

April 3, 2003

**S 914. MODERNIZE CITY/COUNTY PLANNING. TO CLARIFY, SIMPLIFY, AND MODERNIZE CITY AND COUNTY PLANNING AND LAND-USE MANAGEMENT AUTHORITY.** Amendments to GS 160A-360 make clarifying and simplifying changes. The revision to subsection (a) combines into one paragraph several provisions previously scattered throughout the section regarding which powers the city can exercise in the ETJ. It adds a provision requiring a city to exercise in the ETJ any power being exercised throughout the city. The revision to GS 160A-360(a1) simplifies public notice requirements by making the timing requirement for mailing the notice of the public hearing on an ETJ boundary extension the same as the timing requirement for mailing a notice of the hearing on a zoning map amendment (mailed at least ten but not more than twenty-five days prior to the hearing). This allows cities to have a single public hearing (with a single mailed notice) on both the ETJ extension and the proposed zoning for that area. The revision to GS 160A-360(e) consolidates the various provisions of the section regarding when county approval is required for a city's ETJ extension (any extension beyond one mile and any extension into an area where the county is already exercising zoning and subdivision regulations). This is substantively the same as the current law. The revision to GS 160A-360(f) and (f1) clarify the statute by specifying that a jurisdiction acquiring territory may provide public notices and conduct hearings on both adoption and application of its ordinances in areas for which it may acquire jurisdiction prior to the effective date of the jurisdictional shift (but final action taken would be contingent upon the jurisdictional shift actually taking place).

Revision to GS 160A-361 amends the statutory reference to "planning agencies" to "planning boards."

Revision to GS 160A-362 makes no substantive change in the law. It simplifies the section by removing language defining how proportional representation is calculated (while retaining the substantive requirement for proportional representation on the planning board and board of adjustment. It also cross-references the existing statute on publication of hearing notices rather than repeating the language in this section.

Amendment to GS 160A-364 would allow the electronic notices of public hearings to substitute for newspaper publication, but would not replace any mailed notice or posting requirements.

Revision to GS 153A-321 amends the statutory reference to "planning agencies" to "planning boards."

Amendment to GS 153A-323 would allow the electronic notices of public hearings to substitute for newspaper publication, but would not replace any mailed notice or posting requirements.

Revision to GS 160A-371 makes no substantive change in existing law. It adds references to sketch plans and preliminary plats.

Revisions to GS 160A-372 simplify this section. Subsection (a) consolidates the various statements of purposes for subdivision regulation into a single subsection. Subsection (c) consolidates the various existing authorizations for subdivision exactions into a single subsection. It also modernizes the section, for example, referring to transportation infrastructure as "street, sidewalk, bikeway, transit" rather than "roads." Subsection (d) simplifies the statute by establishing a single, common provision for all previously allowed exactions, noting they can be dedications of land, construction of infrastructure, or payment of fees and reiterates the basic constitutionally required limitation that the scope of exactions is limited to an amount proportional to the impacts of the subdivision. This subsection also simplifies the law by deleting the various different detailed methods of calculating exactions that are now included in several sections of this statute and modernizes the reference to performance guarantees.

The amendment to GS 160A-373 makes conforming amendments to incorporate previous amendments regarding the use of preliminary plats and references to planning boards rather than planning agencies.

Amendment to GS 160A-375 extends the same routine enforcement options available for zoning enforcement under GS 160A-389 to subdivision ordinance enforcement (as opposed to limiting enforcement to criminal citations and injunctive relief under the current statute, which are more expensive and burdensome for both the city and the violator).

Revision to GS 160A-376 clarifies that the creation of a single new lot or parcel may be considered a subdivision. It also adds flexibility to local subdivision regulation by explicitly allowing locally determined exemptions.

Revisions to GS 153A-330 through 153A-335 make the same revisions for county subdivision regulation statutes as are made for cities in the above provisions of the bill.

Revision to GS 160A-381 modernizes the zoning statute in several respects. Subsection (a) notes zoning ordinances may be incorporated into a unified development ordinance. It adds authority to require maintenance of buildings and protection of natural features. It deletes the limitation on use of severable development credits and rights to official map implementation (right-of-way protections) and specifically authorizes use of transferable development rights. Subsection (b) simplifies the law by reorganizing existing provisions related to use regulations into a single subsection and replacing detailed provisions on appeals [previously in subsection (c)] with a simpler cross-reference to an existing statute that already has those details. Subsection (c) simplifies the exaction provisions by adding the modernizing language that tracks similar exaction authority in the subdivision statute [in the same manner as done with amendments to GS 160A-372]. It specifies the five areas of potential exactions

and explicitly applies the constitutional limitation that the exaction be no more than is proportional to the impacts generated. Subsection (d) is a new provision that explicitly recognizes the authority to adopt temporary moratoria of reasonable duration and codifies the constitutional limitations on the use of moratoria.

Amendment to GS 160A-382 incorporates reference to the conditional zoning technique recently approved by the courts and deletes specific reference to special and conditional use district zoning. It clarifies how the specific conditions may be developed and applied. It also codifies the existing court mandated analysis of the reasonableness of such rezonings. It specifically allows cities to require meetings of petitioners and neighbors as part of the process of developing a conditional rezoning petition.

Amendment to GS 160A-383 does two things. First, the sentence added to the first paragraph strengthens the role of the comprehensive plan in land use regulation. It does not require zoning to be entirely consistent with the plan, but it does require such inconsistencies to be identified, considered, and explained. Second, the amendment modernizes the statement of zoning purposes in the second paragraph. It explicitly includes managing potentially incompatible uses, protecting neighborhood and community quality, protecting community aesthetics, and addressing housing and environmental concerns, all of which are commonly considered in city development management programs.

Amendment to GS 160A-384(b) simplifies the alternate notice provision for large-scale rezoning by requiring the half-page newspaper advertisement to be published twice rather than four times and conforming the mailed notice provided to absentee owners to the same mailed notice provided in subsection (a). Subsection (c) is added to conform this mailed notice requirement to the existing requirements for counties.

Revision to GS 160A-385 clarifies the definition of a qualifying area for a zoning protest petition without making any substantive changes in the law. It simplifies the qualifying area for a protest to be 5% of the land in the 100-foot wide buffer around the area proposed to be rezoned (rather than 20% of any one of four sides). It changes the law to provide that when less than entire parcel is proposed to be rezoned, the qualifying area for a protest petition is measured from the property line rather than the zoning district boundary. It also clarifies that the three-fourths majority is calculated on the basis of the number of council members eligible to vote on the matter (excluding, for example, those who have a financial conflict of interest and are prohibited by law from voting on the matter). It also simplifies the protest provision by limiting its applications to zoning map amendments.

Amendment to GS 160A-386 clarifies when a person filing a protest against a proposed zoning amendment may withdraw the protest.

Amendment to GS 160A-387 clarifies that planning board recommendations are required prior to initial adoption of zoning. It further mandates referral of proposed amendments to the planning board for review and comment (this is now mandated for counties, but not for cities). The amendment further specifies that planning board review must include an analysis of plan consistency and a report on that to the governing board.

Amendment to GS 160A-388 makes several clarifying amendments to board of adjustment procedures. The revision to subsection (a) clarifies that alternate members may serve either temporarily (as when a member is disqualified from participation on an individual case due to a conflict of interest) or to fill a vacancy, as well as serving for an absent member. The amendment to subsection (e) clarifies that the size of the board for purposes of calculating the requisite four-fifths vote is reduced by vacancies and members who are not able to vote due to conflicts of interest. Subsection (e1) is added to codify the constitutional limitation requiring impartial board members for quasi-judicial decision-making. Subsection (e2) clarifies that standing to make a judicial appeal of a board of adjustment decision is the same as the standing to make an appeal to that board.

GS 160A-392 requiring state and local governments to be consistent with local zoning was added to the statutes in 1951. The amendment clarifies that zoning applies to use of land that does not involve buildings (e.g., requirements for stormwater management or regulations on parking lots or landscaped buffers). The amendment also removes the requirement for state approval of application of overlay districts, as these districts are now commonly used for routine zoning requirements (e.g., flood hazard districts, historic districts, entryway corridor districts, and the like). The amendment also allows the Council of State to delegate authority to apply for a special or conditional use district to appropriate staff.

Except where otherwise noted, amendments to GS Ch. 153A make same changes for county governments as those made above for cities. Amendment to GS 153A-345, in addition to other changes consistent with the revisions in the comparable section for cities, also adds subsection (g) regarding subpoena power to further conform the county provision to the city provision.

Adds new GS 160A-499 and GS 160A-309 to give statewide application to a local act previously adopted in the 2001-02 session for Charlotte.

Adds new GS Ch. 160A, Art. 19, Part 3D based on South Carolina's development agreement statute. Simplifies the SC provision regarding size of areas included and length of agreements, makes this supplemental to existing state law on vested rights (building permits, site specific development plans), and makes other stylistic changes.

Effective Jan. 1, 2004.

**Intro. by Clodfelter.**

Ref. to	GS 153A, 160A
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