

2021-113 TEXT AMENDMENT SUMMARY
CHARLOTTE ZONING ORDINANCE
5/10/21

This document summarizes the changes proposed to the Charlotte Tree Ordinance through petition 2021-113. Only the sections being revised are shown in the summary. Text to be added is in red and underlined. Text to be deleted is in red and struck through. The full ordinance, with the changes shown in the ordinance, can be found on the webpage for [rezoning petition 2021-113](#) on the Charlotte Planning, Design & Development website.

(For all Chapters listed herein, section and subsection listings not shown remain unchanged)

CHAPTER 21 TREES

ARTICLE II ADMINISTRATION

Sec. 21-31 Tree advisory commission

- (e) Any rules of procedure adopted by the tree advisory commission shall be consistent with the provisions of G.S. Chapter 160D and kept on file at the office of the City Clerk and posted on the City of Charlotte website.
- (f) In determining appeals of administrative decisions and variances, the tree advisory commission shall follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec.160D-406.
- (g) The tree advisory commission shall keep minutes of its proceedings as required by G.S. Sec.160D- 308.
- (h) Each member shall take an oath of office before starting their duties as required by G.S. Sec. 160D- 309.
- (i) Each member shall comply with the conflict of interest standards as specified in G.S. Sec. 160D-109 and Section 1.111 of the City of Charlotte zoning ordinance.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-32 City jurisdiction and authority

- (d) No staff member shall make a final decision on an administrative decision

required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city. For purposes of this chapter, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

ARTICLE V MODIFICATION, INSPECTION, ENFORCEMENT AND APPEAL

Sec. 21-122 Inspections and investigations of sites

- (a) ~~Agents, officials or other qualified persons designated by the~~ Administrative staff of the city are authorized to inspect the sites subject to this chapter to determine compliance with this chapter, the terms of applicable development approval, or rules or orders adopted or issued pursuant to this chapter. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
- (b) ~~No person shall refuse entry or access to any authorized city representative or agent who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with such authorized representative while in the process of carrying out official duties.~~
- (eb) If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with this chapter or rules or orders issued pursuant to this chapter, the city ~~will serve~~

may issue a written notice of violation. As specified by G.S. Sec. 160D-404(a), the notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of the violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or any other means reasonably calculated to give actual notice, such as facsimile or hand delivery. A notice of violation shall identify the nature of the violation and shall set forth the measures necessary to achieve compliance with this chapter. The notice shall inform the person whether a civil penalty will be assessed immediately or shall specify a date by which the person must comply with this chapter. The notice shall advise that failure to correct the violation within the time specified will subject that person to the civil penalties as provided in section 21-124 or any other authorized enforcement action.

- (~~dc~~) The city shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites subject to this chapter as specified by G.S. Sec. 160D-403(e) and subsection (a) of this section.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-124 Penalties

- (d) *Notice.* The city shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. As specified by G.S. Sec. 160D-404(a), the notice of violation shall be delivered to the person assessed the civil penalty by personal delivery, electronic delivery, or first-class mail. The notice of violation shall be posted on the property. The person providing the notice of violation shall certify to the city that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. The notice of assessment ~~shall be served by any means authorized under G.S. 1A-1, rule 4, and~~ shall direct the

violator to either pay the assessment or contest the assessment as specified in section 21-126. If payment of assessed penalties is not received within 30 days after it is due, or if no request for a hearing has been made as provided in section 21-126, the assessment shall be considered a debt due and owing to the city, and the matter shall be referred to the city attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the Mecklenburg County Superior Court or in any other court of competent jurisdiction.

Sec. 21-126. - Hearings and appeals.

(a) Quasi-judicial procedure. In determining appeals of administrative decisions and variances, the tree advisory commission shall follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec. 160D-406.

(~~a~~b) *Requests for variance.* Procedures for a request for a variance from this chapter are as follows:

- (1) The decision of the city arborist or senior urban forester to deny an application for a variance from the requirements of this chapter shall entitle the person submitting the application (petitioner) to a public hearing before the commission if such person submits a written request for a hearing to the chair of the commission within ~~ten-working~~ 30 days ~~of from~~ receipt of the written notice of the decision denying the variance. In the absence of evidence to the contrary, notice given pursuant to G.S. Sec. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. As soon as possible after the receipt of the request, the chair of the commission will set a date, time and place for the hearing and notify the petitioner of the hearing by mail. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The chair may appoint a three-member board selected from the appointed members of the commission to act as an appeal board and hear the request of the petitioner. The hearing shall be conducted by the commission in accordance with subsection (d).
- (2) The commission or its designated appeal board may grant a variance from the requirements of this chapter upon a finding that:
 - a. Unnecessary hardship would result from the strict application of the

regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

d. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

~~a. Practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; and~~

~~b. The variance is in accordance with the general purpose and~~

~~intent of this chapter. (3) Variance approvals attach to and run with the land pursuant to G.S. Sec. 160D-104.~~

~~(bc)~~ *Appeals of decisions, notices of violation and assessments of civil penalties.*

Any party dissatisfied with a decision of the city adversely affecting such party in the application or enforcement of this chapter, including notices of violations and assessments of civil penalties, may request a public hearing before the commission. ~~An appeal stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the commission as specified in G.S. Sec. 160D-405(f), unless the city staff member who made the decision certifies to the commission, after notice of appeal has been filed that because of the facts stated in the certificate a stay would cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with the enforcement of this chapter. In that case, enforcement shall not be stayed except by a restraining order, which may be granted by a court. Procedures for such appeal~~ hearings are as follows:

- (1) The issuance of a decision, including a notice of violation or assessment of a civil penalty by the city, shall entitle the person subject to the decision or responsible for the violation (petitioner) to a public hearing before the

commission if such person submits a written request for a hearing to the chair of the commission within 30 days of the receipt of a decision, notice of violation or assessment of a civil penalty. In the absence of evidence to the contrary, notice given pursuant to G.S. Sec. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

- (2) As soon as possible after the receipt of the request, the chair shall set a date, time and place for the hearing and, as specified in G.S. Sec. 160D-406, notify shall mail notices to (1) the petitioner person or entity whose appeal is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the county tax listing shall be used to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

~~by mail of the date, time and place of the hearing.~~ The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to G.S. Sec. 160D-406 and subsection ~~(de)~~.

- ~~(ed)~~ *Petition for review of commission's decision.* Every quasi-judicial decision of the commission shall be subject to judicial review by the superior court by proceedings in the nature of certiorari pursuant to G.S. Sec. 160D-1402. Any petition for a review of the commission's decision in the nature of certiorari by the superior court must be filed with the clerk of superior court by the later of (1) 30 days after the decision is effective, or (2) 30 days after a written copy of the decision is given in accordance with subsection (1) of this section. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. Any party aggrieved by the decision of the commission shall have 30 days from the receipt of the decision to file a petition for review in the nature of certiorari with the clerk of Mecklenburg County Superior Court.

- ~~(de)~~ *Hearing procedure.* The following shall be applicable to any hearing conducted by the commission pursuant to subsection (a) or (b):

- (1) At the hearing, the petitioner and the city shall have the right to:

- a. Be present and be heard;
 - b. Be represented by counsel; and
 - c. Present evidence through witnesses and competent testimony relevant to the issues before the commission.
- (4) Staff shall transmit to the commission all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the commission prior to the hearing if at the same time they are distributed to the commission, a copy is also provided to the petitioner and to the property owner if that person is not the petitioner. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the commission the hearing.
- (45) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.
- (6) For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor if the person is no longer employed) shall be present at the quasi-judicial hearing to appear as a witness.
- (7) All parties with standing shall be allowed to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments.
- (58) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the city and for the petitioner shall have the right to cross examine witnesses.
- (9) At the conclusion of the hearing, the commission shall render its decision on the evidence submitted at such hearing and not otherwise.
- a. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the city's actions are true and substantiated, the commission shall, as it sees fit, uphold the city's action.
 - b. If, after considering the evidence presented at the hearing, the

commission concludes by a preponderance of the evidence that the grounds for the city's actions are not true and substantiated, the commission may, as it sees fit, reverse or modify any order, requirement, decision or determination of the city. The commission bylaws will determine the number of concurring votes needed to reverse any order, requirement, decision or determination of the city.

(~~7~~10) The commission shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the commission shall be based on findings of fact and conclusions of law to support its decision. and shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing, reflect the commission's determination of contested facts and their application to the applicable standards, and be approved by the commission and signed by the chair or other duly authorized member of the commission.

(~~8~~11) ~~The commission shall send a copy of its findings and decision to the petitioner and the city. The decision of the commission shall be delivered by personal delivery, electronic mail, or by first- class mail to the petitioner, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.~~ If either party contemplates an appeal to a court of law, the party may request and obtain, at his own cost, a transcript of the proceedings.

(~~9~~12) The decision of the commission shall constitute a final decision.

(Ord. No. 4521, § 1, 9-27-2010)