

**Responses to Board Member Comments about UDO-CC17
- October 13, 2022 Planning Board Meeting -**

1. UDO-CC17 would not apply to Winston Weaver.
 - So long as UDO-CC17 is adopted prior to Winston Weaver applying for permits, these new standards would apply to the facility.
2. This ordinance leaves out storage of hazardous/dangerous materials throughout the City.
 - An ordinance regulating the storage of hazardous materials throughout the City, unrelated to development review/approval, is beyond the scope of the NC Planning legislation.
 - Addressing such storage throughout the City would extremely challenging for staff to administer/enforce.
 - City fire marshals do inspect businesses and places of assembly periodically in accordance with the fire code.
3. The ordinance is too limited in scope in that it limits what is considered “dangerous.”
 - Chemical manufacturing has numerous industry subgroups within the North American Industrial Classification System (NAICS).
 - Requiring all new chemical manufacturing companies to meet the standards in this amendment would place Winston-Salem and Forsyth County at a competitive disadvantage to other communities in recruiting these companies.
 - Several chemical manufacturing uses currently exist in our region in most of the industry subgroups and have not posed significant concerns to surrounding properties or neighborhoods. Examples include:
 1. Pharmaceutical and Medicine Manufacturing - Banner Pharmacaps and Vicks VapoRub in Greensboro.
 2. Paint, Coating, and Adhesive Manufacturing - Akzo Nobel and Axalta Coating Systems in High Point.
 3. Soap, Cleaning Compound, and Toilet(ry) Preparation Manufacturing - Ecolab Kay Chemical in Winston-Salem, Proctor and Gamble in Greensboro, plus several smaller industrial degreaser companies throughout the Triad.
 - A narrower range of chemical manufacturing use categories were included in this amendment than originally proposed. This approach seeks to include only NAICS chemical manufacturing industry groups with known, documented explosive potential with significant off-site impacts:
 1. Pesticides, Fertilizers, and Other Agricultural Chemical Manufacturing, and
 2. Explosives and Pyrotechnics Manufacturing.
 - Other chemical manufacturing uses could be added in the future if there are multiple documented incidents which report off-site injuries and damage.
 - The provisions would also apply to battery manufacturing uses due to the use of lithium.
4. This ordinance doesn’t account for rail storage.
 - Local zoning regulations cannot apply to storage of hazardous materials in rail cars. Rail car storage is under the purview of the state and federal Departments of Transportation.
5. Grandfathered sites are not addressed in the amendment.
 - Grandfathered uses are addressed in the applicability section of the amendment. Any existing agricultural chemical manufacturing, explosives manufacturing, and battery manufacturing uses would be grandfathered from the new requirements unless the company moved to a new site.

- No known pesticide or fertilizer manufacturing plant is presently located in Forsyth County. Clarios, LLC (formerly Johnson Controls) in Walkertown is the only known battery manufacturing plant in Forsyth County. East Penn Manufacturing (Deka Batteries) does have a small wholesaling/distribution facility in southeast Winston-Salem.
 - According to OSHA, there are six hazardous chemical storage companies (Ardagh Metal Packaging, DFA Dairy Brands Fluid—Pet Dairy, Ecolab Kay Chemical, Stratford Metal Finishing, Tex-Tech Coatings, and Tri-Seal Coatings) in Forsyth County. These operations are not classified as NAICS industries subject to UDO-CC17.
6. The 400-foot setback would not have been enough in terms of Winston Weaver damaging surrounding areas if an explosion occurred. UDO-CC17 is not nuanced enough to allow dangerous types of businesses to be built when they're not truly dangerous.
- It is true that 400 feet would not have been enough setback to protect surrounding properties from an explosion, but this distance is 10 times greater than the currently required 0- or 40-foot UDO setbacks.
 - No distance could protect the public from harm and still meet statutory requirements for allowing a legal use in the jurisdiction. The damage from the West, Texas explosion impacted areas 1,500 to 2,000 feet away, which staff considers much too great to be a legally defensible zoning regulation.
 - Fire codes would require any new fertilizer plant to have fertilizer stored in noncombustible buildings or containers.
 - Staff considered the inclusion of a sliding-scale setback provision based on the weight of material stored on-site. Such a provision would be unfeasible on two grounds: the significant difficulty, if not impossibility, of weighing the material and the potential for the amount of stored material to change over time.
7. The expertise of our code experts/fire marshal was not used/did not result in expanded codes.
- Local regulations cannot be more restrictive than State building or fire codes. It would take State-level changes to amend either code. A deputy fire marshal was involved in discussions with the Planning Board during a work session.
 - Another challenge is that ammonium nitrate (AN), which is the main ingredient in fertilizer, is not considered an explosive material by National fire codes. AN becomes explosive only when it is mixed with contaminants, such as wood, paper, straw, dust, etc.
8. I am concerned about our expanded options for residential in non-residential districts allowing residential uses to locate near another Weaver (which is why it is important to have reasonable setbacks).
- The main issue with not requiring a use separation from residential districts is that a subsequent rezoning to a residential district near a new agricultural chemical or battery manufacturing plant could render the new plant nonconforming and limit its expansion through no action of its own. This issue was discussed with the Public Works Committee last June.
9. UDO-CC17 is better than any current regulations, but zoning is the least effective tool in the toolbox.
- This assessment is correct, but unless the state is willing to impose tougher regulations, zoning is one of the few tools available.