section 19. Amend Raleigh City Code Section 10-2103(h), second sentence, by deleting the code reference “§10-2132.2(c)(2)” and substituting in lieu thereof “§10-2132.2(c)”.

Section 20. Amend Raleigh City Code quasi-judicial hearing procedures of Section 10-2141(a) subsections (2), (6), (7) and (9) as follows:

Subsection (2): Delete the word "application" and substitute in lieu thereof "quasi-judicial hearing".

Subsection (6): Delete the second sentence in its entirety and substitute in lieu thereof the following: "No member *shall* participate in or vote on any quasi-judicial matter on a matter that would violate affected persons' constitutional rights to an impartial decision-maker.". Amend Subsection (6), third sentence to delete the word "occasional" and substitute in lieu thereof "associational". Furthermore, add the following State Law Reference to the end of subsection (6): "**State Law Reference**: G.S. 160A-388 (e1)".

Subsection (7): Delete this subsection (7) in its entirety and substitute in lieu thereof the following:

"(7) The reviewing body *shall* act as a fact-finding body and *shall* approve or disapprove the application in accordance with the evidence presented before it which is substantial, competent, relevant, and material. The term "competent evidence," as used in this subsection, *shall* not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, *shall* not be deemed to include the opinion testimony of lay witnesses as to any of the following:

i. The use of property in a particular way would affect the value of other property.
ii. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
iii. Matters about which only expert testimony would generally be admissible under the rules of evidence.

State Law reference: G.S. 160-393(k)(3).".

Subsection (9): Delete this subsection (9) in its entirety and substitute in lieu thereof the following:

"(9) Every decision *shall* include the vote, abstention from voting, or absence of each member. The decision of the quasi-judicial proceeding, including findings of fact and conclusions of law, *shall* be filed in the Office of the *City* Clerk. A *written* copy *shall* be delivered to the applicant, the owner of the subject property and to any *person* who has filed a request for such copy with the Office of the *City* Clerk or with the chairperson of the review board at the time of its

hearing of the case. Delivery *shall* be by any of the *following* means: personal service, registered mail, or certified mail, return receipt requested or electronic mail if electronic notification is requested.".

Section 21. Increase the site plan filing fees by $50 by amending the fee schedule of Raleigh City Code Section 10-2171 as follows:

"Preliminary *Site Plans*

Group housing development . . .	771.00
Site plans on less than 2 acres . . .	307.00
Site plans between 2 and 4 acres . . .	821.00
Site plans greater than 4 acres . . .	1,592.00"

Section 22. Amend Raleigh City Code Section 10-3004 by deleting it in its entirety and substituting in lieu thereof the following:

"Sec. 10-3004.
VARIANCES AND ALTERNATIVE DESIGNS.

Where topography or other existing physical conditions are such that compliance with the foregoing requirements would cause an unusual and unnecessary hardship on the *developer* above and beyond what other *developers* would meet, or deprive the *developer* of reasonable use of his/her *property*, after conducting a quasi-judicial hearing in accordance with the procedures of subsection10-3013(b)(3)b., the *City Council may* vary the minimum requirements set forth herein.

Contemporaneously with the filing of a petition for a variance with the Planning Director, the petitioner *shall* provide the Planning Department first class mail stamped and addressed envelopes for all *owners* of *property*, as shown on the county tax listing, included in the proposed subdivision and within one hundred (100) feet on all sides of the proposed *subdivision* boundaries (not counting the *street rights-of-way*). Based on the envelopes supplied by the petitioner the City will by first class mail send notice that a request for a variance to the subdivision regulations, Part 10 Chapter 3 of the City Code, has been made to the *City Council* for the subject property. Such mailings *shall* advise that petitioner has filed a development plan affecting the subject property, the general nature of the questions involved, the *city* file number and *city* telephone number and website of the Planning Department where additional information can be obtained, the time and place of the hearing, and that the *City Council* will conduct a quasi-judicial hearing in accordance with the procedures of §10-3013(b)(3)b. All mailings are for the convenience of the public and any defective notification *shall* not invalidate the proceeding. The City will also the post ~~a~~ sign(s), not less than 18 by 24 inches, on each block of the *property* proposed to be subdivided, to provide visibility to *property owners* concerned with or affected by the proposed preliminary subdivision plan. Such postings *shall* advise that a proceeding has been filed and direct further inquiry at a listed

telephone number. All postings are for the convenience of the public and any defective posting *shall* not invalidate the proceeding. All mailings and signage required by this section shall be made and put up no more than fifteen (15) days and no less than ten (10) days prior to the *City Council* quasi-judicial hearing. Notice of all variances pending before the *City Council shall* be posted on the Raleigh Planning Department website at least ten (10) days prior to the *City Council* quasi-judicial hearing.

Within a Planned Development Conditional Use Overlay District, *City Council*, in accordance with the approval of the Master Plan, *may* approve alternative designs for one (1) or more of the following:

(a) Paving widths for all public *streets* except *thoroughfares* --§10-3041;
(b) Curbs and gutters--§10-3041; and,
(c) Sidewalks--§10-3041.
Cross reference: Master Plan alternative *subdivision* design standards, §10-2057(f)(5)j. "

Section 23. Repeal in their entirety Raleigh City Code subsections (a) and (b) of Section 10-3013 and in lieu thereof substitute the following:

"**Sec. 10-3013.**
PROCEDURE FOR PRELIMINARY SUBDIVISION REVIEW.

(a) Submittal and review.

(1) An application for the approval of the preliminary *subdivision* plan *shall* be submitted to the *City* Planning Department along with at least seven (7) sets of plans. Submittal documents for preliminary *subdivision* review *shall* include all information specified in Section 10-3015. Within ten (10) days after filing the preliminary subdivision application with the *City*, the *developer shall* notify in *writing*, by first class mail, all *owners* of *property*, as shown on the county tax listing, included in the proposed subdivision and within one hundred (100) feet on all sides of the proposed *subdivision* boundaries (not counting the *street rights-of-way*). Such mailings *shall* advise that *develope*r has filed a *development* plan affecting the subject property, the general nature of the *development* plan, the *city* file number and *city* telephone number and website of the Planning Department where additional information can be obtained, as well as developer contact information. All mailings are for the convenience of the public and any defective notification *shall* not invalidate the proceeding.

Cross reference: Schedule of fees, §10-3081.

(2) The Planning Director *shall* consult with the heads of the departments of Public Utilities, Central Engineering, Transportation, Parks and Recreation, Inspections, and the Fire Department to check the proposed development against the *City* requirements.

Policy reference: Standard Operating Procedure 900-4. Preliminary approval of *subdivisions*, site plans, *group housing*, *unit ownership (condominium*, *townhouse*, and *cluster unit developments*.
Cross references: Public Utilities, Part 8; Public Works, Part 7; Engineering, Part 6; *City* Manager, Part 1 Ch. 2; exemptions from stormwater runoff controls are lost by subdividing exempt property, §10-9023(b)(2)a.

(b) Approval procedure.

(1) Administrative approval and appeals.

The administrative Development Plans Review Group appointed by the *City* Manager *may*, with or without conditions, approve preliminary *subdivision* plans without review by the Planning Commission or the *City Council* except in one (1) or more of the *following* situations:

a. The subdivision plan requires a variance to be granted pursuant to §10-3004;

b. The subdivision plan is an *infill project*;

c. The subdivision plan is located within an Historic Overlay District or the plan subdivides property containing any *Historic Landmark*;

d. The subdivision plan is located in a Metro-Park Overlay District, other than subdivisions for single family detached dwelling and their accessory uses, as defined in the Zoning Code, Part 10 Chapter 2, and recreational uses related to and used exclusively by a single-family development, such as clubhouse.

The *subdivider shall* demonstrate how the preliminary subdivision plan conforms to all applicable standards.

Notice of all *subdivision* plans pending before the Development Plans Review Group shall be posted on the Raleigh Department of Planning website within five (5) days of the date of submittal and the decision of the Development Plans Review Group *shall* be posted on the Raleigh Department of Planning website within three (3) days of the date of final action. The Development Plans Review Group *shall* keep *written* records of any action taken, and it *shall* review the preliminary *subdivision* plan for conformity with the *City* Code and with *City Council* resolutions. Within three (3) days following the decision of the Development Plans Review Group, the *City* will notify in *writing*, by first class mail, all *owners* of *property*, as shown on the county tax listing, included in the proposed subdivision and within one hundred (100) feet on all sides of the proposed *subdivision* boundaries (not counting the *street* rights-of-way). Such mailings *shall* advise that the *City* has approved a *development* plan affecting the subject property, the general description of the approved *development* plan, the

date the *City* approved the development plan, the *City* file number and *City* telephone number where additional information can be obtained. The appeals provisions in the next paragraph *shall* appear verbatim in the notification letter. All mailings are for the convenience of the public and any defective notification *shall* not invalidate the proceeding.

Within twenty (20) days after the date of the decision of the Development Plans Review Group, as determined from the notification letter the decision of the Development Plans Review Group *ma*y be appealed to the *City Council*. The last day of the computed appeal period is to be included, unless it is a Saturday, Sunday or legal holiday when City hall is closed for business, in which event the appeal period runs until the end of the next day which is not a Saturday, Sunday or legal holiday, when City hall is closed for business. Written notice of appeal *shall* be filed with the Planning Director. All appeals before the *City Council shall* be *de novo* and *shall* be conducted in accordance with the quasi-judicial procedures of §10-3013(b)(3)b.

Contemporaneously with the filing of notice of appeal with the Planning Director, the appellant *shall* provide the Planning Department first class mail stamped addressed envelopes for all *owners* of *property*, as shown on the county tax listing, included in the proposed subdivision and within one hundred (100) feet on all sides of the proposed *subdivision* boundaries (not counting the *street rights-of-way*). Based on the envelopes supplied by the appellant, the *City* will by first class mail send notice that an appeal has been made to the *City Council* of a preliminary *subdivision* plan approved by the *City* staff. Such mailings *shall* advise that *developer* has filed a *development* plan affecting the subject property, the general nature of the questions involved, the C*ity* file number and *City* telephone number and website of the Planning Department where additional information can be obtained, the time and place of the hearing, that the *City Council* will conduct a quasi-judicial hearing in accordance with the procedures of §10-3013(b)(3)b, and a verbatim copy of the appeals procedures of §10-3013(b)(3)b below. All mailings are for the convenience of the public and any defective notification *shall* not invalidate the proceeding. The *City* will also the post sign(s), not less than 18 by 24 inches, on each block of the *property* proposed to be subdivided to provide visibility to *property owners* concerned with or affected by the proposed preliminary subdivision plan. Such postings *shall* advise that a proceeding has been filed and direct further inquiry at a listed telephone number. All postings are for the convenience of the public and any defective posting *shall* not invalidate the proceeding. All mailings and signage required by this section shall be made and put up no more than fifteen (15) days and no less than ten (10) days prior to the *City Council* quasi-judicial hearing. Notice of all appeals to the *City Council shall* be posted on the Raleigh Planning Department website at least ten (10) days prior to the City Council quasi-judicial hearing.

(2) Planning Commission Review.

a. Commission hearing.

The Planning Commission *shall* conduct a hearing, without the formalities of a quasi-judicial proceeding, on each of the following development plans:

1. An *infill project*.

2. A subdivision of property located within an Historic Overlay District or of property containing any *Historic Landmark*;
Within sixty (60) days of receipt of the *subdivision* by the City Planning Department and prior to presentation to the Planning Commission, the Raleigh Historic Districts Commission will review and make a recommendation on such proposed *subdivision*.

3. The subdivision plan is located in a Metro-Park Overlay District, except subdivisions for single family detached dwelling and their accessory uses, as defined in the Zoning Code, Part 10 Chapter 2, and recreational uses related to and used exclusively by a single-family development, such as clubhouse.

No more than fifteen (15) days and no less than ten (10) days prior to the Planning Commission hearing, the *City shall* send notice by first class mail, registered mail, or certified mail return receipt requested to all fee *owners* of the *property* within one- hundred (100') feet on all sides of the *property* boundaries of the proposed development preliminary *plan* (not-counting *street* rights-of-way). Such mailings *shall* advise that the *developer* has filed a development plan affecting the subject property, the general nature of the questions involved, the city file number and telephone number and website of the Planning Department where additional information can be obtained, the time and place of the hearing and a verbatim copy of the appeals procedures of §10-3013(b)(2c below. All mailings are for convenience of the public and any defective mailing *shall* not invalidate the proceeding. No more than fifteen (15) days and not less than ten (10) days of the Planning Commission hearing, the *City* will also post sign(s),not less than 18 by 24 inches, on each block of the *property* to provide visibility to *property owners* concerned with or affected by the proposed *development* plan. Such postings *shall* advise that a proceeding has been filed and direct further inquiry at a listed telephone number. Notice of each Commission hearing *shall* be posted on the Raleigh Department of Planning website at least three (3) days prior to the scheduled hearing date and the decision of the Commission *shall* be posted on the Raleigh Department of Planning

website within three (3) days following the date of the Commission hearing. The appeals provisions of §10-3013(b)(2)c *shall* appear verbatim on the website posting.

At the hearing, the city staff, the applicant, and all proponents and opponents to the preliminary *site plan* will be given an opportunity to address the Planning Commission. The hearing *shall* be limited to showing how the *development plan* complies or fails to comply with the applicable standards. The *developer shall* demonstrate how the development plan conforms to all applicable standards.

b. Certified action.

All subdivisions located within a Historic Overlay District, any subdivision of property containing any *historic landmark*, all *subdivisions* located within a Metro-Park Overlay District, except s*ubdivisions* for single family detached dwelling and their accessory uses, as defined in the Zoning Code, Part 10 Chapter 2, and recreational uses related to and used exclusively by a single-family development -such as clubhouse- and all *infill projects shall* be reviewed by the Planning Commission. Subject to the appeals provisions of subsection (b)(2)c. below, with eight (8) or more members of the Planning Commission both present and voting for the motion the Planning Commission *may* approve, deny, or approve with conditions any preliminary *subdivision* plan located within a historic district overlay, an *infill project*, a *subdivision* of property containing any *historic landmark or*, *subdivisions* located within a Metro-Park Overlay District, except s*ubdivisions* for single family detached dwelling and their accessory uses, as defined in the Zoning Code, Part 10 chapter 2, and recreational uses related to and used exclusively by a single-family development – such as clubhouse.

Every decision of the Planning Commission *shall* include the vote, abstention from voting, or absence of each Commissioner. The decision of the Planning Commission *shall* be filed in the Planning Department. A written copy *shall* be delivered to the petitioner, the owner of the subject property and to any *person* who has filed a request for such copy with the Planning Department or with the chairperson of the Planning Commission at the hearing of the Planning Commission. Delivery *shall* be by first class mail or email if electronic notification is requested.

The action of the Planning Commission *shall* be set forth in *written* form as a certified action, stating the decision of the Commission. Following the end of the appeal period, the certified action *shall* be signed by both the Planning Director and the chairperson of the Planning Commission, and the

signed certified action of the Planning Commission *shall* be final and effective.

c. Appeals from Planning Commission action.

Within twenty (20) days after the final vote of the Planning Commission, the decision of the Commission *may* be appealed to the *City Council*. The last day of the computed appeal period is to be included, unless it is a Saturday, Sunday or legal holiday when City hall is closed for business, in which event the appeal period runs until the end of the next day which is not a Saturday, Sunday or legal holiday when City hall is closed for business. Written notice of appeal *shall* be filed with the Planning Director. All appeals before the *City Council shall* be *de novo* and *shall* be conducted in accordance with the quasi-judicial procedures of §10-3013(b)(3)b.

The following *persons* and entities *may* file written notice of appeal from a decision of the Planning Commission:

1. Any person or entity that has standing under G.S. 160A-393(d) subsections (1) through (3).

2. Any fee *owner* of the real property within one- hundred (100') feet on all sides of the *property* boundaries of the proposed *infill project* or preliminary *subdivision* plan (not counting *street* rights-of-way).

3. The Planning Director reasonably believes that either a procedural irregularity occurred affecting the hearing of the Planning Commission or the action of the Planning Commission is not in accord with either the administrative Development Plans Review Group recommendation or applicable technical handbook incorporated into the City Code.

Where real property is owned by more than one person any owner *may* file written notice of appeal.

d. Non-certified actions

Whenever the Planning Commission acts upon the *infill project*, or preliminary *subdivision* plan within an Historic Overlay District or involving property containing any Historic Landmark or upon a subdivision located in a Metro Park Overlay District with less than eight (8) members of the Commission both present and voting for the motion, the *infill project* and preliminary *subdivision* plan *shall* be transmitted to the *City Council* for a *de novo* quasi-judicial hearing in accordance with 10-3013(b)(3) below.

(3) ***City Council*** **Review.**

a. Matters heard by the City Council

After conducting a quasi-judicial hearing in accordance with the procedures of subsection b below, the *City Council may* approve, deny, or approve with conditions the following development plans:

1. Where a request for a variance has been made pursuant to §10- 3004.

2. Where an appeal from the decision of the Development Plans Review Group was made in accordance with §10-3013(b)(1).

3. Where an appeal from the decision of the Planning Commission was made in accordance with §10-3013(b)(2)c.

4. Where the Planning Commission acted upon the preliminary development plan with less than eight (8) members of the Planning Commission both present and voting for the motion.

b. City Council quasi-judicial hearing procedures

1. No City Council quasi-judicial hearings *shall* be heard until notice of the time, place, and subject of the hearing is published in a newspaper of general circulation in the *City*. Said publication of notice *shall* be made at least seven (7) days and no more than twenty-five (25) days before the date fixed for the hearing.

2. Parties in interest, including the City staff, *shall* have the right to present evidence and cross-examine witnesses, as to any competent, material, and relevant facts, inspect documents, and make oral argument.

State Law reference: G.S. 84-2.1 and 84-4, unlawful practice of law, North Carolina State Bar formal Ethics Opinion 3, April 20, 2007.

3. The *City Council shall* act as an impartial decision-maker. No member *shall* participate in or vote on any quasi-judicial matter on a matter that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to the hearing of the matter that is not susceptible to change, undisclosed ex-parte communication, a close financial business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not excuse himself or herself, the remaining members of the board *shall* by majority vote rule on the objection.

State Law Reference: G.S. 160A-388 (e1).

4. The *City Council shall* act as a fact-finding body and the *Council shall* approve, approve with conditions, or disapprove the application in accordance with the evidence presented before it which is substantial, competent, relevant, and material. The term "competent evidence," as used in this subsection, *shall* not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, *shall* not be deemed to include the opinion testimony of lay witnesses as to any of the following:

   i. The use of property in a particular way would affect the value of other property.
   ii The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
   iii Matters about which only expert testimony would generally be admissible under the rules of evidence.

   State Law reference: G.S. 160-393(k)(3)

5. The burden of proof is upon the *developer* and if the *developer* fails to meet its burden, the *City Council* shall deny the request.

6. Every decision *shall* include the vote, abstention from voting, or absence of each *Council* member. The decision of the quasi-judicial proceeding of the *City Council*, including findings of fact and conclusions of law, shall be filed in the Office of the City Clerk. A written copy *shall* be delivered to the petitioner, the owner of the subject property and to any *person* who has filed a request for such copy with the Office of the City Clerk or with the chairperson of the review board at the time of its hearing of the case. Delivery *shall* be by any of the following means: personal service, registered mail, certified mail, return receipt requested or email if electronic notification is requested.

State law reference: 1985 Session Laws, Ch. 498, §3."

Section 24. Repeal in their entirety subsections (4) and (5) of Raleigh City Code Section 10-3032(d) and repeal in their entirety the two paragraphs that immediately follow 10-3032(d)(5), and in lieu thereof substitute the following:

"(4) The *infill project* does not create sharp changes from the physical development pattern of residential lots located on the "periphery "of the infill development with respect to dwelling height, setback, placement and size . Periphery *shall* have the same meaning as set forth in subparagraph (3) of the definition of *infill lots or infill project*.

(5) The *infill project* contains adequate measures to protect other properties, including public corridors from adverse effects expected from the development or recombination, including stormwater, traffic, and incompatible characteristics such as the amount and placement of impervious surface, the placement of structures and vehicular surface areas, and the orientation of uses and entranceways.

The notice, approval procedures, hearings and appeal provisions of §10-3013 *shall* apply to all *infill projects*.".

Section 25. Increase the preliminary subdivision filing fees by $50 by amending the fee schedule of Raleigh City Code Section 10-3081 as follows:

"Preliminary Subdivisions per set of submitted plans

Subdivisions on *lots* less than 2 acres . . ……..	307.00
Subdivisions on *lots* between 2 and 4 acres . . .	821.00
Subdivisions on *lots* greater than 4 acres . …..	1,592.00
Infill subdivision for 3 or fewer lots . . ……	307.00
Infill subdivisions for 4 or more lots . . . …….	564.00
Group housing development . . ……	771.00"

Section 26. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Section 27. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 28. This ordinance has been adopted following a duly advertised joint public hearing of the Raleigh City Council and the City Planning Commission following a recommendation of the Planning Commission.

Section 29. This ordinance has been provided to the North Carolina Capital Commission as required by law.

Section 30. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty dollar limit in G.S. 14-4(a) or similar limitations.

Section 31. This ordinance shall become effective immediately following its adoption.

ADOPTED: February 16, 2010

EFFECTIVE: February 16, 2010

DISTRIBUTION: Planning – Silver, Hallam, Crane, Brandon
Inspections – Strickland
City Attorney – Hargrove
Transcription Svcs – Taylor

This ordinance prepared by the Raleigh City Attorney's Office