

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

As Amended February 14, 2023.

**Article I. GENERAL RULES**

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

**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 Code (“Charlotte Tree Ordinance”), the following words, terms, and phrases, when used shall have the meanings ascribed to them.

*Administrative Officer* means the Administrator of the Tree Ordinance or his/her designee charged with performing the duties, responsibilities, enforcement, and administration of the Charlotte Tree Ordinance.

*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 1<sup>st</sup>, and the Chairperson shall be 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 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. 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.
- D. In the absence of both the Chairperson and Vice-Chairperson, the Commission shall select its presiding officers from those voting members present.
- E. 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 COMMISSION**

A Clerk shall be appointed to serve as Staff Assistant to the Commission 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. notify parties to cases before the Commission of its decision;
- E. keep all records and execute the clerical work of the Commission;
- F. 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, including every motion voted upon by the Commission; and
- G. perform all administrative duties related to the scheduling and conduct of hearings.

**Article VI. MEMBERS**

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

The Commission shall consist of twelve (12) 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 general services department, and planning, design & development department, and shall be ex officio, non-voting, members. These members shall be a Chief Urban Forester or his/her designated representative and the City Arborist or his/her designated representative.

The Commission shall nominate prospective members to City Council and the Mayor based on the following experience and background:

- A. Professional horticulturalist or landscape contractor with five (5) years' experience.
- B. Registered Landscape Architect with five (5) years' experience.
- C. Professional with five (5) years' experience in city planning, urban design, government ordinance and regulations.
- D. Member of a natural resources' advocacy group.
- E. Member of the International Society of Arboriculture.
- F. Representative of sustainable development community.

- G. Representative of citizens' interest groups.
- H. Representative of public utilities.
- I. Representative of neighborhood group.

**Article VII. RULES OF CONDUCT FOR MEMBERS**

- A. All new and returning Commission members shall take an oath of office before performing any duties of their office.
- B. Members of the Commission may be removed for cause, including violation of the rules stated below.
- C. 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<sup>1</sup>.
- D. 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.
- E. 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.
- F. 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.
- G. Commission members shall not express individual opinions on the proper judgment of any case with any parties prior to its deliberations on that case.
- H. 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.
- I. 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 may result to 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, familial, or other associational relationship with a party before the Commission. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. 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.

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<sup>1</sup> Available at <https://charlottenc.gov/CityClerk/Documents/Council%20Resolution%20on%20Boards.pdf>

- 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. A majority vote of the remaining voting members of the Commission, excluding any member subject to the objection, shall determine whether or not a conflict of interest exists.
- 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 or herself, then the remaining voting members of the Commission, excluding any member subject to the objection, 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. Additional procedures are outlined in City Council's January 24, 1983 Conflict of Interest Resolution.<sup>2</sup>

## **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**

A majority of voting members of the Commission shall constitute a quorum.

### **E. Voting**

All members of the Commission must vote on any issue unless they are disqualified for one or more of the reasons listed in Articles VII and VIII above. 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 vote.

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

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<sup>2</sup> <https://charlottenc.gov/CityClerk/Documents/2022/Boards-Handbook-Spring-2022.pdf>

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, hearings, and approval of minutes. The Commission shall have the discretion to modify the order of the business meeting as necessary.

G. Meeting Agendas

1. The Administrative Officer shall prepare the agenda for the meeting with input and approval by the Chairperson. Except in the case of an emergency meeting, Commission members shall receive a copy of the agenda at least twenty-four hours before the meeting.
2. Members can have an item placed on the next available agenda by sending a written request to the Chairperson and Administrative Officer, so long as the request is timely made and is within the Commission's scope, as set forth in the Tree Ordinance, and aligns with the purpose and intent of sustaining Charlotte's Tree Canopy. To be timely, members must submit any request to the Administrative Officer no later than three business days before the meeting date. If an item is not clearly within the scope of the Commission or sustaining Charlotte's Tree Canopy, the request must be made to the full Commission at the next meeting.
3. As the first order of business at each meeting, the Chairperson shall call for a review of the agenda and any suggested revisions, before the Commission adopts the Agenda. Any request to amend the agenda must be supported by a majority vote of Commission members present and voting. In addition, the Commission may not take formal action on any non-agenda matter unless all Commission members vote to add the matter to the agenda.
4. Any member of the Commission may request the Administrative Officer to place an item on a future agenda by making such a request at a Commission meeting. If any Commission member or the Administrative Officer has an objection, the item in question shall not be included on a future agenda, unless a majority of members present vote in favor of including the item.

**Article X. VARIANCES AND APPEALS**

A. Types of Variances

The Commission shall hear and decide all requests for variances from the Charlotte Tree Ordinance codified under Chapter 21 of the Charlotte 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 any order, requirement, decision, or determination made by administrative staff. In considering appeals, it may hear those cases based upon an allegedly improper or erroneous interpretation or application of the Ordinance.

C. Required Time Within Which to File Appeal

No appeal shall be heard by the Commission unless application is filed by the owner or other party within thirty (30) days of receipt of the written order, requirement, decision, or determination made by the Administrative Officer. Any other person with standing to appeal has thirty (30) days from receipt from the source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice of the administrative staff's determination given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the U.S. Postal Service.

D. Procedure for Filing Variances and Appeals

A person may file simultaneously for an appeal and request a variance from the Commission regarding the same facts or circumstances giving rise to a violation within thirty (30) days of receiving a written 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 the Commission determines there are substantial changes in conditions or circumstances affecting the property in question

**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 at least two (2) full business days before the scheduled hearing.

Upon receipt of such a properly filed request for a continuance, the Administrative Officer shall continue the case to the next regularly scheduled meeting/special meeting.

If a request for continuance is received after the required deadline or the Person wishes to file a second request for a continuance, or any subsequent request for a continuance, the Administrative Officer and the Chairperson shall review the request and have authority to grant the request for a continuance if: 1) the Person establishes to the satisfaction of the Administrative Officer and the Chairperson that there is just cause for granting a continuance; and 2) there is no objection to the continuance from any party. If any party objects to a continuance or the request for continuance is denied, the Person or the Person's representative must appear before the Commission at the scheduled hearing to request a continuance from the Commission. After hearing from all parties, 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. Additional Continuance Procedures

The Commission may continue a hearing that has been convened without further advertisement.

If a hearing is set for a certain date and a quorum of the Commission is not present, the hearing shall be continued until the next regular Commission meeting without further advertisement.

If a Person appealing an Administrative Officer's decision raises matters at the hearing that were not stated in the notice of appeal, and another party would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Commission shall continue the hearing.

**Article XI. HEARINGS**

A. Notice of Hearings

Notice of the time and place of each hearing shall be given to the following: the Applicant or Petitioner, the owner of the property, anyone directly named in the application, and the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. Such notice shall state the location of the building or lot, and the general substance 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, as soon thereafter as practical, 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. Witnesses or documentary evidence not provided seven (7) days in advance may not be presented at the hearing except upon consent of all parties or upon a majority vote of the Commission.

D. Administrative Materials

City staff shall transmit to the Commission all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Commission by the Clerk prior to the hearing if, at the same time they are distributed to the Commission, a copy is also provided to the applicant and to the property owner if that person is not the applicant. The administrative materials may be provided in written or electronic form.

Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Commission at the hearing.

E. Failure to Appear or Proceed at Hearing

If the person requesting a variance 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. An appealing party's failure to appear at a scheduled appeal hearing without good cause shall constitute an abandonment of the appeal, and the appeal may be dismissed by the Commission.

F. Conduct of Hearing

All parties with standing before the Commission shall have the right to participate fully in the hearing and 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.

Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Commission. Objections regarding jurisdictional and evidentiary issues may be made to the Commission. The Commission Chair shall rule on any objections, and the Chair's rulings may be appealed to the full Commission.

The Order of 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. For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor if the person is no longer employed) shall be present at the hearing to appear as a witness.
3. The Applicant and the Commission may cross-examine or ask questions of City staff and City witnesses.
4. The Applicant/Petitioner shall present the evidence and arguments in support of his/her application.
5. City staff and the Commission may cross-examine or ask questions of the Applicant and Applicant witnesses.
6. Persons in favor of granting the application shall present the evidence and arguments for the application.
7. Persons opposed to granting the application shall present the evidence and arguments against the application.
8. Commission members may ask questions of any of the witnesses.
9. Both sides shall be permitted to present rebuttals to opposing evidence, testimony, and arguments.
10. 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.
11. The Chairperson closes the public hearing portion of the case and informs everyone that the Commission has entered into Discussion and Deliberation.



12. Chairperson asks for a motion to grant or deny the variance request, or a motion to affirm, reverse or modify a decision of an administrator.
13. Chairperson asks for a second to the offered motion.
14. Commission members vote and include findings of fact and conclusions of law.

G. Rehearings

The Commission 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 a variance application if the Commission finds there have been no substantial changes in conditions or circumstances to the application.

**Article XII. DECISIONS**

A. Rendering of the Commission's Decision

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.

1. Appeals

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. In doing so, the Commission shall have all the powers of the official who made the decision. A majority vote of the voting members of the Commission shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Officer

2. Variances

The Commission shall grant a variance upon a finding that:

- a) Unnecessary hardship would result from the strict application of the regulation;
- b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography;
- c) The hardship did not result from actions taken by the applicant or the property owner; and
- d) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

To grant a variance, a concurring vote of four/fifths (4/5) of the Commission is required. Where a variance is granted, the Commission shall state in the record in detail any 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.

3. Time for Decision

Final written decisions of the Commission on each variance and appeal shall be provided within a reasonable time, generally by its next regular meeting.

**B. Form and Appeal**

Notification about the decision shall be in compliance with Tree Ordinance Code Section 21-126(e)(11), and any appeal of the decision shall be in compliance with Tree Ordinance Section 21-126(d) and City of Charlotte Zoning Ordinance Code Section 5.113(2).

**C. 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.

**D. Public Records of Decisions**

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

**E. 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 XIII. 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.

6/5/52

Amended 12/7/72

Amended 5/13/76

Amended 6/12/78

Amended 3/27/79

Amended 5/28/85

Amended 6/2/87

Amended 9/27/88 (Procedure for Filing appeals & Priority for Agenda)

Amended 4/20/90 (Form and Appeal, corrected reference to City of Charlotte Code § 23-1406.1.)

Amended 1/29/91 (Article IV, Regular Meeting – time changed)

Amended 2/20/91 (Article IV, Quorum, Article V Appeals, Section 2(c), Article VII, Section 4)

Amended 3/26/91 (Article V, added Section 4)

Amended 9/18/91 (Article II, Section 2 and Article VII)

Amended 1/1/92 (Article IX, Section B)

Amended 7/25/95 (Article VII, Section 6, corrected wording to Code § 5.111 and deleted word building in front of permit)

Amended 8/29/95 (Name change of meeting room, Name change of Department, reference to Zoning Code adopted 1/1/92)

Amended 10/28/97 (Article IV, Section 1)

Amended 6/30/98 (Article IV, added Section 6)

Revised October 31, 2006 (Recodified, Article X in its entirety)

Amended September 27, 2016 (Modified Article VII-added new Section C and E, modified Section F, and renumbered existing sections; VIII.C-modified language; updated language and verbiage)

Amended 2/14/23