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CHAPTER 1: GENERAL PROVISIONS

1.1 TITLE; EFFECTIVE DATE

This Ordinance shall be officially known as the "Land Development Ordinance of the Town of Cary, North Carolina." It also may be called the "LDO" or the "Zoning Ordinance," and is referred to throughout this document as "this Ordinance." This Ordinance shall become effective on July 1, 2003.

1.2 AUTHORITY

This Ordinance is adopted pursuant to authority granted to the Town of Cary by the General Assembly of the State of North Carolina, and especially the Town Charter; North Carolina General Statutes (N.C.G.S. or NCGS or G.S.) Chapter 160A, Article 19 (Planning and Regulation of Development); G.S. Chapter 113A, Article 4 (Sedimentation Pollution Control); G.S. Chapter 143, Article 21, Part 6 (Floodway Regulation); G.S. Chapter 63, Article 4 (Airport Zoning); G.S. Chapter 136 (Roads and Highways); G.S. Chapter 157 (Housing); G.S. 143, Article 21, Part 1 (Water Supply Watershed Protection); and any special legislation enacted for the Town of Cary as amended.
(Ord. No. 04-001, 1-8-04)

1.3 GENERAL PURPOSES

The provisions of this Ordinance are enacted to protect the public health, safety, and general welfare, and to implement the policies of the Cary Comprehensive Plan. The regulations are specifically intended to:

1.3.1 Preserve the character and quality of residential neighborhoods;

1.3.2 Foster convenient, compatible, and efficient relationships among land uses;

1.3.3 Lessen congestion in the streets;

1.3.4 Ensure the provision of adequate open space for light, air, and fire safety;

1.3.5 Prevent the overcrowding of land and avoid undue concentrations of population;

1.3.6 Facilitate the adequate and safe provision of transportation, water, wastewater treatment, schools, parks, and other public facilities and requirements;

1.3.7 Ensure that service demands of new development will not exceed the capabilities of existing streets, utilities, or other public facilities and services;

1.3.8 Maintain and enhance the character of various districts within the Town, in light of their peculiar suitability for particular uses;

1.3.9 Maintain and protect high quality aesthetic standards for development;

1.3.10 Conserve the value of buildings and land;

1.3.11 Conserve the natural resources and environmental quality of the Town and its environs; and

1.3.12 Protect development in and residents of the community from flooding and other hazards.

1.4 COMPREHENSIVE PLAN AND OTHER PLANS AND MANUALS

1.4.1 Purpose and Role

The Comprehensive Plan for the Town of Cary shall serve as the basic policy guide for the administration of this Ordinance. The Comprehensive Plan serves as the statement of goals, recommendations, and policies guiding the development of the physical environment of the Town, its extraterritorial jurisdiction, and any other geographic areas specifically addressed by the Comprehensive Plan. The goals, vision, recommendations, and policies of the Comprehensive Plan may be amended from time to time to meet the changing requirements of the Town and any other geographic areas addressed by the Comprehensive Plan. Procedures for amending the Comprehensive Plan are set forth in Section 3.2.

1.4.2 Legal Effect

All development and redevelopment within the Town and its extraterritorial jurisdiction shall be in accordance with the policy direction provided by all of the applicable elements or volumes of the Comprehensive Plan, as adopted or amended by the Town Council. Amendments to the text of this Ordinance (see Section 3.3) and/or rezoning of property (see Section 3.4) may be required in order to ensure compliance with this section.

1.4.3 Components of the Comprehensive Plan

The following elements or volumes of the Comprehensive Plan set forth the Town's overall goals and strategies in each of the respective areas:

(A) Affordable Housing Plan

This plan sets forth the Town's overall goals and strategies relating to the encouragement of construction of moderately priced housing and financial assistance to those struggling to purchase or rehabilitate existing housing. The plan is a general policy guide intended to ensure that current and future Town plans, policies, procedures, and regulations, as well as land use decisions and investments, are consistent with the goals and strategies identified in the Affordable Housing Plan.

(B) Growth Management Plan

This plan sets forth the Town's overall goals and objectives relating to the rate and timing, location, amount and density, cost, and quality of growth. The plan is a general policy guide intended to ensure that current and future Town plans, policies, procedures, and regulations, as well as land use decisions, are consistent with the guiding principles identified for these five (5) growth characteristics.

(C) Land Use Plan

This plan presents the Town's declaration of its official policy with regard to the form and pattern of future development. It directs growth by serving as a reference guide when considering rezonings, annexation, subdivisions, and site plans. The plan also is used to direct provision of public infrastructure and aid decisions for private sector investment. Included within the Land Use Plan are several smaller "Area Plans" which serve as

amendments or extensions to the official Land Use Plan. Such Area Plans include, but are not limited to: the Town Center Area Plan, Southeast Gateway Area Plan and the Northwest Cary Area Plan.

(D) Open Space Plan

This plan sets forth a plan of action to identify and protect the Town's natural resources and other special environmental features. The Plan identifies parcels with significant resource value and open space potential and ranks them according to the quality and quantity of resources present, threat of loss, and other factors.

(E) Parks, Greenways, and Bikeways Master Plan

This plan addresses the enhancement and future implementation of a system of parks, greenways, and bikeways to meet future recreation and transportation needs of local residents.

(F) Transportation Plan

This plan sets forth the Town's overall objectives and strategies regarding both long-term and short-term planning of roadways, bicycle facilities, pedestrian facilities, and transit.

(G) Historic Preservation Master Plan

This plan sets forth preservation goals, objectives, and implementation actions to build a complete and effective historic preservation program for the Town by the year 2020.

1.4.4 Other Plans, Ordinances and Manuals

In addition to the Comprehensive Plan, other plans and manuals contain additional recommendations, policies, and standards regarding development within the Town. Such documents include, but are not limited to: the Design Guidelines Manual, the Downtown Design Guidelines, the Community Appearance Manual, the Standard Specifications and Details Manual, the Water System Master Plan, the Wastewater System Master Plan and the Town Code of Ordinances. It is the intent of the Town to administer this Ordinance in accordance with these supplemental plans and manuals, including subsequent amendments. Amendments to these supplemental plans and manuals shall not be required to follow the procedures for amending the Comprehensive Plan set forth in Section 3.2.

(Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2015-LDO-001, 4-21-15)

1.5 ZONING MAP

1.5.1 Incorporation Into This Ordinance

The Official Zoning District Map, which is referred to throughout this Ordinance as the "Zoning Map," along with all notations, references, and other information shown thereon, such as zoning districts and extraterritorial jurisdiction, is hereby incorporated into and made part of this Ordinance. As part of this Ordinance, the Zoning Map shall be amended only in accordance with the procedures set forth in Section 3.4 of this Ordinance.

1.5.2 Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of the zoning districts shown on the Zoning Map, the Planning Director shall use the rules set forth below to interpret the Zoning Map. Appeals shall be made to the Zoning Board of Adjustment pursuant to Section 3.21.

(A) Where the Zoning Map shows a zoning district boundary line located within or following a street or alley right-of-way, railroad or utility line right-of-way, easement, or waterway, the district boundary shall be considered to be in the center of the right-of-way, easement, or waterway. If the actual location of such right-of-way, easement, or waterway, as indicated in a recorded legal description of such, varies slightly from the location shown on the Zoning Map, then the actual location shall control.

(B) Where the Zoning Map shows a boundary line as being located a specific distance from a street line or other physical feature, this distance shall control.

(C) Where the Zoning Map shows a district boundary to coincide with a property line or municipal border, the legal property line or municipal border shall be considered to be the district boundary, unless otherwise indicated on the Map.

(D) Where the Zoning Map shows a district boundary to not coincide or approximately coincide with any street, alley, railroad, waterway, or property line, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the Zoning Map.

(E) Where the Zoning Map shows a district boundary dividing a lot, each part of the lot shall be used in conformity with the standards established by this Ordinance for the zoning district in which that part is located.

(F) Where the case record conflicts with the Zoning Map, the case record shall control. For example, if the Zoning Map shows a property to be zoned GC, yet the case record shows that the property was actually zoned O&I, the case record would control and the map would be changed to reflect the case record.

1.5.3 Transition to New Zoning Districts

Upon adoption of this Ordinance, land that is presently zoned within an existing zoning classification shall be classified within one of the zoning classifications set forth in Chapter 4, *Zoning Districts* and as shown in this table. The following table summarizes the transition from old Unified Development Ordinance districts to new districts set forth in this Land Development Ordinance.

TABLE 1.5-1: NEW VERSUS OLD ZONING DISTRICTS	
Old Zoning Districts	**New Zoning Districts**
Resource Conservation (RC)	Resource/Recreation (RR)
	Residential 80 (R-80)
Residential 40 (R-40)	Residential 40 (R-40)
Residential 30 (R-30)	
	Residential 20 (R-20)
Residential 40 Conforming (R-40 C)	
Residential 30 Conforming (R-30 C)	
Residential 12 (R-12)	Residential 12 (R-12)
Residential 10 (R-10)	
Residential 8 (R-8)	Residential 8 (R-8)
Residential Mixed (RM)	Transitional Resident (TR)
Downtown Residential (DR)	
Residential Multi-Family 12 (RMF-12)	Residential Multi-Family (RMF)
Residential Multi-Family 8 (RMF-8)	Residential Multi-Family (RMF)
Mobile Home (MH)	
	Corridor Transition (CT)
Office & Institutional (O&I)	Office & Institutional (O&I)
Commercial District (B-2)	General Commercial (GC)
Business District (B-1)	
Planned Employment Center (PEC)	Office, Research & Development (ORD)
Light Industrial (I-1)	Industrial (I)
Heavy Industrial (I-2)	Industrial (I)
	Town Center (TC)
Planned Unit Development Overlay	Planned Development District Major (PDD)
Planned Unit Development Overlay	Planned Development District Minor (PDD)
Airport Overlay	Airport Overlay
Thoroughfare Corridor Overlay	Thoroughfare Corridor Overlay
Downtown Overlays	
Reservoir Watershed Protection Overlay	Watershed Protection Overlay
	Mixed Use Overlay District

1.5.4 Transition to Conditional Zoning

Upon adoption of this Ordinance, any land that was subject to a Conditional Use Permit that was approved prior to the effective date of this Ordinance shall continue to be governed by the conditions of the approved Conditional Use Permit as recorded with the Wake County Register of Deeds or Chatham County Register of Deeds, regardless of the property's designation on the Official Zoning Map as a Conditional Use District, Conditional District, or General Use District.

All provisions of this Ordinance shall apply to all properties that are the subject of Conditional Use Permits approved prior to the effective date of this Ordinance; however, all conditions contained in such Conditional Use Permits shall remain valid until amended, unless such conditions are in conflict with this Ordinance, any federal or state laws, or other existing Town ordinance. In such situations, the more restrictive condition or law shall govern.

(Ord. No. 06-009, 4-27-06)

1.6 JURISDICTION AND APPLICABILITY

1.6.1 General

The provisions of this Ordinance shall apply to all land, buildings, structures, and uses thereof located within the corporate limits of the Town of Cary and within the Town's extraterritorial jurisdiction, as identified on the Zoning Map, including land owned by local agencies.

1.6.2 Applicability to County and Federal Property

To the extent allowed by law, the provisions of this Ordinance shall apply to all land, buildings, structures, and uses owned or used by county or federal agencies within the corporate limits of the Town of Cary. Where the provisions of this Ordinance do not apply to such structures and land, such agencies are encouraged to meet the provisions of this Ordinance.

1.6.3 Applicability to State Property

The provisions of this Ordinance are applicable to the erection, construction, and use of buildings owned by the State of North Carolina under G.S. 160A-392; however, no land owned by the State may be included within an overlay district or a special use or conditional use district without approval of the Council of State. To the extent allowed by law, the provisions of this Ordinance shall apply to all land, structures, and uses owned or used by the State of North Carolina. Where the provisions of this Ordinance do not apply to such land, structures, and uses, the State is encouraged to meet the provisions of this Ordinance.

1.6.4 Applicability to Public Utilities

To the extent allowed by law, the provisions of this Ordinance shall apply to all land, buildings, structures, and uses owned or used by Public Utilities (as such term is defined by G.S. § 62-3). Where the provisions of this Ordinance do not apply to such structures and land, such Public Utilities are encouraged to meet the provisions of this Ordinance.

1.6.5 Applicability to Bona Fide Farms

Property that is located in the Town's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from the provisions of this Ordinance. Property that is located in the Town's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to the provisions of this Ordinance. As used in this section, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this section, "property" means a single tract of property or an identifiable portion of a single tract.

(Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2015-LDO-006, 12-10-15)

1.7 LDO COMPLIANCE REQUIRED

No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with all of the applicable regulations established by this Ordinance, including the district regulations of Chapter 4, the use regulations of Chapter 5, the dimensional standards of Chapter 6, and the development and design standards of Chapter 7. No lot of record that did not exist on the effective date of this Ordinance shall be created, by subdivision or otherwise, that does not conform to the applicable requirements of this Ordinance.

1.8 CONFLICTING PROVISIONS

1.8.1 Conflict with Other Public Laws, Ordinances, Regulations, or Permits

This Ordinance is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. However, where conditions, standards, or requirements imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions that are more restrictive or that impose higher standards or requirements shall govern. Wherever the provisions of this Ordinance require a greater width or size of yards or courts, a lower height of building, a lesser number of stories, or a greater percentage of lot to be left unoccupied, or impose other standards which are higher than those set forth in another statute, ordinance, or regulation, then the provisions of this Ordinance shall govern. Wherever the provisions of any other statute, ordinance, or regulation require a greater width or size of yard or courts, a lower height of building, a lesser number of stories, or a greater percentage of lot to be left unoccupied, or impose other standards which are higher than those set forth in this Ordinance, then the provisions of such statute, ordinance, or regulation shall govern.

1.8.2 Conflict with Private Agreements

This Ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this Ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this Ordinance shall govern. Nothing in this Ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this Ordinance. In no case shall the Town be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

1.9 SEVERABILITY

If any court of competent jurisdiction invalidates any section, subsection, sentence, clause, phrase, word or portion ('portion') of this Ordinance, then such judgment shall not affect the validity and continued enforcement of any other portion of this Ordinance and all remaining portions shall remain in full force and effect. If any court of competent jurisdiction invalidates the application of any portion of this Ordinance, then such judgment shall not affect the application of that portion to any other building, structure, or use not specifically included in that judgment. If any court of competent jurisdiction judges invalid any condition attached to the approval of an application for development approval or the approval of a request for rezoning to a conditional use district, then such judgment shall not affect any other conditions or requirements attached to the same approval which are not specifically included in that judgment. Severability is expressly intended throughout and within the provisions of Chapter 9 even if such severability would result in a situation where there would be less speech, such as by subjecting previously exempt signs to that chapter. Without diminishing or limiting in any way the declaration of severability set forth above, if any section, subsection, sentence, clause, phrase, word or portion of this Ordinance is declared or held to be unconstitutional or invalid by any court of competent jurisdiction, such declaration

or holding shall not affect any other section, subsection, sentence, clause, phrase, word or portion of this Ordinance that pertains to prohibited signs, including specifically the prohibition on off-site signs and those signs and sign-types prohibited and not allowed under Section 9.4 of this Ordinance.
(Ord. No. 2010-LDO-01, 1-14-10)

1.10 TRANSITIONAL RULES

1.10.1 Violations Continue

Any violation of the previous Unified Development Ordinance shall continue to be a violation under this Ordinance and be subject to penalties and enforcement under Chapter 11, unless the use, development, construction, or other activity complies with the provisions of this Ordinance. Payment shall be required for any civil penalty assessed under the previous Unified Development Ordinance, even if the original violation is no longer considered a violation under this Ordinance.

1.10.2 Approved Projects

(A) Special use permits, subdivision plans, site plan approvals, grading permits, building permits, sign permits, and variances, any of which are valid on July 1, 2003, shall remain valid until their expiration date. Projects with valid approvals or permits may be carried out with the development standards in effect at the time of approval, provided that the permit or approval is valid and has not lapsed.

(B) No provision of this Ordinance shall require any change in the plans, construction, or designated use of any structure for which a building permit has been issued prior to July 1, 2003.

(C) Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.

1.10.3 Pending Applications

All pending projects for which a complete application was submitted and accepted by the Town prior to the effective date of this Ordinance shall be exempt from complying with all provisions of this Ordinance, but shall be required to comply with the previous Unified Development Ordinance. Site and/or subdivision plan applications and rezonings received prior to the effective date of this Ordinance that are inactive shall be deemed denied.

1.10.4 Nonconformities Under Prior Ordinance

Any nonconformity under the previous Unified Development Ordinance will also be a nonconformity under this Ordinance, as long as the situation that resulted in the nonconforming status under the previous Ordinance continues to exist. If a nonconformity under the previous Ordinance becomes conforming because of the adoption of this Ordinance, then the situation will no longer be a nonconformity.

1.10.5 Uses and Structures Rendered Nonconforming

(A) When a lot is used for a purpose that was a lawful use before the effective date of this Ordinance, and this Ordinance no longer classifies such use as either a permitted use or special use in the zoning district in which it is located, such use shall be considered nonconforming and shall be controlled by the provisions of Chapter 10 of this Ordinance.

(B) Where any building, structure, or lot that legally existed on the effective date of this Ordinance does not meet all standards set forth in this Ordinance, such building, structure, or lot shall be considered nonconforming and shall be controlled by the provisions of Chapter 10 of this Ordinance.