

CHAIRPERSON'S STATEMENT TO OPEN SESSION  
OF TREE ADVISORY COMMISSION HEARING

The chairperson will call the meeting to order and make the following announcement:

I now call this hearing before the Tree Advisory Commission to order. All phases of this hearing, including the Tree Advisory Commission's deliberations, is being recorded and will be open to the public, except that the Tree Advisory Commission may go into closed session to consult with its attorney pursuant to North Carolina General Statute § 143-318.11(a)(3).

All hearings before the Tree Advisory Commission are heard de novo (brand new). This hearing concerns a variance/violation upon property located at: \_\_\_\_\_. I will note for the record that representatives for the City are present and the Appellant/Petitioner is/is not present for this hearing.

The Tree Advisory Commission will enforce rules of conduct and decorum to permit and secure a full, fair, and orderly hearing and to permit all relevant, competent, substantial, and material evidence to be received herein.

I will inform both parties that the Tree Advisory Commission will only consider relevant evidence that is presented at this hearing or that is presented to the Tree Advisory Commission in some other manner that the Tree Advisory Commission may direct. Relevant evidence shall be limited to the issues that are within the Commission's power to address. The rules of evidence shall not apply to this hearing and the Tree Advisory Commission may give probative effect to competent, substantial, and material evidence.

The Tree Advisory Commission's decision shall be based upon all evidence presented at this hearing. No information, outside of the evidence presented at this hearing, shall be considered by the Tree Advisory Commission and shall be stricken from the record.

All witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.

Hearing Procedure for the Tree Advisory Commission is as follows:

1. Presentation by City staff
2. Cross-examination by Appellant/Petitioner
3. Cross-examination by the Tree Advisory Commission
4. Presentation by Appellant/Petitioner
5. Cross-examination by City staff
6. Cross-examination by the Tree Advisory Commission
7. Closing Statement by City staff
8. Closing Statement by Appellant/Petitioner
9. Discussion & Deliberation by Tree Advisory Commission

BYLAWS, RULES, AND PROCEDURE FOR THE  
TREE ADVISORY COMMISSION OF THE CITY OF CHARLOTTE

**ARTICLE I. GENERAL RULES**

The Tree Advisory Commission (“Commission”) shall be governed by the terms of Chapter 21 of the Charlotte City Code as amended and by these Bylaws, Rules, and Procedures as amended. All Commission members shall thoroughly familiarize themselves with these regulations and ordinances.

**ARTICLE II. PURPOSE AND INTENT**

The mission of the Commission is to achieve recognition that trees and landscaping are an integral part of our quality of life, and it is the responsibility of all citizens to protect our urban forest environment.

**ARTICLE III. DEFINITIONS**

In addition to the definitions listed in Chapter 21 of the Charlotte City Code, the following words, terms and phases, when used shall have the meanings ascribed to them.

*Administrative Officer* means the City Engineer or his/her designee charged with performing the duties, responsibilities, enforcement, and administration of the Trees Ordinance codified in Chapter 21 of the Charlotte City Code.

*Applicant* means the Person who submits a request for a variance to the Commission and shall be interchangeable with Person.

*Petitioner* means the Person who appeals a decision, notice of violation or assessment of a civil penalty and shall be interchangeable with Person.

**ARTICLE IV. OFFICERS AND DUTIES**

- A. The officers of the Commission shall consist of a Chairperson and a Vice-Chairperson.
- B. A Chairperson shall be elected by a majority vote from the full voting membership of the Commission. The Chairperson’s term shall be for one (1) year, and/or until a successor is elected, beginning on January 1st and is eligible for re-election. The Chairperson shall preside at all meetings and decide upon all points of order and procedure, subject to these rules, unless directed otherwise by a voting majority of the Commission in session at the time. The Chairperson shall appoint any committees found necessary to investigate any matters before the Commission.
- C. The Chairperson shall have the right to vote on all matters.
- D. A Vice-Chairperson shall be elected by the Commission from among its voting members in the same manner and for the same term as the Chairperson. The Vice-Chairperson shall serve as acting Chairperson in the absence of the Chairperson and shall have the same powers and duties as the Chairperson during such times.
- E. In the absence of both the Chairperson and Vice-Chairperson, the Commission shall select its presiding officers from those voting members present.

- F. In the event the office of Chairperson becomes vacant, the Vice-Chairperson automatically becomes the Chairperson as of the date of the vacancy. In the event the office of Vice-Chairperson becomes vacant, the Commission shall elect a new Vice-Chairperson.

#### **ARTICLE V. CLERK TO THE BOARD**

A Clerk to serve as Staff Assistant to the Commission shall be appointed by the Administrative Officer. The Clerk, subject to the direction of the Chairperson and Administrative Officer, shall perform the following:

- A. conduct all correspondence of the Commission;
- B. arrange for all public notices required to be given;
- C. notify members of pending meetings and their agenda;
- D. record the attendance of members of the Commission.
- E. notify parties to cases before the Commission of its decision;
- F. keep all records and execute the clerical work of the Commission; and,
- G. maintain a permanent volume of the minutes of every meeting of the Commission. These minutes shall constitute the record of all important facts pertaining to each meeting and hearing, every motion voted upon by the Commission.

#### **ARTICLE VI. MEMBERS**

It is desirable that Commission members be representative of a cross-section of the citizens interested in tree preservation and planting.

The Commission shall consist of twelve (12) regular members.

- A. Seven (7) of the voting members shall be appointed by the City Council
- B. Three (3) of the voting members shall be appointed by the Mayor.
- C. Two (2) members shall be representatives of the city engineering and property management department and shall be ex officio (non-voting) members. These members shall be a Senior Urban Forestry Specialist or his/her designated representative and the City Arborist or his/her designated representative.

The Commission may nominate prospective members to City Council and the Mayor, and may select citizens based on the following experience and background:

- A. Professional horticulturist or Landscape Contractor with five (5) year's experience.
- B. Registered Landscape Architect with five (5) years experience.
- C. Professional with five (5) years experience in City Planning, Urban Design, Government Ordinance & Regulations.
- D. Member of a natural resources advocacy group
- E. Member of the International Society of Arboriculture
- F. Representative of sustainable development community.
- G. Representatives of citizens' interest groups.
- H. Representative of public utilities.
- I. Representative of neighborhood group.

## **ARTICLE VII. RULES OF CONDUCT FOR MEMBERS**

- A. Members of the Commission may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at all Commission meetings is required and conscientious performance of the duties required of members shall be considered a prerequisite of continuing membership on the Commission. Commission members should refer to Section 5: Attendance Policy of the Charlotte City Council Resolution
- C. No member of the Commission shall vote on any variance or appeal unless the Commission member was present from the beginning of the hearing to the end of the hearing.
- D. No member of the Commission shall discuss any case with any parties prior to the public hearing on that case. A Commission member shall not participate in or vote on any matter in which the Commission member has had undisclosed *ex parte* communications prior to the public hearing on the case.
- E. Commission members shall not, by any available means, investigate, research, explore, or travel to the site or location to inquire about the circumstances for an appeal or variance.
- F. Commission members shall not express individual opinions on the proper judgment of any case with any parties prior to its deliberations on that case.
- G. No Commission member shall participate in or vote on any matter in which the Commission member has a fixed opinion prior to hearing the matter that is not susceptible to change.
- H. New Commission members must complete a new member orientation before participating in and voting at any hearing.

## **ARTICLE VIII. CONFLICTS OF INTEREST**

No voting member of the Commission shall take part in a hearing, participate in any consideration or determination, seek to influence a decision, or cast a vote involving any matter that is before the Commission if: a private benefit is derived on behalf of the Commission member, their relatives, or their business interests; a Commission member is personally or financially interested; or, a Commission member has a close financial, business, or family relationship with a party before the Commission. In applying this rule the following procedure shall govern:

- A. A Commission member, who determines the existence of a conflict of interest or upon recognition of a conflict, shall declare the existence of a conflict and shall refrain from any deliberation on the matter and shall sit in the audience where such deliberations are taking place.
- B. A Commission member, who believes there may exist a conflict of interest, shall declare the possibility of the conflict and may ask for a determination by the Commission.
- C. Any interested party may object to the existence, whether disclosed or undisclosed, of a conflict of interest by a Commission member and shall state the reason for the objection. If the named Commission member does not recuse himself/herself, then the voting members of the Commission shall hear all evidence and shall, by majority vote, make the final determination upon the objection presented by the interested party.
- D. Withdrawal from participation in any matter is necessary only in those specific cases in which a conflict arises. There shall be no attempt to exclude entire categories of considerations because of the business or profession with which a member is associated.
- E. Addition procedures are outlined in Section 7: Conflict of Interest of the Charlotte City

Council Resolution.

## **ARTICLE IX. MEETINGS**

### **A. Regular Meetings**

Regular meetings of the Commission shall be held per the Commission's adopted calendar for the year; provided that meetings may be held at any other convenient locations in the City if the Chairperson so directs before the meeting.

### **B. Special Meetings**

Special meetings of the Commission may be called at any time by the Chairperson. Notice of the time and place of special meetings shall be given at least forty-eight (48) hours prior to the meeting by the Chairperson to each member of the Commission and the City Clerk.

### **C. Cancellation of Meetings**

Whenever there are no appeals, applications for variances, or other business for the Commission, or whenever a quorum will not be available, the Chairperson may dispense with a regular meeting by giving written or oral notice to all members prior to the time set for the meeting.

### **D. Quorum**

In all circumstances, a majority of the voting members of the CTAC, not counting vacancies, shall constitute a quorum for the purpose of conducting business.

### **E. Voting at Hearings**

All voting members, constituting a quorum, must vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Articles VII and VIII above. A majority vote of the quorum shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Officer ("Trees Ordinance"). Vacant positions on the Commission and voting members who are disqualified from voting shall not be considered "members of the Commission" for calculation of the requisite majority.

### **F. Conduct of Business Meetings**

All business meetings shall be open to the public, subject to these rules. The order of business at the regular meetings shall be as follows: Roll call, unfinished business, new business, approval of minutes, and any reports of committees. The Commission shall have the discretion to modify the order of the business meeting as necessary.

## **ARTICLE X. VARIANCES AND APPEALS**

### **A. Types of Variances**

The Commission shall hear and decide all requests for variances from the Trees Ordinance codified under Chapter 21 of the Charlotte City Code. In considering variances, it may hear those cases based upon alleged hardship resulting from strict enforcement of the Ordinance.

B. Types of Appeals

The Commission shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Administrative Officer. In considering appeals, it may hear those cases based upon an allegedly improper or erroneous interpretation of the Ordinance.

C. Procedure for Filing Variances and Appeals

A Person may file simultaneously for an appeal before or request a variance from the Commission regarding the same facts or circumstances giving rise to a violation within thirty (30) days of receiving a notice of violation. If the Person seeks an appeal of the notice of violation, but does not seek a variance, then the Person cannot seek a variance thereafter from the Commission within the next two (2) years unless there are substantial changes in conditions or circumstances affecting the property in question.

D. Required Time Within Which To File Variance Request or Appeal

No variance request or appeal shall be heard by the Board unless application is filed within thirty (30) days of the order, requirement, decision, or determination made by the Administrative Officer.

**ARTICLE XI. CONTINUANCES**

A. Procedure to Properly File a Request for a Continuance.

If an Applicant, Petitioner, owner of property named in the application, or party named in the application wishes to request a continuance, then the Administrative Officer must receive a request for continuance and the reasons for the request in writing, or have such request received in the mail addressed to the attention of the Administrative Officer by 5:00 p.m. on Thursday before the regularly scheduled hearing on the third Tuesday of each month. Stated more generally, the receipt of the request for a continuance must be received in writing at least two (2) full working days before the scheduled hearing.

Upon receipt of such a properly filed request for a continuance, the Administrative Officer shall have the authority to continue the case to the next regularly scheduled meeting/special meeting if the Person establishes to the satisfaction of the Administrative Officer that there is just cause for granting a continuance. If the Administrative Officer grants a continuance, then that shall be conclusive. If the Administrative Officer denies a request for a continuance, then the Person may request a continuance from the Commission based on just cause, but the Person must be prepared to have the variance request or appeal heard if the Commission denies the request. A majority vote shall be required in order to grant a continuance.

If the Person wishes to file a second request for a continuance, or any subsequent request for a continuance, then the Person must properly comply with the same procedure as stated above. However, the Administrative Officer shall not have authority to grant a second request for a continuance. The Administrative Officer shall have the authority to request sufficient information from the Person either justifying or corroborating such a request for a continuance and the Person is expected to provide the information to the Administrative Officer before the day of the scheduled hearing. The Person or the Person's representative must appear before the Commission at the scheduled hearing to request a continuance from the Commission. The Administrative Officer shall be given an opportunity to report on the information provided by the Person to support the granting of the continuance and the Administrative Officer shall have the right to make a recommendation on the request. A majority vote shall be required in order to grant a continuance. The Commission shall not grant the continuance unless there are exceptional, extenuating reasons justifying a continuance which shall be stated in the minutes. In appearing before the Commission, the Person must be fully prepared to have the Commission decide to proceed to hear the case if the request for continuance is denied.

**B. Failure To Properly File A Request For A Continuance**

If a Person fails to properly comply with the procedure described herein, then the case shall be heard as scheduled. Following the denial of the continuance request, if the Person fails to appear for the hearing or appears and does not elect to proceed at the hearing, then the Commission shall conduct the hearing as scheduled.

**ARTICLE XII. HEARINGS**

**A. Notice Of Hearings**

Notice of the time and place of each hearing shall be given to any of the following: the Applicant or Petitioner, the owner of the property, and to anyone directly named in the application. Such notice shall state the location of the building or lot, and the general nature of the question involved in the application.

**B. Time**

After receipt of notice of an appeal or variance application, the Administrative Officer shall schedule the time for a hearing, which shall be at the next available regularly scheduled meeting or at a special meeting.

**C. Submission of Evidence**

In order for any evidence to be considered by the Commission in its deliberations, such evidence must be made known to all parties and all parties must have the opportunity to object to and rebut the same. Thus, at least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the commission.

#### D. Conduct of Hearing

All parties before the Commission shall have the opportunity to:

1. Be present and be heard;
2. Be represented by counsel;
3. Present evidence through witnesses and competent testimony relevant to the issues before the commission;
4. Cross examine witnesses; and,
5. Present rebuttal evidence.

The Order of Parties Presentation shall be:

1. All witnesses before the Commission shall be placed under oath.
2. City staff shall give a preliminary statement of the case and present evidence and exhibits.
3. The Applicant/Petitioner shall present the evidence and arguments in support of his/her application.
4. Persons in favor of granting the application shall present the evidence and arguments for the application.
5. Persons opposed to granting the application shall present the evidence and arguments against the application.
6. Both sides shall be permitted to present rebuttals to opposing evidence, testimony, and arguments.
7. If there are facts within the special knowledge of a member of the Commission, they may be properly considered. However, they must be revealed at the public hearing and made a part of the record so that each party will have an opportunity to refute the special knowledge by evidence or argument and the reviewing Commission may judge its competency and materiality.
8. Commission members may ask questions of City staff, Applicant/Petitioner, Applicant's or Petitioner's representative, and any of the witnesses or Persons.
9. The Chairperson closes the public hearing portion of the case informs everyone that the Commission has entered into Discussion & Deliberation.
10. Chairperson asks for a motion to grant or deny the variance request or a motion to affirm or reverse a notice of violation.
11. Chairperson asks for a second to the offered motion.
12. Commission members vote and include findings of fact and conclusion of law.

#### E. Rehearings

The Board may not rehear a variance application that has been denied until two (2) years after the denial. Prior to that two (2) year period, it shall refuse to hear an appeal or application if it finds there have been no substantial changes in conditions or circumstances to the application.

### **ARTICLE XIII. DECISIONS**

#### **A. Rendering of the Commission's Decision**

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.

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.

A majority vote shall be required to render a decision by the Commission. If the Commission has only six (6) people present for a hearing, which constitutes quorum, then four votes shall be required to render a decision.

#### **B. Minutes**

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 in accordance with Article IX.E. The decision of the Commission shall be based on findings of fact and conclusions of law to support its decision for a variance or appeal. In addition, the Commission shall state in the record in detail any practical difficulty or unnecessary hardship upon which the request for variance was based and which the Commission finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the Commission in connection with the granting of a variance.

#### **C. Public Records of Decisions**

The decisions of the Commission, as recorded in the minutes, shall be a public record filed and available for inspection.

#### **D. Expiration of Permits**

Unless otherwise specified by the Commission, any decision of the Commission granting a variance shall automatically expire if a permit or a certificate of occupancy pertaining to the need for the variance is not obtained within two (2) years from the date of the meeting of the Commission at which the Commission rendered its decision.

### **ARTICLE XIV. AMENDMENTS**

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than a majority of the full voting Commission, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken. Anything in these By-laws inconsistent or in conflict with the laws of the State of North Carolina, or the policies of the City Council of the City of Charlotte, is hereby rescinded and annulled.