

Section 1 Provisions of Common Applicability

1.01 Title

These regulations shall hereinafter be known and cited as "Town of Holly Springs Unified Development Ordinance", and hereinafter referred to as the "UDO".

1.02 Authority

- A. This UDO is adopted pursuant to the authority contained in the General Statutes of North Carolina, Chapter 160A, Article 19 and Chapter 160A, Article 8. [Amended Ordinance #10-11]*
- B. Whenever any provision of this UDO refers to or cites a section of the General Statutes and that section of the General Statutes is later amended or superseded, this UDO shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

1.03 Purpose

In adopting this UDO, the *Town Council* of the Town of Holly Springs has given reasonable consideration to, among other things, the character of the districts and their peculiar suitability for particular uses, conserving the value of buildings, and encouraging the most appropriate use of land throughout the Town of Holly Springs and its extra-territorial jurisdiction, and hereby adopts this UDO to: [Amended Ordinance #04-06]

- A. lessen congestion in the streets;
- B. secure safety from fire, panic and other dangers;
- C. promote health and the general welfare;
- D. provide adequate light and air;
- E. prevent the overcrowding of land;
- F. avoid undue concentration of population;
- G. facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements promoting the public health, safety, comfort, morals, convenience, and general welfare;
- H. provide for the orderly growth and development of the Town of Holly Springs and its extra-territorial jurisdiction;

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- I. coordinate streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities;
- J. provide for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of a development or a subdivision or more than one subdivision or development within the immediate area;
- K. provide for the dedication or reservation of rights-of-way or easements for street and utility purposes, including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11;
- L. provide for the reservation of school sites;
- M. provide for the construction of recreation and open space facilities, street and utility facilities, or community service facilities;
- N. provide for the payment of a fee-in-lieu of dedication or construction for recreation and open space purposes or street and utility purposes;
- O. distribute population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare; and,
- P. otherwise accomplish the purposes of the General Statutes 160A, Part 1, Part 2, Part 3 and Part 4.

1.04 Effective Date

This Ordinance shall be effective at 12:01 a.m., on the 8th day of November, 2002.

1.05 Repealer

Part 9, Chapter 4, Zoning, and Part 9, Chapter 3, Subdivision Regulations, for the Town of Holly Springs, Wake County, North Carolina and its extra-territorial jurisdiction, as adopted by the *Town Council* on the 27th day of February, 1984, and all amendments thereto, are repealed as of the effective date of this UDO. [Amended Ordinance #04-06]*

1.06 Severability

It is hereby declared to be the intention of the *Town Council* of the Town of Holly Springs, North Carolina, that the sections, paragraphs, sentences, clauses, and phrases of

this UDO are severable and, if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any remaining sections, paragraphs, sentences, clauses or phrases of this UDO because the same would have been enacted without the incorporation into this UDO of such unconstitutional or invalid section, paragraph, sentence, clause, or phrase. [Amended Ordinance #04-06]

1.07 Eminent Domain

Nothing in this UDO or in any rules, regulations, or orders issued pursuant to this UDO shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, *Planning Board*, or *Board of Adjustment* now or hereafter established, to restrict or regulate the exercise of the power of eminent domain by the State of North Carolina or by any agency of the State of North Carolina.

1.08 Interpretation

In their interpretation and application, the provisions of this UDO shall be held to be the minimum requirements for the promotion of the health, safety, comfort, morals, convenience, and the general welfare of the public. In the case of any conflict or inconsistency between two or more provisions of this UDO (e.g., the restrictions set forth in an *Overlay District* versus the restrictions set forth in a *primary district*) or any other ordinance of the Town of Holly Springs, the provision which imposes the greater or higher or more restrictive standard of performance shall control.

1.09 Jurisdiction

Upon (i) adoption of this UDO by the *Town Council* of the Town of Holly Springs, and (ii) the effective date of this UDO, the Town of Holly Springs Planning Board shall be the duly authorized *Planning Board* for the incorporated areas of the Town of Holly Springs and its extra-territorial jurisdiction pursuant to the General Statutes of the State of North Carolina, and this UDO shall apply to all real property located within the corporate boundaries of the Town of Holly Springs and its extra-territorial jurisdiction.

However, pursuant to NCGS§ 160A-360(k), property that is located within the Town of Holly Springs extra-territorial jurisdiction and is used for *bona fide farm* purposes as described in NCGS§ 153A-340 is exempt from the regulations of this UDO. Property that is located in the Town of Holly Springs extra-territorial jurisdiction and ceases to be used for *bona fide farm* purposes shall become subject to the regulations of this UDO. *Bona fide farm* property that is exempt from the regulations of this UDO shall be subject to the Wake County floodplain ordinance or all floodplain regulation provisions of Wake County's unified development ordinance. [Amended Ordinance #04-06, #15-10, #18-03]*

A building or structure that is used for *agritourism* is a *bona fide farm* purpose if the *building or structure* is located on a property that (i) is owned by a person who holds a

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qualifying farmer sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105 - 164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S.105-277.3. Failure to maintain the requirements of this section for a period of three (3) years after the date the *building* or *structure* was originally classified as a *bona fide farm* purpose pursuant to this UDO shall subject the *building* or *structure* to applicable zoning and development regulation ordinances of this UDO in effect on the date the property no longer meets the requirements of this section. [Added Ordinance #18-03]*

1.10 Subdivision of Land

The regulations regarding the *subdivision* of land shall be applicable in any and all *districts* established by this UDO. Whenever a *subdivision* occurs, the rules, regulations and procedures of this UDO shall apply.

Any person who, being the owner or agent of the owner of any land located within the corporate boundaries of the Town of Holly Springs or its extra-territorial jurisdiction, thereafter subdivides their land in violation of this UDO or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a *subdivision* of the land before the plat has been properly approved under this UDO and recorded in the office of the register of deeds for Wake County, North Carolina, shall be guilty of a Class 1 misdemeanor.

1.11 Scope and Application of UDO

Except as expressly provided otherwise in this UDO:

- A. No person may use or occupy any land, *building*, *structure* or *improvement* or authorize or permit the use or occupancy of any land, *building*, *structure* or *improvement* under their control except in accordance with the applicable provisions of this UDO.
- B. No land, *building*, *structure* or *improvement* shall be used and no *building*, *structure* or *improvement* shall be erected, reconstructed or structurally altered, which is arranged, intended or designed to be used for any purpose other than a use which is permitted in the *district* in which such land, *building*, *structure* or *improvement* is located.
- C. No *building*, *structure* or *improvement* shall be placed, erected, moved or structurally altered with respect to height, area, bulk, or *setback* except in compliance with the regulations of this UDO.

1.12 Private Provisions

The provisions of this UDO are not intended to nullify, abolish or repeal any easement, covenant or other private agreement or restriction.

1.13 Determination of Land Uses Not Listed in this Unified Development Ordinance

It is recognized that this UDO may require interpretation to assign all possible *uses* to individual *districts*. Therefore, any *use* which is not specifically set forth in this UDO shall be reviewed by the *Director* for consistency with the intent set forth in each *district* and for compatibility with *use* characteristics typical of *uses* permitted within those *districts*. Based upon this review, the *Director* shall determine the appropriate *district* for any *use* which is not specifically set forth herein. In case of disagreement with the determination of the *Director* in assigning a *use* to an appropriate *district*, any aggrieved party may file an appeal pursuant to the provisions of Section 9.09 – Decision Matrix of this UDO. If it is: (i) determined by the *Director* that a particular *use* is not permitted in any agricultural, residential, commercial/mixed use, industrial or other *district* provided for in this UDO and no appeal of the *Director's* decision is filed pursuant to the provisions of Section 9.09 – Decision Matrix of this UDO; or, (ii) determined upon appeal that a particular *use* is not permitted in any agricultural, residential, commercial/mixed use, industrial or other *district* provided for in this UDO, then such *use* shall be deemed to require the PUD *District* and shall be considered to be a *permitted use* only in a PUD *District* in which such *use* is specifically included and described in a petition for zoning map change to the PUD *District*.

1.14 Saving Provision for Pending Enforcement Actions

Except as shall be expressly provided for in this UDO, the adoption of this UDO shall not: (i) nullify or make void any action pending under, or by virtue of, any prior zoning or subdivision control ordinance; (ii) discontinue, nullify, void, abate, modify or alter any penalty accruing or about to accrue under, or by virtue of, any prior zoning or subdivision control ordinance; (iii) affect the liability of any person, firm, or corporation under, or by virtue of, any prior zoning or subdivision control ordinance; (iv) waive any right of the Town of Holly Springs under any section or provision of any prior zoning or subdivision control ordinance; or, (v) vacate or annul any rights obtained by any person, firm, or corporation by lawful action of the Town of Holly Springs under, or by virtue of, any prior zoning or subdivision control ordinance.

1.15 Transition Rules

A. Site Plan Review / Zoning Permits

Any application for: (i) zoning permit by the *Town Council*; or, (ii) application for a zoning permit to the *Director*, which has been filed with the Department of Planning and Zoning of the Town of Holly Springs and which application is full and complete under the provisions of the Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code prior to the effective date of this UDO, shall continue to be processed to completion pursuant to the terms and conditions of Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code. Upon the issuance of a zoning permit, construction drawing approval, and the issuance of a *building*

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permit, construction shall be commenced within six (6) months or such zoning permit shall be deemed null and void. [Amended Ordinance #04-06]

B. Zoning Map Amendments

Any application for zoning map amendment which has been filed with the Department of Planning and Zoning of the Town of Holly Springs and which application is full and complete under the provisions of Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code prior to the effective date of this UDO shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code, provided, however, if the proposed use would no longer be permitted in the proposed *district* as a result of changes to that *district* resulting from the adoption of this UDO, such application shall be deemed amended to request the least intense *district* of this UDO in which the proposed use is permitted.

C. Conditional Use Permits, Variances

Any application before the *Board of Adjustment* (i.e., for a conditional use permit, or variance) which has been filed with Department of Planning and Zoning of the Town of Holly Springs and which application is full and complete under the provisions of Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code in effect prior to the effective date of this UDO, shall be allowed to continue to be processed to completion pursuant to the terms and conditions of such Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code, provided, however:

1. if such application is no longer required by the terms of this UDO, such application shall be considered dismissed for lack of jurisdiction; or,
2. if the proposed use or development requires additional approvals from the *Board of Adjustment, Town Council or Planning Board* pursuant to the terms and conditions of this UDO (and which additional approvals were not required by the terms and conditions of Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code) such application shall be deemed amended to include only those additional approvals which are minimally required and within the jurisdiction of the *Board of Adjustment* to grant for the proposed use or site plan for the development. [Amended Ordinance #04-06]

D. Special Use Permits.

Any application before the *Town Council* for a special use permit which has been filed with Department of Planning and Zoning of the Town of Holly Springs and which application is full and complete under the provisions of Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code in effect prior to the effective date of this UDO, shall be allowed to continue to be processed to completion

pursuant to the terms and conditions of such Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code, provided, however: [Amended Ordinance #04-06]

1. if such application is no longer required by the terms of this UDO, such application shall be considered dismissed for lack of jurisdiction; or,
2. if the proposed use or development requires additional approvals from the *Board of Adjustment, Town Council* or *Planning Board* pursuant to the terms and conditions of this UDO (and which additional approvals were not required by the terms and conditions of Part 9, Chapter 4, Zoning of the Town of Holly Springs Town Code) such application shall be deemed amended to include only those additional approvals which are minimally required and within the jurisdiction of the *Town Council* to grant for the proposed use or site plan for the development. [Amended Ordinance #04-06]

E. Preliminary Plans, Final Plats or Resubdivisions of Land

Any application for *preliminary plan* approval, *final plat* approval, resubdivision of land which have been filed with the *Director* of the Department of Planning and Zoning, and which application is full and complete under the provisions of Part 9, Chapter 3, Subdivision Control of the Town of Holly Springs in effect prior to the effective date of this UDO, shall continue to be processed to completion pursuant to the terms and conditions of such Part 9, Chapter 3, Subdivision Control of the Town of Holly Springs, provided that such *preliminary plans, final plats* or resubdivisions shall be subject to the duration regulations contained in Section 9.05, B., of this UDO.

F. Existing Special Use Permits

In any case where a special use permit has been approved by the *Town Council* pursuant to a prior existing zoning ordinance, but the *use* or development authorized by such approval has not been commenced within eighteen (18) months after the effective date of this UDO, said special use permit shall be deemed null and void. [Amended Ordinance #04-06]

G. Existing PUD Master Plans

In any case where a PUD Master Plan has been approved by the *Town Council* pursuant to a prior existing zoning ordinance, but the *use* or development authorized by such approval has not been commenced within eighteen (18) months of the effective date of this UDO, said PUD Master Plan shall be deemed null and void. [Amended Ordinance #04-06]

1.16 UDO Amendments

In its continuing administration of the purposes set forth in Section 1.03 – Purpose above, the *Town Council* of the Town of Holly Springs may find it reasonable and necessary to propose and adopt amendments to the text of this UDO or determine changes to the Zoning Maps incorporated into this UDO. All such amendments shall be considered and adopted in compliance with General Statutes of North Carolina (Chapters 160A-364, 160A-384, 160A-385, 160A-386, and 160A-387), the provisions of this UDO, and any applicable rules subsequently adopted by the *Planning Board* or the *Town Council* of the Town of Holly Springs governing such procedures. [Amended Ordinance #04-06]

1.17 Compliance Required for Use and Development of Real Property

Compliance with the terms and provision of this UDO shall be a prerequisite for the use and development of real property within the Town of Holly Springs and its extra-territorial jurisdiction. Failure to comply with the terms and provisions of this UDO shall, unless otherwise provided by the General Statutes of the State of North Carolina, be deemed to a zoning violation enforceable by the Town of Holly Springs as provided for in Section 10 – Enforcement of this UDO.

1.18 Exemptions for Transportation, Communication, and Utility Lines

Service or subterranean easements, including but not limited to those providing for: roadways; railroad lines; pipelines; electric power lines, conduits or systems; telephone lines, conduits or systems; cable television lines, conduits or systems; water mains, lines valves or fire hydrants; sanitary sewer mains, lines, laterals, manhole structures or lift stations; drainage or storm sewer inlets, pipes or roof drains; similar and comparable utility services and facilities; Municipal utility facilities such as Municipal wastewater and Municipal water treatment facilities; and Municipal pump stations shall be exempt from the provisions of this UDO. [Amended Ordinance #05-01, 17-01]

Bus stations, park and ride facilities, railway terminals, gas storage tanks, power stations, electricity relay stations, non-municipal water treatment plants, non-municipal pumping stations, water towers, , non-municipal sewage treatment plants, wireless telecommunication facilities and other facilities which generate, create or process such transportation, communication, or utility services, shall be subject to all *use* and *development standards* regulations of this UDO. [Amended Ordinance #05-01, 17-01]

1.19 State Land in an Overlay District

Pursuant to General Statute 160A-392, all real property owned or occupied by the State of North Carolina or any agency of the State of North Carolina shall be subject to the regulations of *use* and *development standards* set forth in this UDO, provided, however, no real property owned by the State of North Carolina, even if so indicated on the Official Zoning Map incorporated into this UDO, shall be deemed to be included in or

subject to the regulations of any *Overlay District, Special Use District or Conditional Use District* established pursuant to this UDO without the approval of the Council of State. [Amended Supplement #9- corrected typographical error]

1.20 Zoning Districts and Zoning Maps

A. Establishment of *Districts*

1. *General Use Districts* – The following *general use districts* are hereby established for the Town of Holly Springs and its extra-territorial jurisdiction, and land within said areas shall be designated on the Official Zoning Map by the following symbols:

GENERAL USE DISTRICTS	SYMBOL
Residential Districts	
Residential – Single Family	R-30
Residential – Single Family	R-20
Residential – Single Family	R-15
Residential – Single Family	R-10
Residential – Single Family / Two Family	R-8
Residential – Multifamily	R-MF-8
Residential – Multifamily	R-MF-15
Commercial / Mixed Use Districts [Amended Supplement #04-11]	
Local Business ⁽¹⁾	LB
Town Village	TV
Office / Research & Development Park	OR
Community Business	CB
General Business	GB
Industrial Districts [Amended Ordinance #11-03]	
Business and Technology	BT
Research and Technology	RT
Industry and Technology	IT
Planned Unit Developments	PUD

⁽¹⁾ – See Section 1.20, I., for limitations on Local Business (LB) Districts which were zoned O&I immediately prior to the adoption of this UDO.

2. *Conditional Use Districts* – All the above *general use districts* shall have a corresponding *conditional use district* in the event of a zoning map change with voluntary limitations offered by the Owner of a parcel of real estate pursuant to Section 9.07 – Conditional Use Districts and Conditional Use Permits of this UDO.

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3. *Overlay Districts* – *Overlay districts* are hereby established for the Town of Holly Springs and its extra-territorial jurisdiction as set forth in Section 6 – Additional General Use Districts & Overlay Districts of this UDO.

B. Order of *Districts*.

The *districts* listed in Section 1.20, A. – Establishment of Districts, above, are ranked in the order from the "least intense" *district* on the top, through each successively "more intense" *district* as the list progresses to the bottom, except for the Planned Unit Development *district* which shall not be considered part of such progression.

C. Official Zoning Map

In order to carry out the purpose of this UDO and to allow a variety of *uses* in different *districts* which are appropriate in location, arrangement, and density to the character of the individual *districts* and the establishment of a well considered pattern of development for the Town of Holly Springs and its extraterritorial jurisdiction, all real property located within: (i) the corporate boundaries of the Town of Holly Springs; and, (ii) the extraterritorial jurisdiction of the Town of Holly Springs, are hereby divided into *districts* as shown on the Official Zoning Map which, together with all explanatory matter, is incorporated by reference and declared to be a part of this UDO.

D. Identification of the Official Zoning Map

An Official Zoning Map for the Town of Holly Springs and its extraterritorial jurisdiction shall be maintained by the *Director*. The Official Zoning Map shall be maintained by the *Director* as a paper hard copy.

The Official Zoning Map may be identified by the signature of the Mayor; the attestation of the Town Clerk; and, the signature of the *Director* under the following words: "This is to certify that this is the Official Zoning Map of the Town of Holly Springs, North Carolina and its extraterritorial jurisdiction", together with the date of adoption of this UDO.

E. Official Zoning Map Changes

If, after adoption of the Official Zoning Map, the *Town Council*, in accordance with the provisions of this UDO, the *Development Procedures Manual*, and the General Statutes of the State of North Carolina, changes any of the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered by *staff* on a Working Copy of the Official Zoning Map which is maintained in the office of the Department of Planning and Zoning. The Working

Copy of the Official Zoning Map shall be maintained as an interim representation of the actual zoning changes approved by the *Town Council* since the most recent adoption of an Official Zoning Map. The Working Copy of the Official Zoning Map shall be available for public inspection and reference during all normal business hours. In case of discrepancy between changes noted on the Working Copy of the Official Zoning Map and the official printed record of the *Town Council*, the official printed record of the *Town Council* shall control. [Amended Ordinance #04-06, 13-09]

In the event that the Official Zoning Map becomes worn, damaged, destroyed, lost, or difficult to interpret, *staff* shall, on an as needed basis, prepare a revised Official Zoning Map for review and recommendation by the *Planning Board* to the *Town Council*. A revised Official Zoning Map shall incorporate all official actions of the *Town Council* related to matters depicted on the Official Zoning Map since the adoption of the prior Official Zoning Map. A revised Official Zoning Map may also include revisions to correct drafting errors and changes in the base information related to plats or streets. [Amended Ordinance #04-06]

The *Town Council* may, by resolution, adopt such revised Official Zoning Map. Any such revised Official Zoning Map shall be identified as described above with the addition of the phrase "As amended to and including the *Town Council* agenda of _____." [Amended Ordinance #04-06]

No change of any nature shall be made in the Official Zoning Map, or matter shown thereon, except in conformity with the amendment procedures set forth in this UDO.

F. Retention and Preservation of Record

Unless the prior Official Zoning Map has been lost or completely destroyed, the prior Official Zoning Map, along with all available records pertaining to its adoption or amendment, shall be retained and preserved in the office of the Department of Planning and Zoning.

G. Interpretation of the Official Zoning Map

Where uncertainty exists with respect to the boundaries of *districts* shown on the Official Zoning Map, the following rules shall apply to the interpretation of those boundaries:

1. Boundaries indicated as approximately following the center lines of thoroughfares, highways, *streets* or *alleys* shall be construed to follow the center lines.

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2. Boundaries indicated as approximately following platted *lot lines* shall be construed to follow the platted *lot lines*.
3. Boundaries indicated as approximately following the corporate boundary of the Town of Holly Springs or its extraterritorial jurisdiction boundary shall be construed as following such corporate boundary of the Town of Holly Springs or its extraterritorial jurisdictional boundary.
4. Boundaries indicated as approximately following railroad lines shall be construed to be midway between the main tracks.
5. Boundaries indicated as approximately following the center lines of streams, rivers, lakes or other bodies of water shall be construed as following the center lines of such bodies of water.
6. Boundaries indicated as approximately following floodplain lines shall be construed to follow the floodplain lines. If the floodplain lines are changed, either naturally or as permitted by law, and such floodplain line changes are documented and concurred with by the Town Engineer, such boundary shall be construed as moving with such change.
7. Boundaries indicated as following the contours of certain elevations or soils of a particular type shall be construed as following the actual height or soil contour as determined by accepted surveying practices.
8. Boundaries indicated as parallel to or extensions of features indicated in the subsections above shall be so controlled.
9. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
10. Where a discrepancy exists between the depictions on the Official Zoning Map and the text of a legal description accompanying an ordinance for zoning map change duly adopted by the *Town Council*, the text of the legal description shall control. [Amended Ordinance #04-06]
11. Where physical or cultural features existing on the ground do not agree with those shown on the Official Zoning Map, or in other circumstances not covered above, the *Director* shall interpret the boundaries. Any party dissatisfied with the interpretation of the *Director* may appeal such interpretation to the *Board of Adjustment*.

H. Zoning of Newly Annexed Land or Land Added to the Town of Holly Springs' Extra-territorial Jurisdiction

All real property annexed into the Town of Holly Springs or added to the Town of Holly Springs' extra-territorial jurisdiction after the effective date of this UDO shall be considered zoned to the R-30 *District* of this UDO.

In those instances in which the Owner of real property proposed for annexation into the Town of Holly Springs desires annexation only if the zoning of the real property is zoned to a *district* other than R-30, such Owner may file a petition for zoning map change which shall identify the real property and the requested *district*. Said petition shall be filed in compliance with the provisions of this UDO and any applicable Development Procedures Manual. The *Planning Board* shall consider the petition for zoning map change and certify the petition for zoning map change to the *Town Council* with a favorable recommendation, an unfavorable recommendation or no recommendation. The *Town Council* shall consider the request for annexation and zoning map change at a combined hearing and shall determine the annexation question and zoning map change under a single combined vote. The *Planning Board* and *Town Council* shall have all powers delegated to them by the General Statutes of the State of North Carolina G.S. 160A, et seq., and this UDO in determining the zoning map change. [Amended Ordinance #04-06]

Properties added to the Town of Holly Springs' extraterritorial jurisdiction through changes in the extraterritorial jurisdiction line shall be assigned a *district* within sixty (60) days following the change to the extraterritorial jurisdiction line. Determination of the *district* shall be accomplished in accordance with the provisions of Section 9 of this UDO or the Town of Holly Springs Development Procedures Manual regarding amendments initiated by the *Town Council* or the *Planning Board*. [Amended Ordinance #04-06]

I. Limitation on *Permitted Uses* in the LB - Local Business *District*.

Notwithstanding any provision of Section 3.02, A. – Permitted Uses, of this UDO to the contrary, *permitted uses* on any *lot*, parcel or piece of land which was zoned to the Office and Institutional (O&I) *district* of the Zoning Ordinance for the Town Holly Springs, North Carolina, immediately prior to the effective date of this UDO and which is designated LB – Local Business on the initial zoning map adopted in connection with this UDO shall be limited to only those *uses* listed under the sub-headings of: Educational Uses; Office/Professional Services; and, Residential, of Section 3.02, A., 1. – Primary Uses, of this UDO.

The limitation on *permitted uses* imposed by this Section may only be removed on an individual *lot*, parcel or piece of land by petitioning for and successfully obtaining a zoning map change of that *lot*, parcel or piece of land either:

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1. from LB (with O&I *permitted use* limitations) to LB (for the purpose of removing the O&I *permitted use* limitations imposed by this Section) and thereby authorizing all or some additional *permitted uses* listed in the LB *district*; or,
2. from LB to such other *district* of this UDO as may be deemed appropriate.

Neither the *Planning Board* or the *Town Council* shall be obligated to recommend approval of or to approve a request for zoning map change which, in the sole discretion of such board, is not consistent with the *Comprehensive Plan*, the purpose and intent of this UDO, or the requirements for the approval of a zoning map change contained in this UDO and the General Statutes of the State of North Carolina. [Amended Ordinance #04-06]

1.21 Nonconforming Lots, Uses, Buildings, Structures or Signs

A. Intent

Within the *districts* established by this UDO, there exist:

1. nonconforming *lots of record*;
2. nonconforming *buildings* or *structures*;
3. nonconforming uses of land;
4. nonconforming uses within nonconforming *buildings* or *structures*; and,
5. nonconforming *signs*

which were legally established prior to the effective date of this UDO, but which would be prohibited, regulated or restricted under the provisions of this UDO. It is the intent of this UDO to permit these *legally established nonconforming lots of record, buildings, structures, signs* and *uses* to continue until they are removed, but not to encourage their survival. It is further the intent of this UDO that *legally established nonconforming buildings, structures, signs* and *uses* shall not: (a) be enlarged upon, expanded or extended; or, (b) be used as grounds for adding other *buildings, structures, signs* or uses which are prohibited elsewhere in the same *district*. It is the duty of the landowner of a *nonconforming lot of record, building* or *structure, use* of land, *use* within a nonconforming *building* or *structure* or *sign* to provide substantial evidence that the nonconformity was legally established. If the owner cannot provide such evidence, the nonconformity will be deemed illegal. [Amended Ordinance #10-11, Amended Ordinance #11-03]

Nonconforming *lots of record, nonconforming buildings* or *structures, nonconforming uses* of land, nonconforming uses within nonconforming *buildings* or *structures, and nonconforming signs* that are either illegal or not legally established on the effective date of this UDO shall not become legally

established or validated by virtue of the enactment of this UDO unless such nonconforming *lots of record*, nonconforming *buildings* or *structures*, nonconforming uses of land, nonconforming uses within nonconforming *buildings* or *structures*, and nonconforming *signs* are in full compliance with the regulations of this UDO pertaining to the *permitted uses* and *development standards* of the *district* to which the real estate is zoned.

B. Incompatibility of Legally Established Nonconforming Uses

Legally established nonconforming uses are declared by this UDO to be incompatible with *permitted uses* in the *district* in which such *legally established nonconforming use* is located.

A *legally established nonconforming use* of a *building* or *structure*, or a *legally established nonconforming use* of land, shall not be extended, expanded or enlarged after the effective date of this UDO.

After the effective date of this UDO, no *on-premise sign* shall be erected for any continuous, lawful *legally established nonconforming use* which was in existence prior to the effective date of this UDO.

C. Avoidance of Undue Hardship

To avoid undue hardship, nothing in this UDO shall be deemed to require a change in the plans for or construction of any *building*, *structure* or *sign*, or the designation of use of any *building* or *structure*, for which a *zoning permit* has been properly issued prior to the effective date of this UDO; provided that:

1. the construction of such *building* or *structure* (excluding *signs*) is commenced within six (6) months of such effective date, or the construction of any such *sign* is commenced within thirty (30) days of such effective date;
2. construction of such *building*, *structure* or *sign* is diligently prosecuted to completion; and,
3. construction of such *building* or *structure* (excluding *signs*) shall be completed within two (2) years of the issuance of said *zoning permit*, or construction of such *sign* shall be completed within ninety (90) days of the issuance of said *zoning permit*.

D. Legally Established Nonconforming Lots of Record

Any legally established *lot* recorded or any legally established platted *lot* recorded prior to the effective date of this UDO, having less than the required minimum *lot*

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area or minimum *lot width* required by the applicable *district* regulations of this UDO, shall be deemed a permitted exception to such minimum *lot area* or minimum *lot width* and may be used for any use permitted within the applicable *district* in which such *lot* is located provided that:

1. all other *development standards* are met; and
2. such *lot* must be in separate ownership and not be contiguous with other *lots* in the same ownership.

If a nonconforming *lot* is under the same ownership as a contiguous *lot*, such contiguous *lots* shall be deemed as one *lot* for the purposes of this UDO.

E. Legally Established Nonconforming Buildings or Structures (Excluding Signs)

Where a *legally established nonconforming building* or *structure* exists on the effective date of this UDO that could not be built under the terms of this ordinance by reason of restrictions on: *gross floor area*; *lot coverage*; *building height* limitations; front, side and rear *setbacks* and *yards*; location on the *lot*; bulk; or other provisions of this UDO applicable to the *building* or *structure*, such *building* or *structure* may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

1. such *legally established nonconforming building* or *structure* may not be enlarged, expanded or altered in a way which increases its nonconformity, provided such *building* or *structure* may be altered so as to decrease the extent of nonconformity, unless in compliance with the regulations of Section 2.08, F., 2., Section 3.07, F., 2., or Section 4.04, E., 2.;
2. should such *legally established nonconforming building* or *structure*, or *legally established nonconforming* portion of a *building* or *structure*, be damaged or destroyed by any means to the extent of more than fifty (50) percent of the reported tax value at the time the damage or destruction is reported, as determined pursuant to Section 1.21, K., below, said *building* or *structure* shall not be reconstructed except in conformity with the provisions of this UDO; and
3. should such *legally established building* or *structure* be moved for any reason for any distance whatsoever, such *legally established building* or *structure* shall thereafter conform to the provisions of this UDO.

F. Legally Established Nonconforming Uses of Land

Where *legally established nonconforming uses* of land exist on the effective date of this UDO which would not be permitted by the provisions of this UDO, such uses may be continued so long as they remain otherwise lawful provided that:

1. such *legally established nonconforming uses* shall not be enlarged, expanded, increased or extended to occupy a greater area of land than was occupied on the effective date of this ordinance;
2. such *legally established nonconforming uses* shall not be moved in whole or in part to any portion of the *lot* or parcel other than that occupied by such uses on the effective date of this UDO; and
3. no additional *building* or *structure* shall be erected in connection with such *legally established nonconforming use* of land.

G. Discontinuation of Legally Established Nonconforming Uses of Land

If any *legally established nonconforming use* of land is discontinued or abandoned for more than six (6) consecutive months (except when government action impedes access to the premises), any subsequent use of such land shall conform to the provisions of this UDO.

H. Legally Established Nonconforming Uses Within Legally Established Nonconforming Buildings or Structures

If any *legally established nonconforming use* is located within a *legally established nonconforming building* or *structure* and such *legally established nonconforming building* or *structure* becomes unsafe or unlawful by reason of physical condition and is razed, the *legally established nonconforming use* previously being conducted in such *legally established nonconforming building* or *structure* shall be extinguished and no longer permitted.

If any *legally established nonconforming use* is located within a *legally established nonconforming building* or *structure* and such *legally established nonconforming building* or *structure* is damaged or destroyed by any means to the extent of more than fifty (50) percent of the reported tax value at the time the damage or destruction is reported, as determined pursuant to Section 1.21, K., below, the *legally established nonconforming use* previously being conducted in such *legally established nonconforming building* or *structure* shall be extinguished and no longer permitted unless application in compliance with the provisions of Section 9.05, C. – UDO Permits of this UDO and the Town of Holly Springs Development Procedures Manual is made for an *UDO permit* within one-hundred and eighty (180) days of such damage or destruction and a *UDO*

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permit demonstrating compliance with the following regulations is issued pursuant to such application: [Amended Supplement #9- corrected typographical error]

1. The proposed redevelopment shall, to the maximum extent practical, comply with the *development standards*, including but not limited to *lot coverage, off-street parking, off-street loading, lighting, landscaping, minimum yards or bufferyards, use of minimum yards and bufferyards, building setbacks, maximum building height, main floor area, and outside storage and outside operations*, applicable to the *legally established nonconforming use* in the *district* in which such use is first identified as a *permitted use*; and,
2. The *gross floor area* and the *maximum building height* devoted to the *legally established nonconforming use* shall not be increased, except as such increase is required to comply with other applicable federal, state or local regulations (i.e., minor enlargements to accommodate ADA accessibility guidelines or current building codes).

I. Repairs and Maintenance of Legally Established Nonconforming Buildings or Structures (Excluding Signs)

On any *legally established nonconforming building or structure*, or portion of a *building or structure* containing a *legally established nonconforming use*, work may be done on ordinary repairs or on the repair or replacement of non-bearing walls, fixtures, wiring or plumbing, provided that the cubic feet content existing when the *building or structure*, or portion of a *building or structure* containing a *legally established nonconforming use* became nonconforming shall not be increased. Nothing herein shall be deemed to prevent the strengthening, repairing or restoring to safe condition of any *building or structure*, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

If a *legally established nonconforming building or structure* or portions of a *building or structure* containing a *legally established nonconforming use* becomes unsafe or unlawful by reason of physical condition and is razed, such *building or structure* shall not thereafter be rebuilt or used except in conformity with the provisions of this UDO.

A *legally established nonconforming parking area, outside storage area or outside operations area* may be maintained, repaired or upgraded by hardsurfacing with asphalt or concrete provided that:

1. there is no increase in the total area occupied by the *parking area, outside storage area or outside operations area*; and,

2. if, in the discretion of the *Director*, the hardsurfacing would serve to reduce a potential negative impact of the existing *parking area, outside storage area or outside operations area* on surrounding properties.

In case of disagreement with the determination of the *Director*, any aggrieved party may file and appeal with the *Board of Adjustment* pursuant to the provision of Section 9 of this UDO. Such hardsurfacing shall require a *UDO permit* and shall also be subject to full review under and compliance with the Storm Drainage requirements of the Town of Holly Springs' Engineering Design and Construction Standards.

J. Legally Established Nonconforming Signs.

1. Any *legally established nonconforming sign* within the Town of Holly Springs or the extra-territorial jurisdiction of the Town of Holly Springs may continue to exist, including the performance of normal and routine maintenance, so long as such *sign* remains otherwise lawful.
2. *Legally established nonconforming signs* may receive normal and routine repair and maintenance subject to the following provisions:
 - a. a *legally established nonconforming sign* may not be enlarged, expanded or altered in a way which increases its nonconformity;
 - b. a *legally established nonconforming sign* erected pursuant to the grant of a variance of either a previously enacted zoning regulation or this UDO for number of *signs*, height of *sign*, *setback of sign* or *sign surface area* may be altered so as to decrease the extent of nonconformity authorized by such grant of variance;
 - c. except as provided for in sub-section 2., b., above, the removal of a *sign structure* or a *sign cabinet* shall be deemed definitive evidence that such *sign* requires work beyond normal and routine repair and maintenance, and such *sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this UDO;
 - d. if a *legally established nonconforming sign* is damaged or destroyed by any means to the extent that the repair or reconstruction of the *sign* exceeds fifty (50) percent of the *sign's* replacement cost, determined pursuant to Section 1.21, K., below, said *legally established nonconforming sign* shall not be reconstructed except in conformity with the provisions of this UDO;

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- e. if the cost of normal and routine repair and maintenance of a *legally established nonconforming sign* exceeds fifty (50) percent of the *sign's* replacement cost, determined pursuant to Section 1.21, K., below, said *legally established nonconforming sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this UDO; and,
- f. should a *legally established nonconforming sign* be moved for any reason for any distance whatsoever, such *legally established nonconforming sign* shall thereafter conform to the provisions of this UDO.

K. Legally Established Nonconforming Trash Containers.

Any legally established nonconforming trash container located within a *Gateway Corridor* and exceeding thirty-six (36) cubic feet shall be brought into compliance with the screening requirements of the applicable *district* within eighteen (18) months of the effective date of this UDO.

L. Determination of Reported Tax Value or Replacement Cost.

In determining the reported tax value of a *building* or *structure* (excluding *signs*) or the replacement cost of a *sign*, the *Director* may consider the following items:

1. *Building* or *structure* - documentation prepared by and provided by the applicable insurance company responsible for adjusting the loss;
2. *Sign* - documentation prepared by and provided by an appraiser licensed by the State of North Carolina to appraise the type of property involved; or,
3. Other documentary evidence relevant to reported tax value or replacement cost deemed appropriate by the *Director*.

1.22 Sight Distance Requirements

All development shall comply with the Sight Distance Requirements at all street and driveway intersections in accordance with the regulations of the North Carolina Department of Transportation and the Sight Distance requirements of the Town of Holly Springs' Engineering Design and Construction Standards.