

ARTICLE 1. ESTABLISHMENT AND ADMINISTRATION

1.1. SHORT TITLE

This ordinance shall be known as the “Garner Unified Development Ordinance,” “this Ordinance,” or “UDO.”

1.2. AUTHORITY AND PURPOSE

1.2.1. Authority

The Town Council, pursuant to the authority conferred by the State of North Carolina General Assembly in General Statute Chapter 160D (G.S. § 160D), does hereby ordain and enact into law the articles and sections of this UDO.

1.2.2. Purpose

It is the intent of the Town Council that this UDO promote the health, safety, and general welfare of existing and future residents, businesses, and visitors of the Town by:

- A. Providing for adequate light, air, and open space;
- B. Creating a convenient, attractive, and harmonious community;
- C. Protecting and preserving scenic, historic, or ecologically sensitive areas;
- D. Regulating population density and distribution;
- E. Regulating the uses of buildings, structures, and land;
- F. Facilitating economic growth and commerce;
- G. Ensuring adequacy and availability of public services including transportation, emergency response services, utilities, parks, and recreational amenities;
- H. Ensuring availability of well-engineered, well-built, and high-quality housing;
- I. Securing safety from fire, flood, and other dangers;
- J. Regulating the location and distribution of uses of land and buildings;
- K. Regulating the subdivision of land;
- L. Preventing the overcrowding of land, avoiding undue concentrations of population, and lessening street congestion; and
- M. Furthering the public interest by additional means determined by the Town Council.

1.3. JURISDICTION

This UDO shall apply to all land within the Town of Garner municipal limits and its municipal extraterritorial jurisdiction (ETJ) – the entirety of which is more particularly described in Appendix A. All structures and land uses constructed or commenced after the effective date of this UDO, and all enlargements of, additions to, changes in, and relocations of existing structures and uses occurring after the effective date of this UDO, shall be subject to this UDO.

1.4. EFFECTIVE DATE

This UDO, adopted and made effective on <insert date of adoption>, supersedes, repeals, and replaces the amended Town of Garner Unified Development Ordinance originally adopted on July 22, 2003 and made effective on October 1, 2003.

1.5. ADMINISTRATION

The Planning Director is appointed to serve as administrator of this UDO. Should this position at any time become vacant, the Town Manager shall designate another official to act as administrator until the office is filled. The Planning Director may designate any staff member to represent the Planning Director in any function assigned by this UDO but shall remain responsible for any final action.

1.6. INTERPRETATION

The Planning Director is responsible for the ultimate interpretation of this UDO. Any dispute regarding an interpretation or administrative decision may be appealed per the standards of this Ordinance.

1.7. CONFORMITY WITH ARTICLE PROVISIONS

1.7.1. Compliance Required

- A. The purpose of this Ordinance is to ensure compliance with the Town’s zoning, subdivision, and other design and dimensional standards.
- B. No structure or land shall hereafter be used, occupied, or modified, and no structure or part thereof shall be erected, moved onto, or structurally altered, except in compliance with the regulations of this Ordinance, for the district in which it is located.
- C. No building, sign, structure, or land-disturbing activities, or any part thereof shall be erected, structurally altered, moved, or changed in use until a zoning permit has been issued by the Planning Director.
- D. In the absence of public water or public sewer, no building permit shall be issued until the lot meets all other applicable requirements of this UDO and the private water and sewer requirements of the Wake County Environmental Services Department or any successor agency.

1.7.2. Minimum Requirements

For purposes of interpretation and application, the provisions of this UDO shall be the minimum requirements for the protection and promotion of public health, safety, and general welfare.

1.8. RELATIONSHIP TO OTHER ORDINANCES AND STATUTES

1.8.1. Conflicting Provisions

Whenever the requirements of this UDO are inconsistent with the requirements of any other lawfully adopted governmental rules, regulations, or ordinances, the most restrictive requirement imposing the highest standards, as determined by the Planning Director, shall govern. However, the Town shall not be responsible for enforcing other agencies' regulations.

1.8.2. Minimization

Where multiple ways to implement, administer, or construe a provision exist, the provision shall be implemented, administered, or construed to eliminate and minimize conflict with other provisions of this UDO.

1.8.3. Town Ordinances

If substantially similar provisions existed in previous Town ordinances, the provisions of this UDO shall not be considered new enactments but as continuations of existing rule. Unlawful nonconformities do not achieve legal conforming status by virtue of the adoption of this Ordinance alone.

1.8.4. Amendments to State Statutes

Whenever a North Carolina General Statute (a.k.a. "G.S.") section cited or referenced by any of these ordinance provisions is later amended or superseded, the ordinance provision shall be deemed to refer to the amended section or the section that most closely corresponds to the superseded section.

1.8.5. Validity

If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid, such condition shall be null and void and of no effect.

Commentary: For instance, if this UDO references G.S. § 160D-702, which grants the regulation of zoning to local governments from the state, and the state should subsequently reorganize the statutes, then the reference in this Ordinance shall be understood to reference the most current statute. This shall be honored even if this Ordinance fails to modify references immediately at the time that the state statutes should be reorganized.

1.9. CONSISTENCY WITH ADOPTED PLANS

1.9.1. General

The Town Council intends that this UDO shall guide the administration of the Town's adopted planning policies within the Town's municipal limits and its ETJ.

1.9.2. Comprehensive Plan

The most current Comprehensive Plan is hereby incorporated by reference.

1.9.3. Zoning

The zoning regulations of this UDO are in accordance with the Comprehensive Plan and the Town of Garner Official Zoning Map (also known as "zoning map") which is hereby incorporated by reference.

1.9.4. Other Plans and Policies

All other Town-adopted plans, maps, policies, and documents and all other outside agency maps, plans, policies, and documents referenced herein or necessary to enforce the provisions of this UDO are hereby incorporated by reference.

1.9.5. Conformity

Subject to Article 2, Nonconformities, no person may use, occupy, or sell any land or buildings, or authorize or permit the use or occupancy of any land or buildings under their control, except in accordance with all applicable provisions of this UDO.

1.10. TRANSITIONAL PROVISIONS

1.10.1. Active Permits and Development Approvals

- A. Subject to Section 4.2.7. Vested Rights and Expiration, any building or development for which a permit or approval was issued before the effective date of this UDO may be completed in conformance with the issued permit and other applicable permits and conditions, even if such building or development does not fully comply with provisions of this UDO.
- B. Nothing in this UDO shall require a change to a phasing plan approved prior to the adoption of this UDO, provided construction is consistent with the terms and conditions of the phasing plan and proceeds to completion in a timely manner – meaning that the developer shall continue construction activities, as evidenced by an active building permit or other vested right (Section 4.2.7.), in order to continue the project under the previous phasing plan.
- C. If construction is not completed according to the applicable permit terms, the Town Council may, for good cause shown, grant an extension of up to one year for such construction.

1.10.2. Permit Choice

- A. Pursuant to G.S. § 160D-108, any complete application submitted before the effective date of an amendment to this UDO may be evaluated and decided, at the applicant’s discretion, in conformance with applicable permits and regulations in effect at the time of submission of the application.
- B. If construction is not commenced or completed according to the applicable terms of the application, the Town Council may, for good cause shown, grant an extension of up to one year for such construction.

1.10.3. District Conversion

The zoning districts in effect prior to the effective date of this UDO are hereby converted, as shown on the following table:

Figure 1.10-A: District Conversions

PREVIOUS DISTRICT		NEW DISTRICT*	
RESIDENTIAL ZONING DISTRICTS			
R-40	Single-Family Residential 40	RA	Rural Agricultural
R-20	Single-Family Residential 20	R2	Residential 2
R-15	Single-Family Residential 15	R5	Residential 5
R-12	Single-Family Residential 12	R5	Residential 5
R-9	Single-Family Residential 9	R5	Residential 5

PREVIOUS DISTRICT		NEW DISTRICT*	
MF-1	Multifamily Residential 1	MF-1	Multifamily Residential 1
MF-2	Multifamily Residential 2	MF-2	Multifamily Residential 2
RMH	Manufactured Home Park/Subdivision	RMH	Manufactured Home Park/Subdivision
NONRESIDENTIAL AND MIXED USE ZONING DISTRICTS			
NO	Neighborhood Office*	NC	Neighborhood Commercial
NB	Neighborhood Commercial (formerly Neighborhood Business)	NC	Neighborhood Commercial
CBD	Central Business District	TBD	Traditional Business District
OI	Office and Institutional*	CMU	Commercial Mixed Use
SB	Service Business*	CMU	Commercial Mixed Use
CR	Community Retail (formerly Community Business)	CMU	Commercial Mixed Use
FLOATING OVERLAY ZONING DISTRICTS			
-MH	Manufactured Home Floating Zone (formerly Mobile Home Floating District)	-MH	Manufactured Home Floating Zone
OVERLAY ZONING DISTRICTS			
CBA	Conservation Buffer Area	CBA	Conservation Buffer Area
LBC	Lake Benson Conservation	LBC	Lake Benson Conservation
SCC	Swift Creek Conservation	SCC	Swift Creek Conservation
O-TD	Timber Drive Overlay	RAO	Residential Arterial Overlay
-	Timber Drive East Overlay	RAO	Residential Arterial Overlay
O-70	U.S. 70/401 Overlay	CHO	Commerical Highway Overlay
O-40	I-40 Overlay	LAHO	Limited Access Highway Overlay
GR-OD	Garner Road Overlay District	CHO	Commerical Highway Overlay
OBSOLETE DISTRICTS			
MR-1	Multi-Residential 1	MF1 or MF2	Multi-family Residential 1 or 2
RCD	Residential Cluster District	R	One of the Residential general use districts
R-12 PR	Planned Residential District	CZ	Conditional Zoning District
MXD-1	Mixed Use Development District	CZ	Conditional Zoning District
Notes:			
* Not all properties necessarily translated to a direct remapping conversion to the district(s) shown here as each location was considered on a case-by-case basis with regard to the existing use and the surrounding properties at the time of the remapping.			

1.10.4. Conditional Use District Conversion

Effective January 1, 2021, any existing and legal Conditional Use zoning districts (CUD) or Planned Development zoning districts (PD) that are valid and in effect shall be deemed a Conditional zoning district (CZ) subject to the same conditions of approval or conditions of operation of the existing entitlement.

1.11. SEVERABILITY

The sections, paragraphs, sentences, clauses, phrases, requirements, and criteria of this UDO are severable to the least extent necessary to carry out the purpose and intent of this Ordinance.