

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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SENATE BILL 419  
Judiciary Committee Substitute Adopted 6/7/17  
PROPOSED COMMITTEE SUBSTITUTE S419-PCS15239-RB-27

Short Title: Planning/Development Changes.

(Public)

Sponsors:

Referred to:

March 29, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO REORGANIZE AND CLARIFY STATUTES REGARDING LOCAL  
3 PLANNING AND DEVELOPMENT REGULATION.

4 Whereas, a coherent organization of the statutes that authorize local government  
5 planning and development regulation is needed to make the statutes simpler to find, easier to  
6 follow, and more uniform for all local governments; and

7 Whereas, the parallel system of separate city and county statutes regarding planning  
8 and development regulation has led to redundancy and unintended differences in the wording  
9 of planning and development regulation statutes on the same subject; and

10 Whereas, numerous specialized statutes affecting local planning and development  
11 regulation have been added in disparate Chapters of the General Statutes over past decades; and

12 Whereas, antiquated and confusing language exists in the planning and development  
13 regulation statutes; and

14 Whereas, other than collecting some of these statutes into Article 19 of Chapter  
15 160A of the General Statutes in 1971 and Article 18 of Chapter 153A of the General Statutes in  
16 1973, no comprehensive reorganization of North Carolina's planning and development  
17 regulation statutes has been undertaken; and

18 Whereas, the General Assembly intends to collect and organize existing statutes  
19 regarding local planning and development into a single Chapter of the General Statutes and to  
20 consolidate the statutes affecting cities and counties, and

21 Whereas, the intent of this bill is to neither eliminate, diminish, enlarge, nor expand  
22 the authority of local governments to exact land, construction, or money as part of the  
23 development approval process or otherwise substantially alter the scope of local authority to  
24 regulate development and any modifications from earlier versions of this bill should not be  
25 interpreted to affect the scope of local government authority; Now, therefore,

26 The General Assembly of North Carolina enacts:

27 **SECTION 1.** Article 18 of Chapter 153A of the General Statutes is repealed.

28 **SECTION 2.** Article 19 of Chapter 160A of the General Statutes is repealed.

29 **SECTION 3.** The General Statutes are amended by adding a new Chapter to read:

30 **"Chapter 160D.**

31 **"Local Planning and Development Regulation.**

32 **"Article 1.**

33 **"General Provisions.**

34 **"§ 160D-1-1. Application.**



\* S 4 1 9 - P C S 1 5 2 3 9 - R B - 2 7 \*

1        (a) The provisions of this Article shall apply to all development regulations and  
2 programs adopted pursuant to this Chapter or applicable or related local acts. To the extent  
3 there are contrary provisions in local charters or acts, G.S. 160D-1-11 is applicable unless this  
4 Chapter expressly provides otherwise. The provisions of this Article also apply to any other  
5 local ordinance that substantially affects land use and development.

6        (b) The provisions of this Article are supplemental to specific provisions included in  
7 other Articles of this Chapter. To the extent there are conflicts between the provisions of this  
8 Article and the provisions of other Articles of this Chapter, the more specific provisions shall  
9 control.

10       (c) Local governments may apply any of the definitions and procedures authorized by  
11 this Chapter to any ordinance that does not substantially affect land use and development  
12 adopted under the general police power of cities and counties, Article 8 of Chapter 160A of the  
13 General Statutes and Article 6 of Chapter 153A of the General Statutes respectively, and may  
14 employ any organizational structure, board, commission, or staffing arrangement authorized by  
15 this Chapter to any or all aspects of those ordinances.

16       (d) This Chapter does not expand, diminish, or alter the scope of authority for planning  
17 and development regulation authorized by other Chapters of the General Statutes.

18 **§ 160D-1-2. Definitions.**

19       Unless otherwise specifically provided, or unless otherwise clearly required by the context,  
20 the words and phrases defined in this section shall have the following meanings indicated when  
21 used in this Chapter:

- 22        (1) Administrative decision. – Decisions made in the implementation,  
23 administration, or enforcement of development regulations that involve the  
24 determination of facts and the application of objective standards set forth in  
25 this Chapter or local government development regulations. These are  
26 sometimes referred to as ministerial decisions or administrative  
27 determinations.
- 28        (2) Administrative hearing. – A proceeding to gather facts needed to make an  
29 administrative decision.
- 30        (3) Bona fide farm purposes. – Agricultural activities as set forth in  
31 G.S. 160D-9-3.
- 32        (4) Charter. – As defined in G.S. 160A-1(2).
- 33        (5) City. – As defined in G.S. 160A-1(2).
- 34        (6) Comprehensive plan. – A plan officially adopted by the governing board  
35 pursuant to G.S. 160D-5-1(c).
- 36        (7) Conditional zoning. – A legislative zoning map amendment with  
37 site-specific conditions incorporated into the zoning map amendment.
- 38        (8) County. – Any one of the counties listed in G.S. 153A-10.
- 39        (9) Decision-making board. – A governing board, planning board, board of  
40 adjustment, historic district board, or other board assigned to make  
41 quasi-judicial decisions under this Chapter.
- 42        (10) Determination. – A written, final, and binding order, requirement, or  
43 determination regarding an administrative decision.
- 44        (11) Developer. – A person, including a governmental agency or redevelopment  
45 authority, who undertakes any development and who is the landowner of the  
46 property to be developed or who has been authorized by the landowner to  
47 undertake development on that property.
- 48        (12) Development. – Unless the context clearly indicates otherwise, the term  
49 means any of the following:

- 1                   a.     The construction, erection, alteration, enlargement, renovation,  
2                   substantial repair, movement to another site, or demolition of any  
3                   structure.
- 4                   b.     The excavation, grading, filling, clearing, or alteration of land.
- 5                   c.     The subdivision of land as defined in G.S. 160D-8-2.
- 6                   d.     The initiation or substantial change in the use of land or the intensity  
7                   of use of land.
- 8           (13)   Development approval. – An administrative or quasi-judicial approval made  
9           pursuant to this Chapter that is written and that is required prior to  
10           commencing development or undertaking a specific activity, project, or  
11           development proposal. Development approvals include, but are not limited  
12           to, zoning permits, site plan approvals, special use permits, variances, and  
13           certificates of appropriateness. The term also includes plat approvals,  
14           development agreements, and building permits as governed by this Chapter.
- 15           (14)   Development regulation. – A unified development ordinance, zoning  
16           regulation, subdivision regulation, erosion and sedimentation control  
17           regulation, floodplain or flood damage prevention regulation, mountain ridge  
18           protection regulation, stormwater control regulation, wireless  
19           telecommunication facility regulation, historic preservation or landmark  
20           regulation, housing code, State Building Code enforcement, or any other  
21           regulation adopted pursuant to this Chapter, or a local act or charter that  
22           regulates land use or development.
- 23           (15)   Dwelling. – Any building, structure, manufactured home, or mobile home,  
24           or part thereof, used and occupied for human habitation or intended to be so  
25           used, and includes any outhouses and appurtenances belonging thereto or  
26           usually enjoyed therewith. For the purposes of Article 12 of this Chapter, the  
27           term does not include any manufactured home, mobile home, or recreational  
28           vehicle, if used solely for a seasonal vacation purpose.
- 29           (16)   Evidentiary hearing. – A hearing to gather competent, material, and  
30           substantial evidence in order to make findings for a quasi-judicial decision  
31           required by a development regulation adopted under this Chapter.
- 32           (17)   Governing board. – The city council or board of county commissioners. The  
33           term is interchangeable with the terms "board of aldermen" and "boards of  
34           commissioners" and shall mean any governing board without regard to the  
35           terminology employed in charters, local acts, other portions of the General  
36           Statutes, or local customary usage.
- 37           (18)   Landowner or owner. – The holder of the title in fee simple. Absent  
38           evidence to the contrary, a local government may rely on the county tax  
39           records to determine who is a landowner. The landowner may authorize a  
40           person holding a valid option, lease, or contract to purchase to act as his or  
41           her agent or representative for the purpose of making applications for  
42           development approvals.
- 43           (19)   Legislative decision. – The adoption, amendment, or repeal of a regulation  
44           under this Chapter or an applicable local act. The term also includes the  
45           decision to approve, amend, or rescind a development agreement consistent  
46           with the provisions of Article 10 of this Chapter.
- 47           (20)   Legislative hearing. – A hearing to solicit public comment on a proposed  
48           legislative decision.
- 49           (21)   Local act. – As defined in G.S. 160A-1(2).
- 50           (22)   Local government. – A city or county.

- 1           (23) Manufactured home or mobile home. – A structure as defined in  
2           G.S. 143-145(7).
- 3           (24) Person. – An individual, partnership, firm, association, joint venture, public  
4           or private corporation, trust, estate, commission, board, public or private  
5           institution, utility, cooperative, interstate body, the State of North Carolina  
6           and its agencies and political subdivisions, or other legal entity.
- 7           (25) Planning and development regulation jurisdiction. – The geographic area  
8           defined in Part 2 of this Chapter within which a city or county may  
9           undertake planning and apply the development regulations authorized by this  
10          Chapter.
- 11          (26) Planning board. – Any board or commission established pursuant to  
12          G.S. 160D-3-1.
- 13          (27) Property. – All real property subject to land-use regulation by a local  
14          government. The term includes any improvements or structures customarily  
15          regarded as a part of real property.
- 16          (28) Quasi-judicial decision. – A decision involving the finding of facts regarding  
17          a specific application of a development regulation and that requires the  
18          exercise of discretion when applying the standards of the regulation. The  
19          term includes, but is not limited to, decisions involving variances, special  
20          use permits, certificates of appropriateness, and appeals of administrative  
21          determinations. Decisions on the approval of subdivision plats and site plans  
22          are quasi-judicial in nature if the regulation authorizes a decision-making  
23          board to approve or deny the application based not only upon whether the  
24          application complies with the specific requirements set forth in the  
25          regulation, but also on whether the application complies with one or more  
26          generally stated standards requiring a discretionary decision on the findings  
27          to be made by the decision-making board.
- 28          (29) Site plan. – A scaled drawing and supporting text showing the relationship  
29          between lot lines and the existing or proposed uses, buildings, or structures  
30          on the lot, including, but not limited to, site-specific details such as building  
31          areas, building height and floor area, setbacks from lot lines and street  
32          rights-of-way, intensities, densities, utility lines and locations, parking,  
33          access points, roads, and stormwater control facilities, required to show  
34          compliance with all legally required development regulations that are  
35          applicable to the project and the site plan review. A site plan approval based  
36          solely upon application of objective standards is an administrative decision  
37          and a site plan approval based in whole or in part upon the application of  
38          standards involving judgment and discretion is a quasi-judicial decision.
- 39          (30) Special use permit. – A permit issued to authorize development or land uses  
40          in a particular zoning district upon presentation of competent, material, and  
41          substantial evidence establishing compliance with one or more general  
42          standards requiring that judgment and discretion be exercised as well as  
43          compliance with specific standards. The term includes permits previously  
44          referred to as conditional use permits or special exceptions.
- 45          (31) Subdivision. – The division of land for the purpose of sale or development as  
46          specified in G.S. 160D-8-2.
- 47          (32) Subdivision regulation. – A subdivision regulation authorized by Article 8 of  
48          this Chapter.
- 49          (33) Vested right. – The right to undertake and complete the development and use  
50          of property under the terms and conditions of an approval secured as  
51          specified in G.S. 160D-1-8 or under common law.

1           (34) Zoning map amendment or rezoning. – An amendment to a zoning  
2 regulation for the purpose of changing the zoning district that is applied to a  
3 specified property or properties. The term also includes (i) the initial  
4 application of zoning when land is added to the territorial jurisdiction of a  
5 local government that has previously adopted zoning regulations and (ii) the  
6 application of an overlay zoning district or a conditional zoning district. The  
7 term does not include (i) the initial adoption of a zoning map by a local  
8 government, (ii) the repeal of a zoning map and readoption of a new zoning  
9 map for the entire planning and development regulation jurisdiction, or (iii)  
10 updating the zoning map to incorporate amendments to the names of zoning  
11 districts made by zoning text amendments where there are no changes in the  
12 boundaries of the zoning district or land uses permitted in the district.

13           (35) Zoning regulation. – A zoning regulation authorized by Article 7 of this  
14 Chapter.

15 **"§ 160D-1-3. Unified development ordinance.**

16           A local government may elect to combine any of the regulations authorized by this Chapter  
17 into a unified ordinance. Unless expressly provided otherwise, a local government may apply  
18 any of the definitions and procedures authorized by law to any or all aspects of the unified  
19 ordinance and may employ any organizational structure, board, commission, or staffing  
20 arrangement authorized by law to any or all aspects of the ordinance. Inclusion of a regulation  
21 authorized by this Chapter or local act in a unified development ordinance does not expand,  
22 diminish, or alter the scope of authority for those regulations.

23 **"§ 160D-1-4. Development approvals run with the land.**

24           Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations  
25 created by development approvals made pursuant to this Chapter attach to and run with the  
26 land.

27 **"§ 160D-1-5. Maps.**

28           (a) Zoning Map. – Zoning district boundaries and any other boundaries included within  
29 a map that is part of a development regulation adopted pursuant to this Chapter shall be drawn  
30 on a map that is adopted or incorporated within a duly adopted development regulation. Zoning  
31 district maps that are so adopted shall be maintained for public inspection in the office of the  
32 local government clerk or such other office as specified in the development regulation. The  
33 maps may be in paper or a digital format approved by the local government.

34           (b) Incorporation by Reference. – Development regulations adopted pursuant to this  
35 Chapter may reference or incorporate by reference flood insurance rate maps and watershed  
36 boundary maps officially adopted or promulgated by State and federal agencies. For these maps  
37 a regulation text or zoning map may reference a specific officially adopted map or may  
38 incorporate by reference the most recent officially adopted version of such maps. When zoning  
39 district boundaries are based on these maps, the regulation may provide that the zoning district  
40 boundaries are automatically amended to remain consistent with changes in the promulgated  
41 State or federal maps, provided a copy of the currently effective version of any incorporated  
42 map shall be maintained for public inspection as provided in subsection (a) of this section.

43           (c) Copies. – Copies of the zoning district map may be reproduced by any method of  
44 reproduction that gives legible and permanent copies and, when certified by the local  
45 government clerk in accordance with G.S. 160A-79 or G.S. 153A-50, shall be admissible into  
46 evidence and shall have the same force and effect as would the original map.

47 **"§ 160D-1-6. Refund of illegal fees.**

48           If a local government is found to have illegally imposed a tax, fee, or monetary contribution  
49 for development or a development approval not specifically authorized by law, the local  
50 government shall return the tax, fee, or monetary contribution plus interest of six percent (6%)

1 per annum to the person who made the payment or as directed by a court if the person making  
2 the payment is no longer in existence.

3 **"§ 160D-1-7. Moratoria.**

4 (a) Authority. – As provided in this section, local governments may adopt temporary  
5 moratoria on any development approval required by law, except for the purpose of developing  
6 and adopting new or amended plans or development regulations governing residential uses. The  
7 duration of any moratorium shall be reasonable in light of the specific conditions that warrant  
8 imposition of the moratorium and may not exceed the period of time necessary to correct,  
9 modify, or resolve such conditions.

10 (b) Hearing Required. – Except in cases of imminent and substantial threat to public  
11 health or safety, before adopting a development regulation imposing a development  
12 moratorium with a duration of 60 days or any shorter period, the governing board shall hold a  
13 legislative hearing and shall publish a notice of the hearing in a newspaper having general  
14 circulation in the area not less than seven days before the date set for the hearing. A  
15 development moratorium with a duration of 61 days or longer, and any extension of a  
16 moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing  
17 requirements of G.S. 160D-6-1.

18 (c) Exempt Projects. – Absent an imminent threat to public health or safety, a  
19 development moratorium adopted pursuant to this section shall not apply to any project for  
20 which a valid building permit issued pursuant to G.S. 160D-11-8 is outstanding, to any project  
21 for which a special use permit application has been accepted as complete, to development set  
22 forth in a site-specific or phased vesting plan approved pursuant to G.S. 160D-1-8, to  
23 development for which substantial expenditures have already been made in good-faith reliance  
24 on a prior valid development approval, or to preliminary or final subdivision plats that have  
25 been accepted for review by the local government prior to the call for a hearing to adopt the  
26 moratorium. Any preliminary subdivision plat accepted for review by the local government  
27 prior to the call for a hearing, if subsequently approved, shall be allowed to proceed to final plat  
28 approval without being subject to the moratorium. If a complete application for development  
29 approval has been submitted prior to the effective date of a moratorium, G.S. 160D-1-8(b) shall  
30 be applicable when permit processing resumes.

31 (d) Required Statements. – Any development regulation establishing a development  
32 moratorium must include, at the time of adoption, each of the following:

33 (1) A statement of the problems or conditions necessitating the moratorium and  
34 what courses of action, alternative to a moratorium, were considered by the  
35 local government and why those alternative courses of action were not  
36 deemed adequate.

37 (2) A statement of the development approvals subject to the moratorium and  
38 how a moratorium on those approvals will address the problems or  
39 conditions leading to imposition of the moratorium.

40 (3) A date for termination of the moratorium and a statement setting forth why  
41 that duration is reasonably necessary to address the problems or conditions  
42 leading to imposition of the moratorium.

43 (4) A statement of the actions, and the schedule for those actions, proposed to be  
44 taken by the local government during the duration of the moratorium to  
45 address the problems or conditions leading to imposition of the moratorium.

46 (e) Limit on Renewal or Extension. – No moratorium may be subsequently renewed or  
47 extended for any additional period unless the local government shall have taken all reasonable  
48 and feasible steps proposed to be taken in its ordinance establishing the moratorium to address  
49 the problems or conditions leading to imposition of the moratorium and unless new facts and  
50 conditions warrant an extension. Any ordinance renewing or extending a development  
51 moratorium must include, at the time of adoption, the findings set forth in subdivisions (1)

1 through (4) of subsection (d) of this section, including what new facts or conditions warrant the  
2 extension.

3 (f) Expedited Judicial Review. – Any person aggrieved by the imposition of a  
4 moratorium on development approvals required by law may apply to the General Court of  
5 Justice for an order enjoining the enforcement of the moratorium. Actions brought pursuant to  
6 this section shall be scheduled for expedited hearing, and subsequent proceedings in those  
7 actions shall be accorded priority by the trial and appellate courts. In such actions, the local  
8 government shall have the burden of showing compliance with the procedural requirements of  
9 this subsection.

10 **"§ 160D-1-8. Vested rights and permit choice.**

11 (a) Findings. – The General Assembly recognizes that local government approval of  
12 development typically follows significant investment in site evaluation, planning, development  
13 costs, consultant fees, and related expenses. The General Assembly finds that it is necessary  
14 and desirable to provide for the establishment of certain vested rights in order to ensure  
15 reasonable certainty, stability, and fairness in the development regulation process, to secure the  
16 reasonable expectations of landowners, and to foster cooperation between the public and  
17 private sectors in land-use planning and development regulation. The provisions of this section  
18 strike an appropriate balance between private expectations and the public interest.

19 (b) Permit Choice. – If an application made in accordance with local regulation is  
20 submitted for a development approval required pursuant to this Chapter and a regulation  
21 changes between the time the application was submitted and a decision is made, the applicant  
22 may choose which version of the regulation will apply to the application. This section applies  
23 to all development approvals issued by the State and by local governments. The duration of  
24 vested rights created by development approvals are as set forth in subsection (d) of this section.

25 (c) Process to Claim Vested Right. – A person claiming a statutory or common law  
26 vested right may submit information to substantiate that claim to the zoning administrator or  
27 other officer designated by a development regulation, who shall make an initial determination  
28 as to the existence of the vested right. The decision of the zoning administrator or officer may  
29 be appealed under G.S. 160D-4-5. On appeal, the existence of a vested right shall be reviewed  
30 de novo. In lieu of seeking such a determination, a person claiming a vested right may bring an  
31 original civil action as provided by G.S. 160D-4-5(c).

32 (d) Types and Duration of Statutory Vested Rights. – Except as provided by this section  
33 and subject to subsection (b) of this section, amendments in local development regulations shall  
34 not be applicable or enforceable with regard to development that has been permitted or  
35 approved pursuant to this Chapter so long as one of the types of approvals listed in this  
36 subsection remains valid and unexpired. Each type of vested right listed in this subsection is  
37 defined by and is subject to the limitations provided in this section. Vested rights established  
38 under this section are not mutually exclusive, and the establishment of a vested right does not  
39 preclude the establishment of one or more other vested rights. Vested rights established by  
40 local government approvals are as follows:

41 (1) Six months – Building permits. – Pursuant to G.S. 160D-11-9, a building  
42 permit expires six months after issuance unless work under the permit has  
43 commenced. Building permits also expire if work is discontinued for a  
44 period of 12 months after work has commenced.

45 (2) One year – Other local development approvals. – Pursuant to  
46 G.S. 160D-4-3(c), unless otherwise specified by statute or local ordinance,  
47 all other local development approvals expire one year after issuance unless  
48 work has substantially commenced. Expiration of a local development  
49 approval shall not affect the duration of a vested right established under this  
50 section or vested rights established under common law.

51 (3) Two to five years – Site-specific vesting plans. –

- 1                   a.     Duration. – A vested right for a site-specific vesting plan shall  
2                   remain vested for a period of two years. This vesting shall not be  
3                   extended by any amendments or modifications to a site-specific  
4                   vesting plan unless expressly provided by the local government. A  
5                   local government may provide that rights regarding a site-specific  
6                   vesting plan shall be vested for a period exceeding two years, but not  
7                   exceeding five years, if warranted by the size and phasing of  
8                   development, the level of investment, the need for the development,  
9                   economic cycles, and market conditions, or other considerations.  
10                  This determination shall be in the discretion of the local government  
11                  and shall be made following the process specified for the particular  
12                  form of a site-specific vesting plan involved in accordance with  
13                  sub-subdivision c. of this subdivision.
- 14                  b.     Relation to building permits. – A right vested as provided in this  
15                  subsection shall terminate at the end of the applicable vesting period  
16                  with respect to buildings and uses for which no valid building permit  
17                  applications have been filed. Upon issuance of a building permit, the  
18                  provisions of G.S.160D-11-9 and G.S. 160D-11-13 shall apply,  
19                  except that the permit shall not expire or be revoked because of the  
20                  running of time while a vested right under this subsection exists.
- 21                  c.     Requirements for site-specific vesting plans. – For the purposes of  
22                  this section a "site-specific vesting plan" means a plan submitted to a  
23                  local government pursuant to this section describing with reasonable  
24                  certainty the type and intensity of use for a specific parcel or parcels  
25                  of property. The plan may be in the form of, but not be limited to,  
26                  any of the following plans or approvals: a planned unit development  
27                  plan, a subdivision plat, a site plan, a preliminary or general  
28                  development plan, a special use permit, a conditional zoning, or any  
29                  other development approval as may be used by a local government.  
30                  Unless otherwise expressly provided by the local government, the  
31                  plan shall include the approximate boundaries of the site; significant  
32                  topographical and other natural features effecting development of the  
33                  site; the approximate location on the site of the proposed buildings,  
34                  structures, and other improvements; the approximate dimensions,  
35                  including height, of the proposed buildings and other structures; and  
36                  the approximate location of all existing and proposed infrastructure  
37                  on the site, including water, sewer, roads, and pedestrian walkways.  
38                  What constitutes a site-specific vesting plan shall be finally  
39                  determined by the local government pursuant to an ordinance and the  
40                  document that triggers vesting shall be so identified at the time of its  
41                  approval. At a minimum, the regulation shall designate a vesting  
42                  point earlier than the issuance of a building permit. In the event a  
43                  local government fails to adopt an ordinance setting forth what  
44                  constitutes a site-specific vesting plan, any development approval  
45                  shall be considered to be a site-specific vesting plan. A variance shall  
46                  not constitute a site-specific vesting plan and approval of a  
47                  site-specific vesting plan with the condition that a variance be  
48                  obtained shall not confer a vested right unless and until the necessary  
49                  variance is obtained. If a sketch plan or other document fails to  
50                  describe with reasonable certainty the type and intensity of use for a



1 specified parcel or parcels of property, it may not constitute a  
2 site-specific vesting plan.

3 d. Process for approval and amendment of site-specific vesting plans. –  
4 If a site-specific vesting plan is based on an approval required by a  
5 local development regulation, the local government shall provide  
6 whatever notice and hearing is required for that underlying approval.  
7 If the site-specific vesting plan is not based on such an approval, a  
8 legislative hearing with notice as required by G.S. 160D-6-2 shall be  
9 held. A local government may approve a site-specific vesting plan  
10 upon such terms and conditions as may reasonably be necessary to  
11 protect the public health, safety, and welfare. Such conditional  
12 approval shall result in a vested right, although failure to abide by its  
13 terms and conditions will result in a forfeiture of vested rights. A  
14 local government shall not require a landowner to waive vested rights  
15 as a condition of developmental approval. A site-specific vesting  
16 plan shall be deemed approved upon the effective date of the local  
17 government's decision approving the plan or such other date as  
18 determined by the governing board upon approval. An approved  
19 site-specific vesting plan and its conditions may be amended with the  
20 approval of the owner and the local government as follows: any  
21 substantial modification must be reviewed and approved in the same  
22 manner as the original approval; minor modifications may be  
23 approved by staff, if such are defined and authorized by local  
24 regulation.

25 (4) Seven years. – Multiphase developments. – A multiphase development shall  
26 be vested for the entire development with the zoning regulations, subdivision  
27 regulations, and unified development ordinances in place at the time a site  
28 plan approval is granted for the initial phase of the multiphase development.  
29 This right shall remain vested for a period of seven years from the time a site  
30 plan approval is granted for the initial phase of the multiphase development.  
31 For purposes of this subsection, "multiphase development" means a  
32 development containing 100 acres or more that (i) is submitted for site plan  
33 approval for construction to occur in more than one phase and (ii) is subject  
34 to a master development plan with committed elements, including a  
35 requirement to offer land for public use as a condition of its master  
36 development plan approval.

37 (5) Indefinite. – Development agreements. – A vested right of reasonable  
38 duration may be specified in a development agreement approved under  
39 Article 10 of this Chapter.

40 (e) Continuing Review. – Following approval or conditional approval of a statutory  
41 vested right, a local government may make subsequent reviews and require subsequent  
42 approvals by the local government to ensure compliance with the terms and conditions of the  
43 original approval, provided that such reviews and approvals are not inconsistent with the  
44 original approval. The local government may revoke the original approval for failure to comply  
45 with applicable terms and conditions of the original approval or the applicable local  
46 development regulations.

47 (f) Exceptions. – The provisions of this section are subject to the following:

48 (1) A vested right, once established as provided for by subdivision (3) or (4) of  
49 subsection (d) of this section, precludes any zoning action by a local  
50 government that would change, alter, impair, prevent, diminish, or otherwise

1 delay the development or use of the property as set forth in an approved  
2 vested right, except when any of the following conditions are present:

3 a. The written consent of the affected landowner.

4 b. Findings made, after notice and an evidentiary hearing, that natural  
5 or man-made hazards on or in the immediate vicinity of the property,  
6 if uncorrected, would pose a serious threat to the public health,  
7 safety, and welfare if the project were to proceed as contemplated in  
8 the approved vested right.

9 c. The extent to which the affected landowner receives compensation  
10 for all costs, expenses, and other losses incurred by the landowner,  
11 including, but not limited to, all fees paid in consideration of  
12 financing, and all architectural, planning, marketing, legal, and other  
13 consultant's fees incurred after approval by the local government,  
14 together with interest as is provided in G.S. 160D-1-6. Compensation  
15 shall not include any diminution in the value of the property which is  
16 caused by such action.

17 d. Findings made, after notice and an evidentiary hearing, that the  
18 landowner or his representative intentionally supplied inaccurate  
19 information or made material misrepresentations that made a  
20 difference in the approval by the local government of the vested  
21 right.

22 e. The enactment or promulgation of a State or federal law or regulation  
23 that precludes development as contemplated in the approved vested  
24 right, in which case the local government may modify the affected  
25 provisions, upon a finding that the change in State or federal law has  
26 a fundamental effect on the plan, after notice and an evidentiary  
27 hearing.

28 (2) The establishment of a vested right under subdivision (3) or (4) of subsection  
29 (d) of this section shall not preclude the application of overlay zoning or  
30 other development regulation that imposes additional requirements but does  
31 not affect the allowable type or intensity of use, or ordinances or regulations  
32 which are general in nature and are applicable to all property subject to  
33 development regulation by a local government, including, but not limited to,  
34 building, fire, plumbing, electrical, and mechanical codes. Otherwise  
35 applicable new regulations shall become effective with respect to property  
36 that is subject to a vested right established under this section upon the  
37 expiration or termination of the vested rights period provided for in this  
38 section.

39 (3) Notwithstanding any provision of this section, the establishment of a vested  
40 right under this section shall not preclude, change or impair the authority of  
41 a local government to adopt and enforce development regulation provisions  
42 governing nonconforming situations or uses.

43 (g) Miscellaneous provisions. – A vested right obtained under this section is not a  
44 personal right but shall attach to and run with the applicable property. After approval of a  
45 vested right under this section, all successors to the original landowner shall be entitled to  
46 exercise such rights. Nothing in this section shall preclude judicial determination, based on  
47 common law principles or other statutory provisions, that a vested right exists in a particular  
48 case or that a compensable taking has occurred. Except as expressly provided in this section,  
49 nothing in this section shall be construed to alter the existing common law.

50 **"§ 160D-1-9. Conflicts of interest.**

1       (a) Governing Board. – A governing board member shall not vote on any legislative  
2 decision regarding a development regulation adopted pursuant to this Chapter where the  
3 outcome of the matter being considered is reasonably likely to have a direct, substantial, and  
4 readily identifiable financial impact on the member. A governing board member shall not vote  
5 on any zoning amendment if the landowner of the property subject to a rezoning petition or the  
6 applicant for a text amendment is a person with whom the member has a close familial,  
7 business, or other associational relationship.

8       (b) Appointed Boards. – Members of appointed boards providing advice to the  
9 governing board shall not vote on recommendations regarding any legislative decision  
10 regarding a development regulation adopted pursuant to this Chapter where the outcome of the  
11 matter being considered is reasonably likely to have a direct, substantial, and readily  
12 identifiable financial impact on the member. An appointed board member shall not vote on any  
13 zoning amendment if the landowner of the property subject to a rezoning petition or the  
14 applicant for a text amendment is a person with whom the member has a close familial,  
15 business, or other associational relationship.

16       (c) Administrative Staff. – No staff member shall make a final decision on an  
17 administrative decision required by this Chapter if the outcome of that decision would have a  
18 direct, substantial, and readily identifiable financial impact on the staff member or if the  
19 applicant or other person subject to that decision is a person with whom the staff member has a  
20 close familial, business, or other associational relationship. If a staff member has a conflict of  
21 interest under this section, the decision shall be assigned to the supervisor of the staff person or  
22 such other staff person as may be designated by the development regulation or other ordinance.

23       No staff member shall be financially interested or employed by a business that is financially  
24 interested in a development subject to regulation under this Chapter unless the staff member is  
25 the owner of the land or building involved. No staff member or other individual or an employee  
26 of a company contracting with a local government to provide staff support shall engage in any  
27 work that is inconsistent with his or her duties or with the interest of the local government, as  
28 determined by the local government.

29       (d) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial  
30 functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in  
31 a manner that would violate affected persons' constitutional rights to an impartial decision  
32 maker. Impermissible violations of due process include, but are not limited to, a member  
33 having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed  
34 ex parte communications, a close familial, business, or other associational relationship with an  
35 affected person, or a financial interest in the outcome of the matter.

36       (e) Resolution of Objection. – If an objection is raised to a board member's participation  
37 and that member does not recuse himself or herself, the remaining members of the board shall  
38 by majority vote rule on the objection.

39       (f) Familial Relationship. – For purposes of this section, a "close familial relationship"  
40 means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the  
41 step, half, and in-law relationships.

42 **"§ 160D-1-10. Chapter construction.**

43       (a) G.S. 153A-4 and G.S. 160A-4 are applicable to this Chapter.

44       (b) "Written" or "in writing" is deemed to include electronic documentation.

45       (c) Unless specified otherwise, in the absence of evidence to the contrary, delivery by  
46 first-class mail shall be deemed received on the third business day following deposit of the item  
47 for mailing with the United States Postal Service and delivery by electronic mail shall be  
48 deemed received on the date sent.

49 **"§ 160D-1-11. Effect on prior laws.**

50       (a) The enactment of this Chapter shall not require the readoption of any local  
51 government ordinance enacted pursuant to laws that were in effect before the effective date of

1 this Chapter and are restated or revised herein. The provisions of this Chapter shall not affect  
2 any act heretofore done, any liability incurred, any right accrued or vested, or any suit or  
3 prosecution begun or cause of action accrued as of the effective date of this Chapter. The  
4 enactment of this Chapter shall not be deemed to amend the geographic area within which local  
5 government development regulations adopted prior to January 1, 2019, are effective.

6 (b) G.S. 153A-3 and G.S. 160A-3 are applicable to this Chapter. Nothing in this  
7 Chapter repeals or amends a charter or local act in effect as of the effective date of this Chapter  
8 unless this Chapter or a subsequent enactment of the General Assembly clearly shows a  
9 legislative intent to repeal or supersede that charter or local act.

10 (c) Whenever a reference is made in another section of the General Statutes or any local  
11 act, or any local government ordinance, resolution, or order, to a portion of Article 19 of  
12 Chapter 160A or Article 18 of Chapter 153A of the General Statutes that is repealed or  
13 superseded by this Chapter, the reference shall be deemed amended to refer to that portion of  
14 this Chapter that most nearly corresponds to the repealed or superseded portion of Article 19 of  
15 Chapter 160A or Article 18 of Chapter 153A of the General Statutes.

16 "Article 2.

17 "Planning and Development Regulation Jurisdiction.

18 **"§ 160D-2-1. Planning and development regulation jurisdiction.**

19 (a) Municipalities. – All of the powers granted by this Chapter may be exercised by any  
20 city within its corporate limits and within any extraterritorial area established pursuant to  
21 G.S. 160D-2.

22 (b) Counties. – All of the powers granted by this Chapter may be exercised by any  
23 county throughout the county except in areas subject to municipal planning and development  
24 regulation jurisdiction.

25 **"§ 160D-2-2. Municipal extraterritorial jurisdiction.**

26 (a) Geographic Scope. – Any city may exercise the powers granted to cities under this  
27 Chapter within a defined area extending not more than one mile beyond its contiguous  
28 corporate limits. In addition, a city of 10,000 or more population but less than 25,000 may  
29 exercise these powers over an area extending not more than two miles beyond its limits and a  
30 city of 25,000 or more population may exercise these powers over an area extending not more  
31 than three miles beyond its limits. In determining the population of a city for the purposes of  
32 this Chapter, the city council and the board of county commissioners may use the most recent  
33 annual estimate of population as certified by the Secretary of the North Carolina Department of  
34 Administration. Pursuant to G.S. 160A-58.4, extraterritorial municipal planning and  
35 development regulation may be extended only from the primary corporate boundary of a city  
36 and not from the boundary of satellite areas of the city.

37 (b) Authority in the Extraterritorial Area. – A city may not exercise any power  
38 conferred by this Chapter in its extraterritorial jurisdiction that it is not exercising within its  
39 corporate limits. A city may exercise in its extraterritorial area all powers conferred by this  
40 Chapter that it is exercising within its corporate limits. If a city fails to extend a particular type  
41 of development regulation to the extraterritorial area, the county may elect to exercise that  
42 particular type of regulation in the extraterritorial area.

43 (c) County Approval of City Jurisdiction. – Notwithstanding subsection (a) of this  
44 section, no city may extend its extraterritorial powers into any area for which the county has  
45 adopted and is enforcing county zoning and subdivision regulations. However, the city may do  
46 so where the county is not exercising both of these powers, or when the city and the county  
47 have agreed upon the area within which each will exercise the powers conferred by this  
48 Chapter. No city may extend its extraterritorial powers beyond one mile from its corporate  
49 limits without the approval of the board or boards of county commissioners with jurisdiction  
50 over the area.

1        (d) Notice of Proposed Jurisdiction Change. – Any municipality proposing to exercise  
2 extraterritorial jurisdiction under this Chapter shall notify the owners of all parcels of land  
3 proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax  
4 records. The notice shall be sent by first-class mail to the last addresses listed for affected  
5 property owners in the county tax records. The notice shall inform the landowner of the effect  
6 of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a  
7 legislative hearing prior to adoption of any ordinance extending the area of extraterritorial  
8 jurisdiction, as provided in G.S. 160D-6-1, and of the right of all residents of the area to apply  
9 to the board of county commissioners to serve as a representative on the planning board and the  
10 board of adjustment, as provided in G.S. 160D-3-3. The notice shall be mailed at least 30 days  
11 prior to the date of hearing. The person or persons mailing the notices shall certify to the city  
12 council that the notices were sent by first-class mail, and the certificate shall be deemed  
13 conclusive in the absence of fraud.

14        (e) Boundaries. – Any council exercising extraterritorial jurisdiction under this Chapter  
15 shall adopt an ordinance specifying the areas to be included based upon existing or projected  
16 urban development and areas of critical concern to the city, as evidenced by officially adopted  
17 plans for its development. A single jurisdictional boundary shall be applicable for all powers  
18 conferred in this Chapter. Boundaries shall be defined, to the extent feasible, in terms of  
19 geographical features identifiable on the ground. Boundaries may follow parcel ownership  
20 boundaries. A council may, in its discretion, exclude from its extraterritorial jurisdiction areas  
21 lying in another county, areas separated from the city by barriers to urban growth, or areas  
22 whose projected development will have minimal impact on the city. The boundaries specified  
23 in the ordinance shall at all times be drawn on a map, set forth in a written description, or  
24 shown by a combination of these techniques. This delineation shall be maintained in the  
25 manner provided in G.S. 160A-22 for the delineation of the corporate limits and shall be  
26 recorded in the office of the register of deeds of each county in which any portion of the area  
27 lies.

28        Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional  
29 boundary between them shall be a line connecting the midway points of the overlapping area  
30 unless the city councils agree to another boundary line within the overlapping area based upon  
31 existing or projected patterns of development.

32        (f) County Authority Within City Jurisdiction. – The county may, on request of the city  
33 council, exercise any or all of these powers in any or all areas lying within the city's corporate  
34 limits or within the city's specified area of extraterritorial jurisdiction.

35        (g) Transfer of Jurisdiction. – When a city annexes, or a new city is incorporated in, or  
36 a city extends its jurisdiction to include, an area that is currently being regulated by the county,  
37 the county development regulations and powers of enforcement shall remain in effect until (i)  
38 the city has adopted such development regulations or (ii) a period of 60 days has elapsed  
39 following the annexation, extension, or incorporation, whichever is sooner. Prior to the transfer  
40 of jurisdiction, the city may hold hearings and take any other measures consistent with  
41 G.S. 160D-2-4 that may be required in order to adopt and apply its development regulations for  
42 the area at the same time it assumes jurisdiction.

43        (h) Relinquishment of Jurisdiction. – When a city relinquishes jurisdiction over an area  
44 that it is regulating under this Chapter to a county, the city development regulations and powers  
45 of enforcement shall remain in effect until (i) the county has adopted such development  
46 regulation or (ii) a period of 60 days has elapsed following the action by which the city  
47 relinquished jurisdiction, whichever is sooner. Prior to the transfer of jurisdiction, the county  
48 may hold hearings and take other measures consistent with G.S. 160D-2-4 that may be required  
49 in order to adopt and apply its development regulations for the area at the same time it assumes  
50 jurisdiction.

1 (i) Process for Local Government Approval. – When a local government is granted  
 2 powers by this section subject to the request, approval, or agreement of another local  
 3 government, the request, approval, or agreement shall be evidenced by a formally adopted  
 4 resolution of the governing board of the local government. Any such request, approval, or  
 5 agreement can be rescinded upon two years' written notice to the other governing boards  
 6 concerned by repealing the resolution. The resolution may be modified at any time by mutual  
 7 agreement of the governing boards concerned.

8 (j) Local Acts. – Nothing in this section shall repeal, modify, or amend any local act  
 9 which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or  
 10 courses and distances.

11 (k) Effect on Vested Rights. – Whenever a city or county, pursuant to this section,  
 12 acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of  
 13 another local government, any person who has acquired vested rights in the surrendering  
 14 jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or  
 15 county acquiring jurisdiction may take any action regarding such a development approval,  
 16 certificate, or other evidence of compliance that could have been taken by the local government  
 17 surrendering jurisdiction pursuant to its development regulations. Except as provided in this  
 18 subsection, any building, structure, or other land use in a territory over which a city or county  
 19 has acquired jurisdiction is subject to the development regulations of the city or county.

20 **"§ 160D-2-3. Split jurisdiction.**

21 If a parcel of land lies within the planning and development regulation jurisdiction of more  
 22 than one local government, for the purposes of this Chapter, the local governments may, by  
 23 mutual agreement pursuant to Article 20 of Chapter 160A of the General Statutes and with the  
 24 written consent of the landowner, assign exclusive planning and development regulation  
 25 jurisdiction under this Chapter for the entire parcel to any one of those local governments. Such  
 26 a mutual agreement shall only be applicable to development regulations and shall not affect  
 27 taxation or other nonregulatory matters. The mutual agreement shall be evidenced by a  
 28 resolution formally adopted by each governing board and recorded with the register of deeds in  
 29 the county where the property is located within 14 days of the adoption of the last required  
 30 resolution.

31 **"§ 160D-2-4. Pending jurisdiction.**

32 After consideration of a change in local government jurisdiction has been formally  
 33 proposed, the local government that is potentially receiving jurisdiction may receive and  
 34 process proposals to adopt development regulations and any application for development  
 35 approvals that would be required in that local government if the jurisdiction is changed. No  
 36 final decisions shall be made on any development approval prior to the actual transfer of  
 37 jurisdiction. Acceptance of jurisdiction, adoption of development regulations, and decisions on  
 38 development approvals may be made concurrently and may have a common effective date.

39 "Article 3.

40 "Boards and Organizational Arrangements.

41 **"§ 160D-3-1. Planning boards.**

42 (a) Composition. – A local government may by ordinance provide for the appointment  
 43 and compensation of a planning board or may designate one or more boards or commissions to  
 44 perform the duties of a planning board. A planning board established pursuant to this section  
 45 may include, but shall not be limited to, one or more of the following:

46 (1) A planning board of any size or composition deemed appropriate, organized  
 47 in any manner deemed appropriate; provided, however, the board shall have  
 48 at least three members.

49 (2) A joint planning board created by two or more local governments pursuant  
 50 to Part 1 of Article 20 of Chapter 160A of the General Statutes.

51 (b) Duties. – A planning board may be assigned the following powers and duties:

- 1           (1) To prepare, review, maintain, monitor, and periodically update and  
2 recommend to the governing board a comprehensive plan, and such other  
3 plans as deemed appropriate, and conduct ongoing related research, data  
4 collection, mapping, and analysis.
- 5           (2) To facilitate and coordinate citizen engagement and participation in the  
6 planning process.
- 7           (3) To develop and recommend policies, ordinances, development regulations,  
8 administrative procedures, and other means for carrying out plans in a  
9 coordinated and efficient manner.
- 10          (4) To advise the governing board concerning the implementation of plans,  
11 including, but not limited to, review and comment on all zoning text and  
12 map amendments as required by G.S. 160D-6-4.
- 13          (5) To exercise any functions in the administration and enforcement of various  
14 means for carrying out plans that the governing board may direct.
- 15          (6) To provide a preliminary forum for review of quasi-judicial decisions,  
16 provided that no part of the forum or recommendation may be used as a  
17 basis for the deciding board.
- 18          (7) To perform any other related duties that the governing board may direct.

19 **"§ 160D-3-2. Boards of adjustment.**

20       (a) Composition. – A local government may by ordinance provide for the appointment  
21 and compensation of a board of adjustment consisting of five or more members, each to be  
22 appointed for three-year terms. In appointing the original members or in the filling of vacancies  
23 caused by the expiration of the terms of existing members, the governing board may appoint  
24 certain members for less than three years so that the terms of all members shall not expire at the  
25 same time. The governing board may appoint and provide compensation for alternate members  
26 to serve on the board in the absence or temporary disqualification of any regular member or to  
27 fill a vacancy pending appointment of a member. Alternate members shall be appointed for the  
28 same term, at the same time, and in the same manner as regular members. Each alternate  
29 member serving on behalf of any regular member has all the powers and duties of a regular  
30 member.

31       (b) Duties. – The board shall hear and decide all matters upon which it is required to  
32 pass under any statute or development regulation adopted under this Chapter. The ordinance  
33 may designate a planning board or governing board to perform any of the duties of a  
34 board of adjustment in addition to its other duties and may create and designate  
35 specialized boards to hear technical appeals. If any board other than the board of adjustment is  
36 assigned decision-making authority for any quasi-judicial matter that board shall comply with  
37 all of the procedures and the process applicable to a board of adjustment in making  
38 quasi-judicial decisions.

39 **"§ 160D-3-3. Historic preservation commission.**

40       (a) Composition. – Before it may designate one or more landmarks or historic districts  
41 pursuant to Part 4 of Article 9 of this Chapter, the governing board shall establish a historic  
42 preservation commission. The governing board shall determine the number of the members of  
43 the commission, which shall be at least three, and the length of their terms, which shall be no  
44 greater than four years. A majority of the members of the commission shall have demonstrated  
45 special interest, experience, or education in history, architecture, archaeology, or related fields.  
46 All the members shall reside within the planning and development regulation jurisdiction of the  
47 local government as established pursuant to this Chapter. The commission may appoint  
48 advisory bodies and committees as appropriate. Members of the commission may be  
49 reimbursed for actual expenses incidental to the performance of their duties within the limits of  
50 any funds available to the commission but shall serve without pay unless otherwise provided in  
51 the ordinance establishing the commission.

1       (b) Alternative Forms. – In lieu of establishing a historic preservation commission, a  
2 local government may designate as its historic preservation commission (i) a separate historic  
3 districts commission or a separate historic landmarks commission established pursuant to this  
4 Chapter to deal only with historic districts or landmarks respectively, (ii) a planning board  
5 established pursuant to this Chapter, or (iii) a community appearance commission established  
6 pursuant to this Chapter. In order for a commission or board other than the historic preservation  
7 commission to be designated, at least three of its members shall have demonstrated special  
8 interest, experience, or education in history, architecture, or related fields. At the discretion of a  
9 local government the ordinance may also provide that the preservation commission may  
10 exercise within a historic district any or all of the powers of a planning board or a community  
11 appearance commission.

12       (c) Joint Commissions. – Local governments may establish or designate a joint  
13 preservation commission. If a joint commission is established or designated, it shall have the  
14 same composition as specified by this section and the local governments involved shall  
15 determine the residence requirements of members of the joint preservation commission.

16       (d) Duties. – The historic preservation commission shall have the duties specified in  
17 G.S. 160D-9-42.

18 **"§ 160D-3-4. Appearance commission.**

19       (a) Composition. – Each local government may create a special commission, to be  
20 known as the appearance commission. The commission shall consist of not less than seven nor  
21 more than 15 members, to be appointed by the governing board for terms not to exceed four  
22 years, as the governing board may by ordinance provide. All members shall be residents of the  
23 local government's area of planning and development regulation jurisdiction at the time of  
24 appointment. Where possible, appointments shall be made in such a manner as to maintain on  
25 the commission at all times a majority of members who have had special training or experience  
26 in a design field, such as architecture, landscape design, horticulture, city planning, or a related  
27 field. Members of the commission may be reimbursed for actual expenses incidental to the  
28 performance of their duties within the limits of any funds available to the commission but shall  
29 serve without pay unless otherwise provided in the ordinance establishing the commission.  
30 Membership of the commission is an office that may be held concurrently with any other  
31 elective or appointive office pursuant to Section 9 of Article VI of the North Carolina  
32 Constitution.

33       (b) Joint Commissions. – Local governments may establish a joint appearance  
34 commission. If a joint commission is established, it shall have the same composition as  
35 specified by this section and the local governments involved shall determine the residence  
36 requirements for members of the joint commission.

37       (c) Duties. – The community appearance commission shall have the duties specified in  
38 G.S. 160D-9-60.

39 **"§ 160D-3-5. Housing appeals board.**

40       (a) Composition. – The governing board may by ordinance provide for the creation and  
41 organization of a housing appeals board. Instead of establishing a housing appeals board, a  
42 local government may designate the board of adjustment as its housing appeals board. The  
43 housing appeals board, if created, shall consist of five members to serve for three-year  
44 staggered terms.

45       (b) Duties. – The housing appeals board shall have the duties specified in  
46 G.S. 160D-12-8.

47 **"§ 160D-3-6. Other advisory boards.**

48       A local government may by ordinance establish additional advisory boards as deemed  
49 appropriate. The ordinance establishing such boards shall specify the composition and duties of  
50 such boards.

51 **"§ 160D-3-7. Extraterritorial representation on boards.**



1 (a) Proportional Representation. – When a city elects to exercise extraterritorial powers  
2 under this Chapter, it shall provide a means of proportional representation based on population  
3 for residents of the extraterritorial area to be regulated. The population estimates for this  
4 calculation shall be updated no less frequently than after each decennial census. Representation  
5 shall be provided by appointing at least one resident of the entire extraterritorial planning and  
6 development regulation area to the planning board, board of adjustment, appearance  
7 commission, and the historic preservation commission if there are historic districts or  
8 designated landmarks in the extraterritorial area.

9 (b) Appointment. – Membership of joint municipal-county planning agencies or boards  
10 of adjustment may be appointed as agreed by counties and municipalities. The extraterritorial  
11 representatives on a city advisory board authorized by this Article shall be appointed by the  
12 board of county commissioners with jurisdiction over the area. The county shall make the  
13 appointments within 90 days following the hearing. Once a city provides proportional  
14 representation, no power available to a city under this Chapter shall be ineffective in its  
15 extraterritorial area solely because county appointments have not yet been made. If there is an  
16 insufficient number of qualified residents of the extraterritorial area to meet membership  
17 requirements, the board of county commissioners may appoint as many other residents of the  
18 county as necessary to make up the requisite number. When the extraterritorial area extends  
19 into two or more counties, each board of county commissioners concerned shall appoint  
20 representatives from its portion of the area, as specified in the ordinance. If a board of county  
21 commissioners fails to make these appointments within 90 days after receiving a resolution  
22 from the city council requesting that they be made, the city council may make them.

23 (c) Voting Rights. – If the ordinance so provides, the outside representatives may have  
24 equal rights, privileges, and duties with the other members of the board to which they are  
25 appointed, regardless of whether the matters at issue arise within the city or within the  
26 extraterritorial area; otherwise, they shall function only with respect to matters within the  
27 extraterritorial area.

#### 28 **"§ 160D-3-8. Rules of procedure.**

29 Rules of procedure that are consistent with the provisions of this Chapter may be adopted  
30 by the governing board for any or all boards created under this Article. In the absence of action  
31 by the governing board, each board created under this Article is authorized to adopt its own  
32 rules of procedure that are consistent with the provisions of this Chapter. A copy of any  
33 adopted rules of procedure shall be maintained by the local government clerk or such other  
34 official as designated by ordinance and posted on the local government Web site if one exists.  
35 Each board shall keep minutes of its proceedings.

#### 36 **"§ 160D-3-9. Oath of office.**

37 All members appointed to boards under this Article shall, before entering their duties,  
38 qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

#### 39 **"§ 160D-3-10. Appointments to boards.**

40 Unless specified otherwise by statute or local ordinance, all appointments to boards  
41 authorized by this Chapter shall be made by the governing board of the local government. The  
42 governing board may establish reasonable procedures to solicit, review, and make  
43 appointments.

44 "Article 4.

45 "Administration, Enforcement, and Appeals.

#### 46 **"§ 160D-4-1. Application.**

47 (a) The provisions of this Article shall apply to all development regulations adopted  
48 pursuant to this Chapter. Local governments may apply any of the definitions and procedures  
49 authorized by this Article to any ordinance adopted under the general police power of cities and  
50 counties, Article 8 of Chapter 160A of the General Statutes, and Article 6 of Chapter 153A of  
51 the General Statutes, respectively, and may employ any organizational structure, board,

1 commission, or staffing arrangement authorized by this Article to any or all aspects of those  
2 ordinances. The provisions of this Article also apply to any other local ordinance that  
3 substantially affects land use and development.

4 (b) The provisions of this Article are supplemental to specific provisions included in  
5 other Articles of this Chapter. To the extent there is a conflict between the provisions of this  
6 Article and other Articles, the more specific provision shall control. This Article does not  
7 expand, diminish, or alter the scope of authority for development regulations authorized by this  
8 Chapter.

9 **"§ 160D-4-2. Administrative staff.**

10 (a) Authorization. – Local governments may appoint administrators, inspectors,  
11 enforcement officers, planners, technicians, and other staff to develop, administer, and enforce  
12 development regulations authorized by this Chapter.

13 (b) Duties. – Duties assigned to staff may include, but are not limited to, drafting and  
14 implementing plans and development regulations to be adopted pursuant to this Chapter;  
15 determining whether applications for development approvals are complete; receipt and  
16 processing applications for development approvals; providing notices of applications and  
17 hearings; making decisions and determinations regarding development regulation  
18 implementation; determining whether applications for development approvals meet applicable  
19 standards as established by law and local ordinance; conducting inspections; issuing or denying  
20 certificates of compliance or occupancy; enforcing development regulations, including issuing  
21 notices of violation, orders to correct violations, and recommending bringing judicial actions  
22 against actual or threatened violations; keeping adequate records; and any other actions that  
23 may be required in order adequately to enforce the laws and development regulations under  
24 their jurisdiction. A development regulation may require that designated staff members take an  
25 oath of office. The local government shall have the authority to enact ordinances, procedures,  
26 and fee schedules relating to the administration and the enforcement of this Chapter. The  
27 administrative and enforcement provisions related to building permits set forth in Article 11 of  
28 this Chapter shall be followed for those permits.

29 (c) Alternative Staff Arrangements. – A local government may enter into contracts with  
30 another city, county, or combination thereof under which the parties agree to create a joint staff  
31 for the enforcement of State and local laws specified in the agreement. The governing boards of  
32 the contracting parties may make any necessary appropriations for this purpose.

33 In lieu of joint staff, a governing board may designate staff from any other city or county to  
34 serve as a member of its staff with the approval of the governing board of the other city or  
35 county. A staff member, if designated from another city or county under this section, shall,  
36 while exercising the duties of the position, be considered an agent of the local government  
37 exercising those duties. The governing board of one local government may request the  
38 governing board of a second local government to direct one or more of the second local  
39 government's staff members to exercise their powers within part or all of the first local  
40 government's jurisdiction, and they shall thereupon be empowered to do so until the first local  
41 government officially withdraws its request in the manner provided in G.S. 160D-2-2.

42 A local government may contract with an individual, company, council of governments,  
43 regional planning agency, metropolitan planning organization, or rural planning agency to  
44 designate an individual who is not a city or county employee to work under the supervision of  
45 the local government to exercise the functions authorized by this section. The local government  
46 shall have the same potential liability, if any, for inspections conducted by an individual who is  
47 not an employee of the local government as it does for an individual who is an employee of the  
48 local government. The company or individual with whom the local government contracts shall  
49 have errors and omissions and other insurance coverage acceptable to the local government.

50 (d) Financial Support. – The local government may appropriate for the support of the  
51 staff any funds that it deems necessary. It shall have power to fix reasonable fees for support,

1 administration, and implementation of programs authorized by this Chapter and all such fees  
2 shall be used for no other purposes.

3 **"§ 160D-4-3. Administrative development approvals and determinations.**

4 (a) Development Approvals. – No person shall commence or proceed with development  
5 without first securing any required development approval from the local government with  
6 jurisdiction over the site of the development. A development approval shall be in writing and  
7 may contain a provision that the development shall comply with all applicable State and local  
8 laws. A local government may issue development approvals in print or electronic form. Any  
9 development approval issued exclusively in electronic form shall be protected from further  
10 editing once issued. Applications for development approvals may be made by the landowner, a  
11 lessee or person holding an option or contract to purchase or lease land, or an authorized agent  
12 of the landowner. An easement holder may also apply for development approval for such  
13 development as is authorized by the easement.

14 (b) Determinations and Notice of Determinations. – A development regulation enacted  
15 under the authority of this Chapter may designate the staff member or members charged with  
16 making determinations under the development regulation.

17 The officer making the determination shall give written notice to the owner of the property  
18 that is the subject of the determination and to the party who sought the determination, if  
19 different from the owner. The written notice shall be delivered by personal delivery, electronic  
20 mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner  
21 of the affected property on the county tax abstract and to the address provided in the application  
22 or request for a determination if the party seeking the determination is different from the owner.

23 It shall be conclusively presumed that all persons with standing to appeal have constructive  
24 notice of the determination from the date a sign providing notice that a determination has been  
25 made is prominently posted on the property that is the subject of the determination, provided  
26 the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning  
27 Decision" or "Subdivision Decision" or similar language for other determinations in letters at  
28 least six inches high and shall identify the means to contact a local government staff member  
29 for information about the determination. Posting of signs is not the only form of constructive  
30 notice. Any such posting shall be the responsibility of the landowner, applicant, or person who  
31 sought the determination. Verification of the posting shall be provided to the staff member  
32 responsible for the determination. Absent an ordinance provision to the contrary, posting of  
33 signs shall not be required.

34 (c) Duration of Development Approval. – Unless a different period is specified by this  
35 Chapter or other specific applicable law or a different period is provided by a quasi-judicial  
36 development approval, a development agreement, or a local ordinance, a development approval  
37 issued pursuant to this Chapter shall expire one year after the date of issuance if the work  
38 authorized by the development approval has not been substantially commenced. Local  
39 development regulations may provide for development approvals of shorter duration for  
40 temporary land uses, special events, temporary signs, and similar development. Unless  
41 provided otherwise by this Chapter or other specific applicable law or a longer period is  
42 provided by local ordinance, if after commencement the work or activity is discontinued for a  
43 period of 12 months after commencement, the development approval shall immediately expire.  
44 The time periods set out in this subsection shall be tolled during the pendency of any appeal.  
45 No work or activity authorized by any development approval that has expired shall thereafter  
46 be performed until a new development approval has been secured.

47 (d) Changes. – After a development approval has been issued, no deviations from the  
48 terms of the application or the development approval shall be made until written approval of  
49 proposed changes or deviations has been obtained. A local government may define by  
50 ordinance minor modifications to development approvals that can be exempted or  
51 administratively approved. The local government shall follow the same development review

1 and approval process required for issuance of the development approval in the review and  
2 approval of any major modification of that approval.

3 (e) Inspections. – Administrative staff may inspect work undertaken pursuant to a  
4 development approval to assure that the work is being done in accordance with applicable State  
5 and local laws and of the terms of the approval. In exercising this power, staff are authorized to  
6 enter any premises within the jurisdiction of the local government at all reasonable hours for  
7 the purposes of inspection or other enforcement action, upon presentation of proper credentials.

8 (f) Revocation of Development Approvals. – In addition to initiation of enforcement  
9 actions under G.S. 160D-4-4, development approvals may be revoked by the local government  
10 issuing the development approval by notifying the holder in writing stating the reason for the  
11 revocation. The local government shall follow the same development review and approval  
12 process required for issuance of the development approval, including any required notice or  
13 hearing, in the review and approval of any revocation of that approval. Development approvals  
14 shall be revoked for any substantial departure from the approved application, plans, or  
15 specifications; for refusal or failure to comply with the requirements of any applicable local  
16 development regulation or any State law enforced by the local government; or for false  
17 statements or misrepresentations made in securing the approval. Any development approval  
18 mistakenly issued in violation of an applicable State or local law may also be revoked. The  
19 revocation of a development approval by a staff member may be appealed pursuant to  
20 G.S. 160D-4-5. If an appeal is filed regarding a development regulation adopted by a local  
21 government pursuant to this Chapter, the provisions of G.S. 160D-4-5(e) regarding stays shall  
22 be applicable.

23 (g) Certificate of Occupancy. – A local government may, upon completion of work or  
24 activity undertaken pursuant to a development approval, make final inspections and issue a  
25 certificate of compliance or occupancy if staff finds that the completed work complies with all  
26 applicable State and local laws and with the terms of the approval. No building, structure, or  
27 use of land that is subject to a building permit required by Article 11 of this Chapter shall be  
28 occupied or used until a certificate of occupancy or temporary certificate pursuant to  
29 G.S. 160D-11-14 has been issued.

30 (h) Optional Communication Requirements. – A regulation adopted pursuant to this  
31 Chapter may require notice and/or informational meetings as part of the administrative  
32 decision-making process.

33 **"§ 160D-4-4. Enforcement.**

34 (a) Notices of Violation. – When staff determines work or activity has been undertaken  
35 in violation of a development regulation adopted pursuant to this Chapter or other local  
36 development regulation or any State law enforced by the local government or in violation of the  
37 terms of a development approval, a written notice of violation may be issued. The notice of  
38 violation shall be delivered to the holder of the development approval and to the landowner of  
39 the property involved, if the landowner is not the holder of the development approval, by  
40 personal delivery, electronic delivery, or first-class mail and may be provided by similar means  
41 to the occupant of the property or the person undertaking the work or activity. The notice of  
42 violation may be posted on the property. The person providing the notice of violation shall  
43 certify to the local government that the notice was provided and the certificate shall be deemed  
44 conclusive in the absence of fraud. Except as provided by G.S. 160D-11-23 or G.S. 160D-12-6  
45 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment  
46 pursuant to G.S. 160D-4-5.

47 (b) Stop Work Orders. – Whenever any work or activity subject to regulation pursuant  
48 to this Chapter or other applicable local development regulation or any State law enforced by  
49 the local government is undertaken in substantial violation of any State or local law, or in a  
50 manner that endangers life or property, staff may order the specific part of the work or activity  
51 that is in violation or presents such a hazard to be immediately stopped. The order shall be in

1 writing, directed to the person doing the work or activity, and shall state the specific work or  
2 activity to be stopped, the reasons therefor, and the conditions under which the work or activity  
3 may be resumed. A copy of the order shall be delivered to the holder of the development  
4 approval and to the owner of the property involved (if that person is not the holder of the  
5 development approval) by personal delivery, electronic delivery, or first-class mail. The person  
6 or persons delivering the stop work order shall certify to the local government that the order  
7 was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as  
8 provided by G.S. 160D-11-12 and G.S. 160D-12-8, a stop work order may be appealed  
9 pursuant to G.S. 160D-4-5. No further work or activity shall take place in violation of a stop  
10 work order pending a ruling on the appeal. Violation of a stop work order shall constitute a  
11 Class 1 misdemeanor.

12 (c) Remedies. –

13 (1) Subject to the provisions of the development regulation, any development  
14 regulation adopted pursuant to authority conferred by this Chapter may be  
15 enforced by any remedy provided by G.S. 160A-175 or G.S. 153A-123. If a  
16 building or structure is erected, constructed, reconstructed, altered, repaired,  
17 converted, or maintained, or any building, structure or land is used or  
18 developed in violation of this Chapter or of any development regulation or  
19 other regulation made under authority of this Chapter, the local government,  
20 in addition to other remedies, may institute any appropriate action or  
21 proceedings to prevent the unlawful erection, construction, reconstruction,  
22 alteration, repair, conversion, maintenance, use, or development; to restrain,  
23 correct or abate the violation; to prevent occupancy of the building, structure  
24 or land; or to prevent any illegal act, conduct, business, or use in or about the  
25 premises.

26 (2) When a development regulation adopted pursuant to authority conferred by  
27 this Chapter is to be applied or enforced in any area outside the planning and  
28 development regulation jurisdiction of a city as set forth in Article 2 of this  
29 Chapter, the city and the property owner shall certify that the application or  
30 enforcement of the city development regulation is not under coercion or  
31 otherwise based on representation by the city that the city's development  
32 approval would be withheld without the application or enforcement of the  
33 city development regulation outside the jurisdiction of the city. The  
34 certification may be evidenced by a signed statement of the parties on any  
35 development approval.

36 (3) In case any building, structure, site, area, or object designated as a historic  
37 landmark or located within a historic district designated pursuant to this  
38 Chapter is about to be demolished whether as the result of deliberate neglect  
39 or otherwise, materially altered, remodeled, removed, or destroyed, except in  
40 compliance with the development regulation or other provisions of this  
41 Chapter, the local government, the historic preservation commission, or  
42 other party aggrieved by such action may institute any appropriate action or  
43 proceedings to prevent such unlawful demolition, destruction, material  
44 alteration, remodeling, or removal, to restrain, correct, or abate such  
45 violation, or to prevent any illegal act or conduct with respect to such  
46 building, structure, site, area, or object. Such remedies shall be in addition to  
47 any others authorized by this Chapter for violation of an ordinance.

48 **"§ 160D-4-5. Appeals of administrative decisions.**

49 (a) Appeals. – Except as provided in subsection (c) of this section, appeals of decisions  
50 made by the staff under this Chapter shall be made to the board of adjustment unless a different  
51 board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this

1 Chapter. If this function of the board of adjustment is assigned to any other board pursuant to  
2 G.S. 160D-3-2(b), that board shall comply with all of the procedures and processes applicable  
3 to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and  
4 sedimentation control regulation, a stormwater control regulation, or a provision of the housing  
5 code shall not be made to the board of adjustment unless required by a local government  
6 ordinance or code provision.

7 (b) Standing. – Any person who has standing under G.S. 160D-14-2(c) or the local  
8 government may appeal an administrative decision to the board. An appeal is taken by filing a  
9 notice of appeal with the local government clerk or such other local government official as  
10 designated by ordinance. The notice of appeal shall state the grounds for the appeal.

11 (c) Judicial Challenge. – If otherwise allowed by law, a person with standing may bring  
12 a separate and original civil action to challenge the validity of an ordinance or development  
13 regulation without filing an appeal under subsection (a) of this section.

14 (d) Time to Appeal. – The owner or other party shall have 30 days from receipt of the  
15 written notice of the determination within which to file an appeal. Any other person with  
16 standing to appeal shall have 30 days from receipt from any source of actual or constructive  
17 notice of the decision within which to file an appeal. In the absence of evidence to the contrary,  
18 notice given pursuant to G.S. 160D-4-3(b) by first-class mail shall be deemed received on the  
19 third business day following deposit of the notice for mailing with the United States Postal  
20 Service.

21 (e) Record of Decision. – The official who made the decision shall transmit to the board  
22 all documents and exhibits constituting the record upon which the decision appealed from is  
23 taken. The official shall also provide a copy of the record to the appellant and to the owner of  
24 the property that is the subject of the appeal if the appellant is not the owner.

25 (f) Stays. – An appeal of a notice of violation or other enforcement order stays  
26 enforcement of the action appealed from and accrual of any fines assessed unless the official  
27 who made the decision certifies to the board after notice of appeal has been filed that, because  
28 of the facts stated in an affidavit, a stay would cause imminent peril to life or property or,  
29 because the violation is transitory in nature, a stay would seriously interfere with enforcement  
30 of the development regulation. In that case, enforcement proceedings shall not be stayed except  
31 by a restraining order, which may be granted by a court. If enforcement proceedings are not  
32 stayed, the appellant may file with the official a request for an expedited hearing of the appeal,  
33 and the board shall meet to hear the appeal within 15 days after such a request is filed.  
34 Notwithstanding the foregoing, appeals of decisions granting a development approval or  
35 otherwise affirming that a proposed use of property is consistent with the development  
36 regulation shall not stay the further review of an application for development approvals to use  
37 such property; in these situations, the appellant or local government may request and the board  
38 may grant a stay of a final decision of development approval applications, including building  
39 permits affected by the issue being appealed.

40 (g) Alternative Dispute Resolution. – The parties to an appeal that has been made under  
41 this section may agree to mediation or other forms of alternative dispute resolution. The  
42 development regulation may set standards and procedures to facilitate and manage such  
43 voluntary alternative dispute resolution.

44 **"§ 160D-4-6. Quasi-judicial procedure.**

45 (a) Process Required. – Boards shall follow quasi-judicial procedures in determining  
46 appeals of administrative decisions, special use permits, certificates of appropriateness,  
47 variances, or any other quasi-judicial decision.

48 (b) Notice of Hearing. – Notice of evidentiary hearings conducted pursuant to this  
49 Chapter shall be mailed to the person or entity whose appeal, application, or request is the  
50 subject of the hearing; to the owner of the property that is the subject of the hearing if the  
51 owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of

1 land that is the subject of the hearing; and to any other persons entitled to receive notice as  
2 provided by the local development regulation. In the absence of evidence to the contrary, the  
3 local government may rely on the county tax listing to determine owners of property entitled to  
4 mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25  
5 days, prior to the date of the hearing. Within that same time period, the local government shall  
6 also prominently post a notice of the hearing on the site that is the subject of the hearing or on  
7 an adjacent street or highway right-of-way.

8 (c) Administrative Materials. – The administrator or staff to the board shall transmit to  
9 the board all applications, reports, and written materials relevant to the matter being considered.  
10 The administrative materials may be distributed to the members of the board prior to the  
11 hearing if at the same time they are distributed to the board a copy is also provided to the  
12 appellant or applicant and to the landowner if that person is not the appellant or applicant. The  
13 administrative materials shall become a part of the hearing record. The administrative materials  
14 may be provided in written or electronic form. Objections to inclusion or exclusion of  
15 administrative materials may be made before or during the hearing. Rulings on unresolved  
16 objections shall be made by the board at the hearing.

17 (d) Presentation of Evidence. – The applicant, the local government, and any person  
18 who would have standing to appeal the decision under G.S. 160D-14-2(c) shall have the right  
19 to participate as a party at the evidentiary hearing. Other witnesses may present competent,  
20 material, and substantial evidence that is not repetitive as allowed by the board.

21 Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the  
22 timeliness of an appeal or the standing of a party, may be made to the board. The board chair  
23 shall rule on any objections, and the chair's rulings may be appealed to the full board. These  
24 rulings are also subject to judicial review pursuant to G.S. 160D-14-2. Objections based on  
25 jurisdictional issues may be raised for the first time on judicial review.

26 (e) Appearance of Official New Issues. – The official who made the decision or the  
27 person currently occupying that position, if the decision-maker is no longer employed by the  
28 local government, shall be present at the evidentiary hearing as a witness. The appellant shall  
29 not be limited at the hearing to matters stated in a notice of appeal. If any party or the local  
30 government would be unduly prejudiced by the presentation of matters not presented in the  
31 notice of appeal, the board shall continue the hearing.

32 (f) Oaths. – The chair of the board or any member acting as chair and the clerk to the  
33 board are authorized to administer oaths to witnesses in any matter coming before the board.  
34 Any person who, while under oath during a proceeding before the board determining a  
35 quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

36 (g) Subpoenas. – The board making a quasi-judicial decision under this Chapter through  
37 the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel  
38 the production of evidence. To request issuance of a subpoena, the applicant, the local  
39 government, and any person with standing under G.S. 160D-14-2(c) may make a written  
40 request to the chair explaining why it is necessary for certain witnesses or evidence to be  
41 compelled. The chair shall issue requested subpoenas he or she determines to be relevant,  
42 reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash  
43 or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately  
44 appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this  
45 subsection, the board or the party seeking the subpoena may apply to the General Court of  
46 Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction  
47 to issue these orders after notice to all proper parties.

48 (h) Appeals in Nature of Certiorari. – When hearing an appeal pursuant to  
49 G.S. 160D-9-47(e) or any other appeal in the nature of certiorari, the hearing shall be based on  
50 the record below and the scope of review shall be as provided in G.S. 160D-14-2(j).

1 (i) Voting. – The concurring vote of four-fifths of the board shall be necessary to grant  
2 a variance. A majority of the members shall be required to decide any other quasi-judicial  
3 matter or to determine an appeal made in the nature of certiorari. For the purposes of this  
4 subsection, vacant positions on the board and members who are disqualified from voting on a  
5 quasi-judicial matter under G.S. 160D-1-9(d) shall not be considered members of the board for  
6 calculation of the requisite majority if there are no qualified alternates available to take the  
7 place of such members.

8 (j) Decisions. – The board shall determine contested facts and make its decision within  
9 a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly,  
10 or may modify the decision appealed from and shall make any order, requirement, decision, or  
11 determination that ought to be made. The board shall have all the powers of the official who  
12 made the decision. Every quasi-judicial decision shall be based upon competent, material, and  
13 substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing,  
14 reflect the board's determination of contested facts and their application to the applicable  
15 standards, and be approved by the board and signed by the chair or other duly authorized  
16 member of the board. A quasi-judicial decision is effective upon filing the written decision with  
17 the clerk to the board or such other office or official as the development regulation specifies.  
18 The decision of the board shall be delivered within a reasonable time by personal delivery,  
19 electronic mail, or first-class mail to the applicant, landowner, and any person who has  
20 submitted a written request for a copy prior to the date the decision becomes effective. The  
21 person required to provide notice shall certify to the local government that proper notice has  
22 been made and the certificate shall be deemed conclusive in the absence of fraud.

23 (k) Judicial Review. – Every quasi-judicial decision shall be subject to review by the  
24 superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-14-2. Appeals  
25 shall be filed within the times specified in G.S. 160D-14-5(d).

26 "Article 5.

27 "Planning.

28 "**§ 160D-5-1. Plans.**

29 (a) Preparation of Plans and Studies. – As a condition of adopting and applying zoning  
30 regulations under this Chapter, a local government shall adopt and reasonably maintain a  
31 comprehensive plan that sets forth goals, policies, and programs intended to guide the present  
32 and future physical, social, and economic development of the jurisdiction.

33 A comprehensive plan is intended to guide coordinated, efficient, and orderly development  
34 within the planning and development regulation jurisdiction based on an analysis of present and  
35 future needs. Planning analysis may address inventories of existing conditions and assess future  
36 trends regarding demographics and economic, environmental, and cultural factors. The  
37 planning process shall include opportunities for citizen engagement in plan preparation and  
38 adoption.

39 (b) Contents. – A comprehensive plan may, among other topics, address any of the  
40 following as determined by the local government:

41 (1) Issues and opportunities facing the local government, including  
42 consideration of trends, values expressed by citizens, community vision, and  
43 guiding principles for growth and development.

44 (2) The pattern of desired growth and development and civic design, including  
45 the location, distribution, and characteristics of future land uses, urban form,  
46 utilities, and transportation networks.

47 (3) Employment opportunities, economic development, and community  
48 development.

49 (4) Acceptable levels of public services and infrastructure to support  
50 development, including water, waste disposal, utilities, emergency services,  
51 transportation, education, recreation, community facilities, and other public



1 services, including plans and policies for provision of and financing for  
2 public infrastructure.

3 (5) Housing with a range of types and affordability to accommodate persons and  
4 households of all types and income levels.

5 (6) Recreation and open spaces.

6 (7) Mitigation of natural hazards such as flooding, winds, wildfires, and  
7 unstable lands.

8 (8) Protection of the environment and natural resources, including agricultural  
9 resources, mineral resources, and water and air quality.

10 (9) Protection of significant architectural, scenic, cultural, historical, or  
11 archaeological resources.

12 (10) Analysis and evaluation of implementation measures, including regulations,  
13 public investments, and educational programs.

14 (c) Adoption and Effect of Plans. – Plans shall be adopted by the governing board with  
15 the advice and consultation of the planning board. Adoption and amendment of a  
16 comprehensive plan is a legislative decision and shall follow the process mandated for zoning  
17 text amendments set by G.S. 160D-6-1. Plans adopted under this Chapter may be undertaken  
18 and adopted as part of or in conjunction with plans required under other statutes, including, but  
19 not limited to, the plans required by G.S. 113A-110. Plans adopted under this Chapter shall be  
20 advisory in nature without independent regulatory effect. Plans adopted pursuant to this section  
21 shall be considered by the planning board and governing board when considering proposed  
22 amendments to zoning regulations as required by G.S. 160D-6-4 and G.S. 160D-6-5.

23 **"§ 160D-5-2. Grants, contracts, and technical assistance.**

24 (a) Grants and Services. – A local government may accept, receive, and disburse in  
25 furtherance of its functions any funds, grants, and services made available by the federal  
26 government and its agencies, the State government and its agencies, any local government and  
27 its agencies, and any private and civic sources. A local government may enter into and carry  
28 out contracts with the State and federal governments or any agencies thereof under which  
29 financial or other planning assistance is made available to the local government and may agree  
30 to and comply with any reasonable conditions that are imposed upon such assistance.

31 (b) Contracts. – Any local government may enter into and carry out contracts with any  
32 other city, county, or regional council, planning agency, or private consultant under which it  
33 agrees to furnish technical planning assistance to the other local government or planning  
34 agency. Any local government may enter into and carry out contracts with any other city,  
35 county, or regional council or planning agency under which it agrees to pay the other local  
36 government for technical planning assistance.

37 (c) Appropriations, Compensation, and Financing. – A local government is authorized  
38 to make appropriations that may be necessary to carry out activities or contracts authorized by  
39 this Article or to support and compensate members of a board that it may create pursuant to this  
40 Chapter and to levy taxes for these purposes as a necessary expense.

41 **"§ 160D-5-3. Coordination of planning.**

42 A local government may undertake any of the planning activities authorized by this Article  
43 in coordination with other local governments, state agencies, or regional agencies created under  
44 Article 19 of Chapter 153A or Article 20 of Chapter 160A of the General Statutes.

45 "Article 6.

46 "Development Regulation.

47 **"§ 160D-6-1. Procedure for adopting, amending, or repealing development regulations.**

48 (a) Hearing with Published Notice. – Before adopting, amending, or repealing any  
49 ordinance or development regulation authorized by this Chapter, the governing board shall hold  
50 a legislative hearing. A notice of the hearing shall be given once a week for two successive  
51 calendar weeks in a newspaper having general circulation in the area. The notice shall be

1 published the first time not less than 10 days nor more than 25 days before the date scheduled  
2 for the hearing. In computing such period, the day of publication is not to be included but the  
3 day of the hearing shall be included.

4 (b) Notice to Military Bases. – If the adoption or modification would result in changes  
5 to the zoning map or would change or affect the permitted uses of land located five miles or  
6 less from the perimeter boundary of a military base, the local government shall provide written  
7 notice of the proposed changes by certified mail, return receipt requested, to the commander of  
8 the military base not less than 10 days nor more than 25 days before the date fixed for the  
9 hearing. If the commander of the military base provides comments or analysis regarding the  
10 compatibility of the proposed development regulation or amendment with military operations at  
11 the base, the governing board of the local government shall take the comments and analysis  
12 into consideration before making a final determination on the ordinance.

13 (c) A development regulation adopted pursuant to this Chapter shall be adopted by  
14 ordinance.

15 **"§ 160D-6-2. Notice of hearing on proposed zoning map amendments.**

16 (a) Mailed Notice. – An ordinance shall provide for the manner in which zoning  
17 regulations and the boundaries of zoning districts shall be determined, established, and  
18 enforced, and from time to time amended, supplemented, or changed, in accordance with the  
19 provisions of this Chapter. The owners of affected parcels of land and the owners of all parcels  
20 of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning  
21 map amendment by first-class mail at the last addresses listed for such owners on the county  
22 tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a  
23 street, railroad, or other transportation corridor. This notice must be deposited in the mail at  
24 least 10 but not more than 25 days prior to the date of the hearing. If the zoning map  
25 amendment is being proposed in conjunction with an expansion of municipal extraterritorial  
26 planning and development regulation jurisdiction under G.S. 160D-2-2, a single hearing on the  
27 zoning map amendment and the boundary amendment may be held. In this instance, the initial  
28 notice of the zoning map amendment hearing may be combined with the boundary hearing  
29 notice and the combined hearing notice mailed at least 30 days prior to the hearing.

30 (b) Notice for Large-Scale Zoning Map Amendments. – The first-class mail notice  
31 required under subsection (a) of this section shall not be required if the zoning map amendment  
32 directly affects more than 50 properties, owned by at least 50 different property owners, and the  
33 local government elects to use the expanded published notice provided for in this subsection. In  
34 this instance, a local government may elect to make the mailed notice provided for in  
35 subsection (a) of this section or, as an alternative, elect to publish notice of the hearing as  
36 required by G.S. 160D-6-1, provided that each advertisement shall not be less than one-half of  
37 a newspaper page in size. The advertisement shall only be effective for property owners who  
38 reside in the area of general circulation of the newspaper that publishes the notice. Property  
39 owners who reside outside of the newspaper circulation area, according to the address listed on  
40 the most recent property tax listing for the affected property, shall be notified according to the  
41 provisions of subsection (a) of this section.

42 (c) Posted Notice. – When a zoning map amendment is proposed, the local government  
43 shall prominently post a notice of the hearing on the site proposed for the amendment or on an  
44 adjacent public street or highway right-of-way. The notice shall be posted within the same time  
45 period specified for mailed notices of the hearing. When multiple parcels are included within a  
46 proposed zoning map amendment, a posting on each individual parcel is not required but the  
47 local government shall post sufficient notices to provide reasonable notice to interested  
48 persons.

49 (d) Actual Notice. – Except for a government-initiated zoning map amendment, when  
50 an application is filed to request a zoning map amendment and that application is not made by  
51 the landowner or authorized agent, the applicant shall certify to the local government that the

1 owner of the parcel of land as shown on the county tax listing has received actual notice of the  
2 proposed amendment and a copy of the notice of the hearing. Actual notice shall be provided in  
3 any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be  
4 achieved by personal delivery, certified mail, or by a designated delivery service authorized  
5 pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with  
6 G.S. 1A-1, Rule 4(j1). The person or persons required to provide notice shall certify to the local  
7 government that actual notice has been provided, and such certificate shall be deemed  
8 conclusive in the absence of fraud.

9 (e) Optional Communication Requirements. – When a zoning map amendment is  
10 proposed, a zoning regulation may require communication by the person proposing the map  
11 amendment to neighboring property owners and residents and may require the person  
12 proposing the zoning map amendment to report on any communication with neighboring  
13 property owners and residents.

14 **"§ 160D-6-3. Citizen comments.**

15 Zoning regulations may from time to time be amended, supplemented, changed, modified,  
16 or repealed. If any resident or property owner in the local government submits a written  
17 statement regarding a proposed amendment, modification, or repeal to a zoning regulation to  
18 the clerk to the board at least two business days prior to the proposed vote on such change, the  
19 clerk to the board shall deliver such written statement to the governing board. If the proposed  
20 change is the subject of a quasi-judicial proceeding under G.S. 160D-7-5, the clerk shall  
21 provide only the names and addresses of the individuals providing written comment and the  
22 provision of such names and addresses to all members of the board shall not disqualify any  
23 member of the board from voting.

24 **"§ 160D-6-4. Planning board review and comment.**

25 (a) Initial Zoning. – In order to exercise zoning powers conferred by this Chapter for  
26 the first time, a local government shall create or designate a planning board under the  
27 provisions of this Article or of a special act of the General Assembly. The planning board shall  
28 prepare or shall review and comment upon a proposed zoning regulation, including the full text  
29 of such regulation and maps showing proposed district boundaries. The planning board may  
30 hold public meetings and legislative hearings in the course of preparing the regulation. Upon  
31 completion, the planning board shall make a written recommendation regarding adoption of the  
32 regulation to the governing board. The governing board shall not hold its required hearing or  
33 take action until it has received a recommendation regarding the regulation from the planning  
34 board. Following its required hearing, the governing board may refer the regulation back to the  
35 planning board for any further recommendations that the board may wish to make prior to final  
36 action by the governing board in adopting, modifying and adopting, or rejecting the regulation.

37 (b) Zoning Amendments. – Subsequent to initial adoption of a zoning regulation, all  
38 proposed amendments to the zoning regulation or zoning map shall be submitted to the  
39 planning board for review and comment. If no written report is received from the planning  
40 board within 30 days of referral of the amendment to that board, the governing board may act  
41 on the amendment without the planning board report. The governing board is not bound by the  
42 recommendations, if any, of the planning board.

43 (c) Review of Other Ordinances and Actions. – Any development regulation other than  
44 a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to  
45 the planning board for review and comment. Any development regulation other than a zoning  
46 regulation may provide that future proposed amendments of that ordinance be submitted to the  
47 planning board for review and comment. Any other action proposed to be taken pursuant to this  
48 Chapter may be referred to the planning board for review and comment.

49 (d) Plan Consistency. – When conducting a review of proposed zoning text or map  
50 amendments pursuant to this section, the planning board shall advise and comment on whether  
51 the proposed action is consistent with any comprehensive plan that has been adopted and any

1 other officially adopted plan that is applicable. The planning board shall provide a written  
2 recommendation to the governing board that addresses plan consistency and other matters as  
3 deemed appropriate by the planning board, but a comment by the planning board that a  
4 proposed amendment is inconsistent with the comprehensive plan shall not preclude  
5 consideration or approval of the proposed amendment by the governing board. If a zoning map  
6 amendment qualifies as a "large-scale rezoning" under G.S. 160D-6-2(b), the planning board  
7 statement describing plan consistency may address the overall rezoning and describe how the  
8 analysis and polices in the relevant adopted plans were considered in the recommendation  
9 made.

10 (e) **Separate Board Required.** – Notwithstanding the authority to assign duties of the  
11 planning board to the governing board as provided by this Chapter, the review and comment  
12 required by this section shall not be assigned to the governing board and must be performed by  
13 a separate board.

14 **"§ 160D-6-5. Governing board statement.**

15 (a) **Plan Consistency.** – When adopting or rejecting any zoning text or map amendment,  
16 the governing board shall approve a statement describing whether its action is consistent with  
17 an adopted comprehensive plan and any other applicable adopted plan and briefly explain why  
18 the board considers the action taken to be reasonable and in the public interest. That statement  
19 is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale  
20 rezoning" under G.S. 160D-6-2(b), the governing board statement describing plan consistency  
21 may address the overall rezoning and describe how the analysis and polices in the relevant  
22 adopted plans were considered in the action taken.

23 (b) **Additional Reasonableness Statement for Rezoning.** – When adopting or rejecting  
24 any petition for a zoning map amendment, a statement analyzing the reasonableness of the  
25 proposed rezoning shall be approved by the governing board. This statement of reasonableness  
26 may consider, among other factors, (i) the size, physical conditions, and other attributes of the  
27 tract; (ii) the benefits and detriment to the landowner, the neighbors, and the surrounding  
28 community; and (iii) the relationship between the current actual and permissible development  
29 on the tract and adjoining areas and the development that would be permissible under the  
30 proposed amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under  
31 G.S. 160D-6-2(b), the governing board statement on reasonableness may address the overall  
32 rezoning.

33 (c) **Single Statement Permissible.** – The statement of reasonableness and the plan  
34 consistency statement required by this section may be approved as a single statement.

35 "Article 7.

36 "Zoning Regulation.

37 **"§ 160D-7-1. Purposes.**

38 Zoning regulations shall be made in accordance with a comprehensive plan and shall be  
39 designed to promote the public health, safety, and general welfare. To that end, the regulations  
40 may address, among other things, the following public purposes: to provide adequate light and  
41 air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen  
42 congestion in the streets; to secure safety from fire, panic, and dangers; to facilitate the efficient  
43 and adequate provision of transportation, water, sewerage, schools, parks, and other public  
44 requirements; and to promote the health, safety, morals, or general welfare of the community.  
45 The regulations shall be made with reasonable consideration, among other things, as to the  
46 character of the district and its peculiar suitability for particular uses and with a view to  
47 conserving the value of buildings and encouraging the most appropriate use of land throughout  
48 the local government's planning and development regulation jurisdiction.

49 **"§ 160D-7-2. Grant of power.**

50 (a) **A Local Government May Adopt Zoning Regulations.** – A zoning regulation may  
51 regulate and restrict the height, number of stories, and size of buildings and other structures; the

percentage of lots that may be occupied; the size of yards, courts, and other open spaces; the density of population; the location and use of buildings, structures, and land. A local government may regulate development, including floating homes, over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12. A zoning regulation shall provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. Where appropriate, a zoning regulation may include requirements that street and utility rights-of-way be dedicated to the public, that provision be made of recreational space and facilities, and that performance guarantees be provided, all to the same extent and with the same limitations as provided for in G.S. 160D-8-4.

(b) Any regulation relating to building design elements adopted under this Chapter may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

- (1) The structures are located in an area designated as a local historic district pursuant to Part 4 of Article 9 of this Chapter.
- (2) The structures are located in an area designated as a historic district on the National Register of Historic Places.
- (3) The structures are individually designated as local, State, or national historic landmarks.
- (4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.
- (5) Where the regulations are applied to manufactured housing in a manner consistent with G.S. 160D-9-7 and federal law.
- (6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160D-6-4 or G.S. 160D-6-5 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan.

For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

Nothing in this subsection shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements.

**§ 160D-7-3. Zoning districts.**

(a) Types of Zoning Districts. – A local government may divide its territorial jurisdiction into zoning districts of any number, shape, and area deemed best suited to carry out the purposes of this Article. Within those districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Zoning districts may include, but shall not be limited to, the following:

- 1           (1) Conventional districts, in which a variety of uses are allowed as permitted  
2           uses or uses by right and that may also include uses permitted only with a  
3           special use permit.  
4           (2) Conditional districts, in which site plans or individualized development  
5           conditions are imposed.  
6           (3) Form-based districts, or development form controls, that address the  
7           physical form, mass, and density of structures, public spaces, and  
8           streetscapes.  
9           (4) Overlay districts, in which different requirements are imposed on certain  
10           properties within one or more underlying conventional, conditional, or  
11           form-based districts.  
12           (5) Districts allowed by charter.

13           (b) Conditional Districts. – Property may be placed in a conditional district only in  
14           response to a petition by all owners of the property to be included. Specific conditions may be  
15           proposed by the petitioner or the local government or its agencies, but only those conditions  
16           mutually approved by the local government and the petitioner may be incorporated into the  
17           zoning regulations. Conditions and site-specific standards imposed in a conditional district shall  
18           be limited to those that address the conformance of the development and use of the site to local  
19           government ordinances, plans adopted pursuant to G.S. 160D-5-1, or the impacts reasonably  
20           expected to be generated by the development or use of the site. The zoning regulation may  
21           provide that defined minor modifications in conditional district standards that do not involve a  
22           change in uses permitted or the density of overall development permitted may be reviewed and  
23           approved administratively. Any other modification of the conditions and standards in a  
24           conditional district shall follow the same process for approval as applicable to zoning map  
25           amendments. If multiple parcels of land are subject to a conditional zoning, the owners of  
26           individual parcels may apply for modification of the conditions so long as the modification  
27           would not result in other properties failing to meet the terms of the conditions. Any  
28           modifications approved shall only be applicable to those properties whose owners petition for  
29           the modification.

30           (c) Uniformity Within Districts. – Except as authorized by the foregoing, all regulations  
31           shall be uniform for each class or kind of building throughout each district but the regulations  
32           in one district may differ from those in other districts.

33           (d) Standards Applicable Regardless of District. – A zoning regulation or unified  
34           development ordinance may also include development standards that apply uniformly  
35           jurisdiction-wide rather than being applicable only in particular zoning districts.

36           **"§ 160D-7-4. Incentives.**

37           For the purpose of reducing the amount of energy consumption by new development, a  
38           local government may adopt ordinances to grant a density bonus, make adjustments to  
39           otherwise applicable development requirements, or provide other incentives within its planning  
40           and development regulation jurisdiction, if the person receiving the incentives agrees to  
41           construct new development or reconstruct existing development in a manner that the local  
42           government determines, based on generally recognized standards established for such purposes,  
43           makes a significant contribution to the reduction of energy consumption and increased use of  
44           sustainable design principles.

45           In order to encourage construction that uses sustainable design principles and to improve  
46           energy efficiency in buildings, a local government may charge reduced building permit fees or  
47           provide partial rebates of building permit fees for buildings that are constructed or renovated  
48           using design principles that conform to or exceed one or more of the following certifications or  
49           ratings:

- 1           (1) Leadership in Energy and Environmental Design (LEED) certification or  
2           higher rating under certification standards adopted by the U.S. Green  
3           Building Council.
- 4           (2) A One Globe or higher rating under the Green Globes program standards  
5           adopted by the Green Building Initiative.
- 6           (3) A certification or rating by another nationally recognized certification or  
7           rating system that is equivalent or greater than those listed in subdivisions  
8           (1) and (2) of this subsection.

9 **"§ 160D-7-5. Quasi-judicial zoning decisions.**

10       (a) Provisions of Ordinance. – The zoning or unified development ordinance may  
11 provide that the board of adjustment, planning board, or governing board hear and decide  
12 quasi-judicial zoning decisions. The board shall follow quasi-judicial procedures as specified in  
13 G.S. 160D-4-6 when making any quasi-judicial decision

14       (b) Appeals. – Except as otherwise provided by this Chapter, the board of adjustment  
15 shall hear and decide appeals from administrative decisions regarding administration and  
16 enforcement of the zoning regulation or unified development ordinance and may hear appeals  
17 arising out of any other ordinance that regulates land use or development. The provisions of  
18 G.S. 160D-4-5 and G.S. 160D-4-6 are applicable to these appeals.

19       (c) Special Use Permits. – The regulations may provide that the board of adjustment,  
20 planning board, or governing board hear and decide special use permits in accordance with  
21 principles, conditions, safeguards, and procedures specified in the regulations. Reasonable and  
22 appropriate conditions and safeguards may be imposed upon these permits. Where appropriate,  
23 such conditions may include requirements that street and utility rights-of-way be dedicated to  
24 the public and that provision be made for recreational space and facilities. Conditions and  
25 safeguards imposed under this subsection shall not include requirements for which the local  
26 government does not have authority under statute to regulate nor requirements for which the  
27 courts have held to be unenforceable if imposed directly by the local government.

28       The regulation may provide that defined minor modifications to special use permits that do  
29 not involve a change in uses permitted or the density of overall development permitted may be  
30 reviewed and approved administratively. Any other modification or revocation of a special use  
31 permit shall follow the same process for approval as is applicable to the approval of a special  
32 use permit. If multiple parcels of land are subject to a special use permit, the owners of  
33 individual parcels may apply for permit modification so long as the modification would not  
34 result in other properties failing to meet the terms of the special use permit or regulations. Any  
35 modifications approved shall only be applicable to those properties whose owners apply for the  
36 modification. The regulation may require that special uses permits be recorded with the register  
37 of deeds.

38       (d) Variances. – When unnecessary hardships would result from carrying out the strict  
39 letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the  
40 zoning regulation upon a showing of all of the following:

- 41           (1) Unnecessary hardship would result from the strict application of the  
42           regulation. It shall not be necessary to demonstrate that, in the absence of the  
43           variance, no reasonable use can be made of the property.
- 44           (2) The hardship results from conditions that are peculiar to the property, such  
45           as location, size, or topography. Hardships resulting from personal  
46           circumstances, as well as hardships resulting from conditions that are  
47           common to the neighborhood or the general public, may not be the basis for  
48           granting a variance. A variance may be granted when necessary and  
49           appropriate to make a reasonable accommodation under the Federal Fair  
50           Housing Act for a person with a disability.

- 1 (3) The hardship did not result from actions taken by the applicant or the  
 2 property owner. The act of purchasing property with knowledge that  
 3 circumstances exist that may justify the granting of a variance shall not be  
 4 regarded as a self-created hardship.
- 5 (4) The requested variance is consistent with the spirit, purpose, and intent of  
 6 the regulation, such that public safety is secured and substantial justice is  
 7 achieved.

8 No change in permitted uses may be authorized by variance. Appropriate conditions may be  
 9 imposed on any variance, provided that the conditions are reasonably related to the variance.  
 10 Any other development regulation that regulates land use or development may provide for  
 11 variances from the provisions of those ordinances consistent with the provisions of this  
 12 subsection.

13 **"§ 160D-7-6. Zoning conflicts with other development standards.**

14 (a) When regulations made under authority of this Article require a greater width or  
 15 size of yards or courts, or require a lower height of a building or fewer number of stories, or  
 16 require a greater percentage of a lot to be left unoccupied, or impose other higher standards  
 17 than are required in any other statute or local ordinance or regulation, the regulations made  
 18 under authority of this Article shall govern. When the provisions of any other statute or local  
 19 ordinance or regulation require a greater width or size of yards or courts, or require a lower  
 20 height of a building or a fewer number of stories, or require a greater percentage of a lot to be  
 21 left unoccupied, or impose other higher standards than are required by the regulations made  
 22 under authority of this Article, the provisions of that statute or local ordinance or regulation  
 23 shall govern.

24 (b) When adopting regulations under this Part, a local government may not use a  
 25 definition of dwelling unit, bedroom, or sleeping unit that is more expansive than any definition  
 26 of the same in another statute or in a rule adopted by a State agency.

27 "Article 8.

28 "Subdivision Regulation.

29 **"§ 160D-8-1. Authority.**

30 A local government may by ordinance regulate the subdivision of land within its planning  
 31 and development regulation jurisdiction. In addition to final plat approval, the regulation may  
 32 include provisions for review and approval of sketch plans and preliminary plats. The  
 33 regulation may provide for different review procedures for different classes of subdivisions.  
 34 Decisions on approval or denial of preliminary or final plats may be made only on the basis of  
 35 standards explicitly set forth in the subdivision or unified development ordinance.

36 **"§ 160D-8-2. Applicability.**

37 (a) For the purpose of this Article, subdivision regulations shall be applicable to all  
 38 divisions of a tract or parcel of land into two or more lots, building sites, or other divisions  
 39 when any one or more of those divisions is created for the purpose of sale or building  
 40 development, whether immediate or future, and shall include all divisions of land involving the  
 41 dedication of a new street or a change in existing streets; but the following shall not be included  
 42 within this definition nor be subject to the regulations authorized by this Article:

- 43 (1) The combination or recombination of portions of previously subdivided and  
 44 recorded lots where the total number of lots is not increased and the resultant  
 45 lots are equal to or exceed the standards of the local government as shown in  
 46 its subdivision regulations.
- 47 (2) The division of land into parcels greater than 10 acres where no street  
 48 right-of-way dedication is involved.
- 49 (3) The public acquisition by purchase of strips of land for the widening or  
 50 opening of streets or for public transportation system corridors.



1           (4)   The division of a tract in single ownership whose entire area is no greater  
2           than two acres into not more than three lots, where no street right-of-way  
3           dedication is involved and where the resultant lots are equal to or exceed the  
4           standards of the local government, as shown in its subdivision regulations.

5           (b)   A local government may provide for expedited review of specified classes of  
6           subdivisions.

7   **§ 160D-8-3. Review process, filing, and recording of subdivision plats.**

8           (a)   Any subdivision regulation adopted pursuant to this Article shall contain provisions  
9           setting forth the procedures and standards to be followed in granting or denying approval of a  
10           subdivision plat prior to its registration.

11           (b)   A subdivision regulation shall provide that the following agencies be given an  
12           opportunity to make recommendations concerning an individual subdivision plat before the plat  
13           is approved:

14               (1)   The district highway engineer as to proposed State streets, State highways,  
15               and related drainage systems.

16               (2)   The county health director or local public utility, as appropriate, as to  
17               proposed water or sewerage systems.

18               (3)   Any other agency or official designated by the governing board.

19           (c)   The subdivision regulation may provide that final decisions on preliminary plats and  
20           final plats are to be made by any of the following:

21               (1)   The governing board.

22               (2)   The governing board on recommendation of a designated body.

23               (3)   A designated planning board, technical review committee of local  
24               government staff members, or other designated body or staff person.

25           If the final decision on a subdivision plat is administrative, the decision may be assigned to  
26           a staff person or committee comprised entirely of staff persons and notice of the decision shall  
27           be as provided by G.S. 160D-4-3(b). If the final decision on a subdivision plat is quasi-judicial,  
28           the decision shall be assigned to the governing board, the planning board, the board of  
29           adjustment, or other board appointed pursuant to this Chapter and the procedures set forth in  
30           G.S. 160D-4-6 shall apply.

31           (d)   After the effective date that a subdivision regulation is adopted, no subdivision  
32           within a local government's planning and development regulation jurisdiction shall be filed or  
33           recorded until it shall have been submitted to and approved by the governing board or  
34           appropriate body, as specified in the subdivision regulation, and until this approval shall have  
35           been entered on the face of the plat in writing by an authorized representative of the local  
36           government. The review officer, pursuant to G.S. 47-30.2, shall not certify a subdivision plat  
37           that has not been approved in accordance with these provisions nor shall the clerk of superior  
38           court order or direct the recording of a plat if the recording would be in conflict with this  
39           section.

40   **§ 160D-8-4. Contents and requirements of regulation.**

41           (a)   Purposes. – A subdivision regulation may provide for the orderly growth and  
42           development of the local government; for the coordination of transportation networks and  
43           utilities within proposed subdivisions with existing or planned streets and highways and with  
44           other public facilities; and for the distribution of population and traffic in a manner that will  
45           avoid congestion and overcrowding and will create conditions that substantially promote public  
46           health, safety, and general welfare.

47           (b)   Plats. – The regulation may require a plat be prepared, approved, and recorded  
48           pursuant to the provisions of the regulation whenever any subdivision of land takes place. The  
49           regulation may include requirements that plats show sufficient data to determine readily and  
50           reproduce accurately on the ground the location, bearing, and length of every street and alley  
51           line, lot line, easement boundary line, and other property boundaries, including the radius and

1 other data for curved property lines, to an appropriate accuracy and in conformance with good  
2 surveying practice.

3 (c) Transportation and Utilities. – The regulation may provide for the dedication of  
4 rights-of-way or easements for street and utility purposes, including the dedication of  
5 rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11

6 The regulation may provide that in lieu of required street construction, a developer be  
7 required to provide funds for city use for the construction of roads to serve the occupants,  
8 residents, or invitees of the subdivision or development and these funds may be used for roads  
9 which serve more than one subdivision or development within the area. All funds received by  
10 the city pursuant to this subsection shall be used only for development of roads, including  
11 design, land acquisition, and construction. However, a city may undertake these activities in  
12 conjunction with the Department of Transportation under an agreement between the city and  
13 the Department of Transportation. Any formula adopted to determine the amount of funds the  
14 developer is to pay in lieu of required street construction shall be based on the trips generated  
15 from the subdivision or development. The regulation may require a combination of partial  
16 payment of funds and partial dedication of constructed streets when the governing board of the  
17 city determines that a combination is in the best interests of the citizens of the area to be served.

18 (d) Recreation Areas and Open Space. – The regulation may provide for the dedication  
19 or reservation of recreation areas serving residents of the immediate neighborhood within the  
20 subdivision or, alternatively, for payment of funds to be used to acquire or develop recreation  
21 areas serving residents of the development or subdivision or more than one subdivision or  
22 development within the immediate area. All funds received by municipalities pursuant to this  
23 subsection shall be used only for the acquisition or development of recreation, park, or open  
24 space sites. All funds received by counties pursuant to this subsection shall be used only for the  
25 acquisition of recreation, park, or open space sites. Any formula enacted to determine the  
26 amount of funds that are to be provided under this subsection shall be based on the value of the  
27 development or subdivision for property tax purposes. The regulation may allow a combination  
28 or partial payment of funds and partial dedication of land when the governing board determines  
29 that this combination is in the best interests of the citizens of the area to be served.

30 (e) Community Service Facilities. – The regulation may provide for the more orderly  
31 development of subdivisions by requiring the construction of community service facilities in  
32 accordance with local government plans, policies, and standards.

33 (f) School Sites. – The regulation may provide for the reservation of school sites in  
34 accordance with plans approved by the governing board. In order for this authorization to  
35 become effective, before approving such plans, the governing board and the board of education  
36 with jurisdiction over the area shall jointly determine the location and size of any school sites to  
37 be reserved. Whenever a subdivision is submitted for approval which includes part or all of a  
38 school site to be reserved under the plan, the governing board shall immediately notify the  
39 board of education and the board of education shall promptly decide whether it still wishes the  
40 site to be reserved. If the board of education does not wish to reserve the site, it shall so notify  
41 the governing board and no site shall be reserved. If the board of education does wish to reserve  
42 the site, the subdivision or site plan shall not be approved without such reservation. The board  
43 of education shall then have 18 months beginning on the date of final approval of the  
44 subdivision or site plan within which to acquire the site by purchase or by initiating  
45 condemnation proceedings. If the board of education has not purchased or begun proceedings  
46 to condemn the site within 18 months, the landowner may treat the land as freed of the  
47 reservation.

48 (g) Performance Guarantees. – To assure compliance with these and other development  
49 regulation requirements, the regulation may provide for performance guarantees to assure  
50 successful completion of required improvements at the time the plat is recorded as provided in

1 subsection (b) of this section. For any specific development, the type of performance guarantee  
2 shall be at the election of the person required to give the performance guarantee.

3 For purposes of this section, all of the following shall apply with respect to performance  
4 guarantees:

- 5 (1) The term "performance guarantee" shall mean any of the following forms of  
6 guarantee:
- 7 a. Surety bond issued by any company authorized to do business in this  
8 State.
  - 9 b. Letter of credit issued by any financial institution licensed to do  
10 business in this State.
  - 11 c. Other form of guarantee that provides equivalent security to a surety  
12 bond or letter of credit.
- 13 (2) The performance guarantee shall be returned or released, as appropriate, in a  
14 timely manner upon the acknowledgement by the local government that the  
15 improvements for which the performance guarantee is being required are  
16 complete. If the improvements are not complete and the current performance  
17 guarantee is expiring, the performance guarantee shall be extended, or a new  
18 performance guarantee issued, for an additional period until such required  
19 improvements are complete. A developer shall demonstrate reasonable,  
20 good-faith progress toward completion of the required improvements that  
21 are the subject of the performance guarantee or any extension. The form of  
22 any extension shall remain at the election of the developer.
- 23 (3) The amount of the performance guarantee shall not exceed one hundred  
24 twenty-five percent (125%) of the reasonably estimated cost of completion  
25 at the time the performance guarantee is issued. Any extension of the  
26 performance guarantee necessary to complete required improvements shall  
27 not exceed one hundred twenty-five percent (125%) of the reasonably  
28 estimated cost of completion of the remaining incomplete improvements still  
29 outstanding at the time the extension is obtained.
- 30 (4) The performance guarantee shall only be used for completion of the required  
31 improvements and not for repairs or maintenance after completion.

32 **§ 160D-8-5. Notice of new subdivision fees and fee increases; public comment period.**

33 (a) A local government shall provide notice to interested parties of the imposition of or  
34 increase in fees or charges applicable solely to the construction of development subject to this  
35 Article at least seven days prior to the first meeting where the imposition of or increase in the  
36 fees or charges is on the agenda for consideration. The local government shall employ at least  
37 two of the following means of communication in order to provide the notice required by this  
38 section:

- 39 (1) Notice of the meeting in a prominent location on a Web site managed or  
40 maintained by the local government.
- 41 (2) Notice of the meeting in a prominent physical location, including, but not  
42 limited to, any government building, library, or courthouse within the  
43 planning and development regulation jurisdiction of the local government.
- 44 (3) Notice of the meeting by electronic mail or other reasonable means to a list  
45 of interested parties that is created by the local government for the purpose  
46 of notification as required by this section.

47 If a city does not maintain its own Web site, it may employ the notice option provided by  
48 subdivision (1) of this subsection by submitting a request to a county or counties in which the  
49 city is located to post such notice in a prominent location on a Web site that is maintained by  
50 the county or counties. Any city that elects to provide such notice shall make its request to the

1 county or counties at least 15 days prior to the date of the first meeting where the imposition of  
2 or increase in the fees or charges is on the agenda for consideration.

3 (b) During the consideration of the imposition of or increase in fees or charges as  
4 provided in subsection (a) of this section, the governing board of the local government shall  
5 permit a period of public comment.

6 (c) This section shall not apply if the imposition of or increase in fees or charges is  
7 contained in a budget filed in accordance with the requirements of G.S. 159-12.

8 **"§ 160D-8-6. Effect of plat approval on dedications.**

9 The approval of a plat shall not be deemed to constitute or effect the acceptance by the local  
10 government or public of the dedication of any street or other ground, public utility line, or other  
11 public facility shown on the plat. However, any governing board may by resolution accept any  
12 dedication made to the public of lands or facilities for streets, parks, public utility lines, or other  
13 public purposes, when the lands or facilities are located within its planning and development  
14 regulation jurisdiction. Acceptance of dedication of lands or facilities located within the  
15 planning and development regulation jurisdiction but outside the corporate limits of a city shall  
16 not place on the city any duty to open, operate, repair, or maintain any street, utility line, or  
17 other land or facility, and a city shall in no event be held to answer in any civil action or  
18 proceeding for failure to open, repair, or maintain any street located outside its corporate limits.  
19 Unless a city, county, or other public entity operating a water system shall have agreed to begin  
20 operation and maintenance of the water system or water system facilities within one year of the  
21 time of issuance of a certificate of occupancy for the first unit of housing in the subdivision, a  
22 city or county shall not, as part of its subdivision regulation applied to facilities or land outside  
23 the corporate limits of a city, require dedication of water systems or facilities as a condition for  
24 subdivision approval.

25 **"§ 160D-8-7. Penalties for transferring lots in unapproved subdivisions.**

26 (a) If a local government adopts a subdivision regulation, any person who, being the  
27 owner or agent of the owner of any land located within the planning and development  
28 regulation jurisdiction of that local government, thereafter subdivides his land in violation of  
29 the regulation or transfers or sells land by reference to, exhibition of, or any other use of a plat  
30 showing a subdivision of the land before the plat has been properly approved under such  
31 regulation and recorded in the office of the appropriate register of deeds, shall be guilty of a  
32 Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or  
33 other document used in the process of selling or transferring land shall not exempt the  
34 transaction from this penalty. The local government may bring an action for injunction of any  
35 illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate  
36 findings, issue an injunction and order requiring the offending party to comply with the  
37 subdivision regulation. Building permits required pursuant to G.S. 160D-11-8 may be denied  
38 for lots that have been illegally subdivided. In addition to other remedies, a local government  
39 may institute any appropriate action or proceedings to prevent the unlawful subdivision of land,  
40 to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

41 (b) The provisions of this section shall not prohibit any owner or its agent from entering  
42 into contracts to sell or lease by reference to an approved preliminary plat for which a final plat  
43 has not yet been properly approved under the subdivision regulation or recorded with the  
44 register of deeds, provided the contract does all of the following:

45 (1) Incorporates as an attachment a copy of the preliminary plat referenced in  
46 the contract and obligates the owner to deliver to the buyer a copy of the  
47 recorded plat prior to closing and conveyance.

48 (2) Plainly and conspicuously notifies the prospective buyer or lessee that a final  
49 subdivision plat has not been approved or recorded at the time of the  
50 contract, that no governmental body will incur any obligation to the  
51 prospective buyer or lessee with respect to the approval of the final

1 subdivision plat, that changes between the preliminary and final plats are  
2 possible, and that the contract or lease may be terminated without breach by  
3 the buyer or lessee if the final recorded plat differs in any material respect  
4 from the preliminary plat.

5 (3) Provides that if the approved and recorded final plat does not differ in any  
6 material respect from the plat referred to in the contract, the buyer or lessee  
7 may not be required by the seller or lessor to close any earlier than five days  
8 after the delivery of a copy of the final recorded plat.

9 (4) Provides that if the approved and recorded final plat differs in any material  
10 respect from the preliminary plat referred to in the contract, the buyer or  
11 lessee may not be required by the seller or lessor to close any earlier than 15  
12 days after the delivery of the final recorded plat, during which 15-day period  
13 the buyer or lessee may terminate the contract without breach or any further  
14 obligation and may receive a refund of all earnest money or prepaid  
15 purchase price.

16 (c) The provisions of this section shall not prohibit any owner or its agent from entering  
17 into contracts to sell or lease land by reference to an approved preliminary plat for which a final  
18 plat has not been properly approved under the subdivision regulation or recorded with the  
19 register of deeds where the buyer or lessee is any person who has contracted to acquire or lease  
20 the land for the purpose of engaging in the business of construction of residential, commercial,  
21 or industrial buildings on the land, or for the purpose of resale or lease of the land to persons  
22 engaged in that kind of business, provided that no conveyance of that land may occur and no  
23 contract to lease it may become effective until after the final plat has been properly approved  
24 under the subdivision regulation and recorded with the register of deeds.

25 **"§ 160D-8-8. Appeals of decisions on subdivision plats.**

26 Appeals of subdivision decisions may be made pursuant to G.S. 160D-14-3.

27 "Article 9.

28 "Regulation of Particular Uses and Areas.

29 "Part 1. Particular Land Uses.

30 **"§ 160D-9-1. Regulation of particular uses and areas.**

31 A local government may regulate the uses and areas set forth in this Article in zoning  
32 regulations pursuant to Article 7 of this Chapter, in development regulations adopted under this  
33 Article, or in regulations adopted under Article 8 of Chapter 160A or Article 6 of Chapter 153A  
34 of the General Statutes. This shall not be deemed to expand, diminish, or alter the scope of  
35 authority granted pursuant to those Articles. In all instances, the substance of the local  
36 government regulation shall be consistent with the provisions in this Article. The provisions of  
37 this Chapter apply to any regulation adopted pursuant to this Article that substantially affects  
38 land use and development.

39 **"§ 160D-9-2. Adult businesses.**

40 (a) The General Assembly finds and determines that sexually oriented businesses can  
41 and do cause adverse secondary impacts on neighboring properties. Numerous studies relevant  
42 to North Carolina have found increases in crime rates and decreases in neighboring property  
43 values as a result of the location of sexually oriented businesses in inappropriate locations or  
44 from the operation of such businesses in an inappropriate manner. Reasonable local  
45 government regulation of sexually oriented businesses in order to prevent or ameliorate adverse  
46 secondary impacts is consistent with the federal constitutional protection afforded to  
47 nonobscene but sexually explicit speech.

48 (b) In addition to State laws on obscenity, indecent exposure, and adult establishments,  
49 local government regulation of the location and operation of sexually oriented businesses is  
50 necessary to prevent undue adverse secondary impacts that would otherwise result from these  
51 businesses.

1       (c) A local government may regulate sexually oriented businesses through zoning  
2 regulations, licensing requirements, or other appropriate local ordinances. The local  
3 government may require a fee for the initial license and any annual renewal. Such local  
4 regulations may include, but are not limited to, the following:

5           (1) Restrictions on location of sexually oriented businesses, such as limitation to  
6 specified zoning districts and minimum separation from sensitive land uses  
7 and other sexually oriented businesses.

8           (2) Regulations on operation of sexually oriented businesses, such as limits on  
9 hours of operation, open booth requirements, limitations on exterior  
10 advertising and noise, age of patrons and employees, required separation of  
11 patrons and performers, clothing restrictions for masseuses, and clothing  
12 restrictions for servers of alcoholic beverages.

13           (3) Clothing restrictions for entertainers.

14           (4) Registration and disclosure requirements for owners and employees with a  
15 criminal record other than minor traffic offenses and restrictions on  
16 ownership by or employment of a person with a criminal record that includes  
17 offenses reasonably related to the legal operation of sexually oriented  
18 businesses.

19       (d) In order to preserve the status quo while appropriate studies are conducted and the  
20 scope of potential regulations is deliberated, local governments may enact moratoria of  
21 reasonable duration on either the opening of any new businesses authorized to be regulated  
22 under this section or the expansion of any such existing business. Businesses existing at the  
23 time of the effective date of regulations adopted under this section may be required to come  
24 into compliance with newly adopted regulations within an appropriate and reasonable period of  
25 time.

26       (e) Local governments may enter into cooperative agreements regarding coordinated  
27 regulation of sexually oriented businesses, including provision of adequate alternative sites for  
28 the location of constitutionally protected speech within an interrelated geographic area.

29       (f) For the purpose of this section, "sexually oriented business" means any business or  
30 enterprise that has as one of its principal business purposes or as a significant portion of its  
31 business an emphasis on matter and conduct depicting, describing, or related to anatomical  
32 areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed  
33 definitions of these and similar businesses in order to precisely define the scope of any local  
34 regulations.

35 **"§ 160D-9-3. Agricultural uses.**

36       (a) Bona Fide Farming Exempt From County Zoning. – County zoning regulations may  
37 affect property used for bona fide farm purposes only as provided in this section. This section  
38 does not limit zoning regulation with respect to the use of farm property for nonfarm purposes.

39       Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement  
40 under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or  
41 incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering  
42 plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in  
43 G.S. 106-581.1. For purposes of this section, "when performed on the farm" in  
44 G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county and any other  
45 farm owned or leased to or from others by the bona fide farm operator, no matter where  
46 located. For purposes of this section, the production of a nonfarm product that the Department  
47 of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina"  
48 product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is  
49 a bona fide farm purpose. For purposes of determining whether a property is being used for  
50 bona fide farm purposes, any of the following shall constitute sufficient evidence that the  
51 property is being used for bona fide farm purposes:

- 1           (1) A farm sales tax exemption certificate issued by the Department of Revenue.
- 2           (2) A copy of the property tax listing showing that the property is eligible for
- 3           participation in the present use value program pursuant to G.S. 105-277.3.
- 4           (3) A copy of the farm owner's or operator's Schedule F from the owner's or
- 5           operator's most recent federal income tax return.
- 6           (4) A forest management plan.
- 7           (5) A Farm Identification Number issued by the United States Department of
- 8           Agriculture Farm Service Agency.

9           The definitions set out in G.S. 106-802 apply to this section. A county may adopt zoning  
10 regulations governing swine farms served by animal waste management systems having a  
11 design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the  
12 zoning regulations may not have the effect of excluding swine farms served by an animal waste  
13 management system having a design capacity of 600,000 pounds SSLW or greater from the  
14 entire zoning jurisdiction.

15           (b) County Zoning of Residential Uses on Large Lots in Agricultural Districts. – A  
16 county zoning regulation shall not prohibit single-family detached residential uses constructed  
17 in accordance with the North Carolina State Building Code on lots greater than 10 acres in size  
18 and in zoning districts where more than fifty percent (50%) of the land is in use for agricultural  
19 or silvicultural purposes, except that this restriction shall not apply to commercial or industrial  
20 districts where a broad variety of commercial or industrial uses are permissible. A zoning  
21 regulation shall not require that a lot greater than 10 acres in size have frontage on a public road  
22 or county-approved private road or be served by public water or sewer lines in order to be  
23 developed for single-family residential purposes.

24           (c) Agricultural Areas in Municipal Extraterritorial Jurisdiction. – Property that is  
25 located in a municipality's extraterritorial planning and development regulation jurisdiction and  
26 that is used for bona fide farm purposes is exempt from the municipality's zoning regulation to  
27 the same extent bona fide farming activities are exempt from county zoning pursuant to this  
28 section. As used in this subsection, "property" means a single tract of property or an identifiable  
29 portion of a single tract. Property that ceases to be used for bona fide farm purposes shall  
30 become subject to exercise of the municipality's extraterritorial planning and development  
31 regulation jurisdiction under this Chapter. For purposes of complying with State or federal law,  
32 property that is exempt from the exercise of municipal extraterritorial planning and  
33 development regulation jurisdiction pursuant to this subsection shall be subject to the county's  
34 floodplain regulation or all floodplain regulation provisions of the county's unified  
35 development ordinance.

36           (d) Accessory Farm Buildings. – A municipality may provide in its zoning regulation  
37 that an accessory building of a "bona fide farm" has the same exemption from the building code  
38 as it would have under county zoning.

39           (e) City Regulations in Voluntary Agricultural Districts. – A city may amend the  
40 development regulations applicable within its planning and development regulation jurisdiction  
41 to provide flexibility to farming operations that are located within a city or county, voluntary  
42 agricultural district, or enhanced voluntary agricultural district adopted under Article 61 of  
43 Chapter 106 of the General Statutes. Amendments to applicable development regulations may  
44 include provisions regarding on-farm sales, pick-your-own operations, road signs, agritourism,  
45 and other activities incident to farming.

46 **"§ 160D-9-4. Airport zoning.**

47           Any local government may enact and enforce airport zoning regulations pursuant to this  
48 Chapter or as authorized by Article 4 of Chapter 63 of the General Statutes. Airport zoning  
49 regulations for real property within six miles of any cargo airport complex site subject to  
50 regulation by the North Carolina Global TransPark Authority are governed by G.S. 63A-18.

51 **"§ 160D-9-5. Amateur radio antennas.**

1 A local government ordinance based on health, safety, or aesthetic considerations that  
2 regulates the placement, screening, or height of the antennas or support structures of amateur  
3 radio operators must reasonably accommodate amateur radio communications and must  
4 represent the minimum practicable regulation necessary to accomplish the purpose of the local  
5 government. A local government may not restrict antennas or antenna support structures of  
6 amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to  
7 achieve a clearly defined health, safety, or aesthetic objective of the local government.

8 **"§ 160D-9-6. Family care homes.**

9 (a) The General Assembly finds it is the public policy of this State to provide persons  
10 with disabilities with the opportunity to live in a normal residential environment.

11 (b) As used in this section, the following definitions apply:

12 (1) Family care home. – A home with support and supervisory personnel that  
13 provides room and board, personal care, and habilitation services in a family  
14 environment for not more than six resident persons with disabilities.

15 (2) Person with disabilities. – A person with a temporary or permanent physical,  
16 emotional, or mental disability, including, but not limited to, mental  
17 retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments,  
18 emotional disturbances, and orthopedic impairments but not including  
19 mentally ill persons who are dangerous to others as defined in  
20 G.S. 122C-3(11)b.

21 (c) A family care home shall be deemed a residential use of property for zoning  
22 purposes and shall be a permissible use in all residential districts. No local government may  
23 require that a family care home, its owner, or operator obtain, because of the use, a special use  
24 permit or variance from any such zoning regulation; provided, however, that a local  
25 government may prohibit a family care home from being located within a one-half mile radius  
26 of an existing family care home.

27 (d) A family care home shall be deemed a residential use of property for the purposes of  
28 determining charges or assessments imposed by local governments or businesses for water,  
29 sewer, power, telephone service, cable television, garbage and trash collection, repairs or  
30 improvements to roads, streets, and sidewalks, and other services, utilities, and improvements.

31 **"§ 160D-9-7. Fence wraps.**

32 Fence wraps displaying signage when affixed to perimeter fencing at a construction site are  
33 exempt from zoning regulation pertaining to signage under this Article until the certificate of  
34 occupancy is issued for the final portion of any construction at that site or 24 months from the  
35 time the fence wrap was installed, whichever is shorter. If construction is not completed at the  
36 end of 24 months from the time the fence wrap was installed, the local government may  
37 regulate the signage but shall continue to allow fence wrapping materials to be affixed to the  
38 perimeter fencing. No fence wrap affixed pursuant to this section may display any advertising  
39 other than advertising sponsored by a person directly involved in the construction project and  
40 for which monetary compensation for the advertisement is not paid or required.

41 **"§ 160D-9-8. Fraternities and sororities.**

42 A zoning regulation or unified development ordinance may not differentiate in terms of the  
43 regulations applicable to fraternities or sororities between those fraternities or sororities that are  
44 approved or recognized by a college or university and those that are not.

45 **"§ 160D-9-9. Manufactured homes.**

46 (a) The General Assembly finds that manufactured housing offers affordable housing  
47 opportunities for low- and moderate-income residents of this State who could not otherwise  
48 afford to own their own home. The General Assembly further finds that some local  
49 governments have adopted zoning regulations, which severely restrict the placement of  
50 manufactured homes. It is the intent of the General Assembly in enacting this section that local  
51 governments reexamine their land-use practices to assure compliance with applicable statutes



1 and case law and consider allocating more residential land area for manufactured homes based  
2 upon local housing needs.

3 (b) For purposes of this section, the term "manufactured home" is defined as provided  
4 in G.S. 143-145(7).

5 (c) A local government may not adopt or enforce zoning regulations or other provisions  
6 that have the effect of excluding manufactured homes from the entire zoning jurisdiction or that  
7 exclude manufactured homes based on the age of the home.

8 (d) A local government may adopt and enforce appearance and dimensional criteria for  
9 manufactured homes. Such criteria shall be designed to protect property values, to preserve the  
10 character and integrity of the community or individual neighborhoods within the community,  
11 and to promote the health, safety, and welfare of area residents. The criteria shall be adopted by  
12 ordinance.

13 (e) In accordance with the local government's comprehensive plan and based on local  
14 housing needs, a local government may designate a manufactured home overlay district within  
15 a residential district. Such overlay district may not consist of an individual lot or scattered lots  
16 but shall consist of a defined area within which additional requirements or standards are placed  
17 upon manufactured homes.

18 (f) Nothing in this section shall be construed to preempt or supersede valid restrictive  
19 covenants running with the land. The terms "mobile home" and "trailer" in any valid restrictive  
20 covenants running with the land shall include the term "manufactured home" as defined in this  
21 section.

22 **"§ 160D-9-10. Modular homes.**

23 Modular homes, as defined in G.S. 105-164.3(21b), shall comply with the design and  
24 construction standards set forth in G.S. 143-139.1.

25 **"§ 160D-9-11. Outdoor advertising.**

26 (a) As used in this section, the term "off-premises outdoor advertising" includes  
27 off-premises outdoor advertising visible from the main-traveled way of any road.

28 (b) A local government may require the removal of an off-premises outdoor advertising  
29 sign that is nonconforming under a local ordinance and may regulate the use of off-premises  
30 outdoor advertising within its planning and development regulation jurisdiction in accordance  
31 with the applicable provisions of this Chapter and subject to G.S. 136-131.1 and  
32 G.S. 136-131.2.

33 (c) A local government shall give written notice of its intent to require removal of  
34 off-premises outdoor advertising by sending a letter by certified mail to the last known address  
35 of the owner of the outdoor advertising and the owner of the property on which the outdoor  
36 advertising is located.

37 (d) No local government may enact or amend an ordinance of general applicability to  
38 require the removal of any nonconforming, lawfully erected off-premises outdoor advertising  
39 sign without the payment of monetary compensation to the owners of the off-premises outdoor  
40 advertising, except as provided below. The payment of monetary compensation is not required  
41 if:

42 (1) The local government and the owner of the nonconforming off-premises  
43 outdoor advertising enter into a relocation agreement pursuant to subsection  
44 (g) of this section.

45 (2) The local government and the owner of the nonconforming off-premises  
46 outdoor advertising enter into an agreement pursuant to subsection (k) of this  
47 section.

48 (3) The off-premises outdoor advertising is determined to be a public nuisance  
49 or detrimental to the health or safety of the populace.

50 (4) The removal is required for opening, widening, extending, or improving  
51 streets or sidewalks, or for establishing, extending, enlarging, or improving

1 any of the public enterprises listed in G.S. 160A-311, and the local  
2 government allows the off-premises outdoor advertising to be relocated to a  
3 comparable location.

4 (5) The off-premises outdoor advertising is subject to removal pursuant to  
5 statutes, ordinances, or regulations generally applicable to the demolition or  
6 removal of damaged structures.

7 (e) Monetary compensation is the fair market value of the off-premises outdoor  
8 advertising in place immediately prior to its removal and without consideration of the effect of  
9 the ordinance or any diminution in value caused by the ordinance requiring its removal.  
10 Monetary compensation shall be determined based on the following:

11 (1) The factors listed in G.S. 105-317.1(a).

12 (2) The listed property tax value of the property and any documents regarding  
13 value submitted to the taxing authority.

14 (f) If the parties are unable to reach an agreement under subsection (e) of this section  
15 on monetary compensation to be paid by the local government to the owner of the  
16 nonconforming off-premises outdoor advertising sign for its removal and the local government  
17 elects to proceed with the removal of the sign, the local government may bring an action in  
18 superior court for a determination of the monetary compensation to be paid. In determining  
19 monetary compensation, the court shall consider the factors set forth in subsection (e) of this  
20 section. Upon payment of monetary compensation for the sign, the local government shall own  
21 the sign.

22 (g) In lieu of paying monetary compensation, a local government may enter into an  
23 agreement with the owner of a nonconforming off-premises outdoor advertising sign to relocate  
24 and reconstruct the sign. The agreement shall include the following:

25 (1) Provision for relocation of the sign to a site reasonably comparable to or  
26 better than the existing location. In determining whether a location is  
27 comparable or better, the following factors shall be taken into consideration:

28 a. The size and format of the sign.

29 b. The characteristics of the proposed relocation site, including  
30 visibility, traffic count, area demographics, zoning, and any  
31 uncompensated differential in the sign owner's cost to lease the  
32 replacement site.

33 c. The timing of the relocation.

34 (2) Provision for payment by the local government of the reasonable costs of  
35 relocating and reconstructing the sign, including the following:

36 a. The actual cost of removing the sign.

37 b. The actual cost of any necessary repairs to the real property for  
38 damages caused in the removal of the sign.

39 c. The actual cost of installing the sign at the new location.

40 d. An amount of money equivalent to the income received from the  
41 lease of the sign for a period of up to 30 days if income is lost during  
42 the relocation of the sign.

43 (h) For the purposes of relocating and reconstructing a nonconforming off-premises  
44 outdoor advertising sign pursuant to subsection (g) of this section, a local government,  
45 consistent with the welfare and safety of the community as a whole, may adopt a resolution or  
46 adopt or modify its ordinances to provide for the issuance of a permit or other approval,  
47 including conditions as appropriate, or to provide for dimensional, spacing, setback, or use  
48 variances as it deems appropriate.

49 (i) If a local government has offered to enter into an agreement to relocate a  
50 nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section  
51 and within 120 days after the initial notice by the local government the parties have not been

1 able to agree that the site or sites offered by the local government for relocation of the sign are  
2 reasonably comparable to or better than the existing site, the parties shall enter into binding  
3 arbitration to resolve their disagreements. Unless a different method of arbitration is agreed  
4 upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party  
5 shall select one arbitrator, and the two arbitrators chosen by the parties shall select the third  
6 member of the panel. The American Arbitration Association rules shall apply to the arbitration  
7 unless the parties agree otherwise.

8 (j) If the arbitration results in a determination that the site or sites offered by the local  
9 government for relocation of the nonconforming sign are not comparable to or better than the  
10 existing site, and the local government elects to proceed with the removal of the sign, the  
11 parties shall determine the monetary compensation under subsection (e) of this section to be  
12 paid to the owner of the sign. If the parties are unable to reach an agreement regarding  
13 monetary compensation within 30 days of the receipt of the arbitrators' determination and the  
14 local government elects to proceed with the removal of the sign, then the local government may  
15 bring an action in superior court for a determination of the monetary compensation to be paid  
16 by the local government to the owner for the removal of the sign. In determining monetary  
17 compensation, the court shall consider the factors set forth in subsection (e) of this section.  
18 Upon payment of monetary compensation for the sign, the local government shall own the sign.

19 (k) Notwithstanding the provisions of this section, a local government and an  
20 off-premises outdoor advertising sign owner may enter into a voluntary agreement allowing for  
21 the removal of the sign after a set period of time in lieu of monetary compensation. A local  
22 government may adopt an ordinance or resolution providing for a relocation, reconstruction, or  
23 removal agreement.

24 (l) A local government has up to three years from the effective date of an ordinance  
25 enacted under this section to pay monetary compensation to the owner of the off-premises  
26 outdoor advertising provided the affected property remains in place until the compensation is  
27 paid.

28 (m) This section does not apply to any ordinance in effect on July 1, 2004. A local  
29 government may amend an ordinance in effect on July 1, 2004, to extend application of the  
30 ordinance to off-premises outdoor advertising located in territory acquired by annexation or  
31 located in the extraterritorial jurisdiction of the city. A local government may repeal or amend  
32 an ordinance in effect on July 1, 2004, so long as the amendment to the existing ordinance does  
33 not reduce the period of amortization in effect on the effective date of this section.

34 (n) The provisions of this section shall not be used to interpret, construe, alter, or  
35 otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter  
36 40A or Chapter 136 of the General Statutes.

37 (o) Nothing in this section shall limit a local government's authority to use amortization  
38 as a means of phasing out nonconforming uses other than off-premises outdoor advertising.

39 **"§ 160D-9-12. Public buildings.**

40 All local government zoning regulations are applicable to the erection, construction, and  
41 use of buildings by the State of North Carolina and its political subdivisions.

42 Notwithstanding the provisions of any general or local law or ordinance, except as provided  
43 in Part 4 of Article 9 of this Chapter, no land owned by the State of North Carolina may be  
44 included within an overlay district or a conditional zoning district without approval of the  
45 Council of State or its delegate.

46 **"§ 160D-9-13. Solar collectors.**

47 (a) Except as provided in subsection (c) of this section, no local government  
48 development regulation shall prohibit, or have the effect of prohibiting, the installation of a  
49 solar collector that gathers solar radiation as a substitute for traditional energy for water  
50 heating, active space heating and cooling, passive heating, or generating electricity for a  
51 residential property and no person shall be denied permission by a local government to install a

1 solar collector that gathers solar radiation as a substitute for traditional energy for water  
2 heating, active space heating and cooling, passive heating, or generating electricity for a  
3 residential property. As used in this section, the term "residential property" means property  
4 where the predominant use is for residential purposes.

5 (b) This section does not prohibit a development regulation regulating the location or  
6 screening of solar collectors as described in subsection (a) of this section, provided the  
7 regulation does not have the effect of preventing the reasonable use of a solar collector for a  
8 residential property.

9 (c) This section does not prohibit a development regulation that would prohibit the  
10 location of solar collectors as described in subsection (a) of this section that are visible by a  
11 person on the ground and that are any of the following:

12 (1) On the facade of a structure that faces areas open to common or public  
13 access.

14 (2) On a roof surface that slopes downward toward the same areas open to  
15 common or public access that the facade of the structure faces.

16 (3) Within the area set off by a line running across the facade of the structure  
17 extending to the property boundaries on either side of the facade, and those  
18 areas of common or public access faced by the structure.

19 (d) In any civil action arising under this section, the court may award costs and  
20 reasonable attorneys' fees to the prevailing party.

21 **"§ 160D-9-14. Temporary health care structures.**

22 (a) The following definitions apply in this section:

23 (1) Activities of daily living. – Bathing, dressing, personal hygiene, ambulation  
24 or locomotion, transferring, toileting, and eating.

25 (2) Caregiver. – An individual 18 years of age or older who (i) provides care for  
26 a mentally or physically impaired person and (ii) is a first- or second-degree  
27 relative of the mentally or physically impaired person for whom the  
28 individual is caring.

29 (3) First- or second-degree relative. – A spouse, lineal ascendant, lineal  
30 descendant, sibling, uncle, aunt, nephew, or niece and includes half, step,  
31 and in-law relationships.

32 (4) Mentally or physically impaired person. – A person who is a resident of this  
33 State and who requires assistance with two or more activities of daily living  
34 as certified in writing by a physician licensed to practice in this State.

35 (5) Temporary family health care structure. – A transportable residential  
36 structure providing an environment facilitating a caregiver's provision of  
37 care for a mentally or physically impaired person that (i) is primarily  
38 assembled at a location other than its site of installation, (ii) is limited to one  
39 occupant who shall be the mentally or physically impaired person, (iii) has  
40 no more than 300 gross square feet, and (iv) complies with applicable  
41 provisions of the State Building Code and G.S. 143-139.1(b). Placing the  
42 temporary family health care structure on a permanent foundation shall not  
43 be required or permitted.

44 (b) A local government shall consider a temporary family health care structure used by  
45 a caregiver in providing care for a mentally or physically impaired person on property owned  
46 or occupied by the caregiver as the caregiver's residence as a permitted accessory use in any  
47 single-family residential zoning district on lots zoned for single-family detached dwellings.

48 (c) A local government shall consider a temporary family health care structure used by  
49 an individual who is the named legal guardian of the mentally or physically impaired person a  
50 permitted accessory use in any single-family residential zoning district on lots zoned for  
51 single-family detached dwellings in accordance with this section if the temporary family health

1 care structure is placed on the property of the residence of the individual and is used to provide  
2 care for the mentally or physically impaired person.

3 (d) Only one temporary family health care structure shall be allowed on a lot or parcel  
4 of land. The temporary family health care structures under subsections (b) and (c) of this  
5 section shall not require a special use permit or be subjected to any other local zoning  
6 requirements beyond those imposed upon other authorized accessory use structures, except  
7 otherwise provided in this section. Such temporary family health care structures shall comply  
8 with all setback requirements that apply to the primary structure and with any maximum floor  
9 area ratio limitations that may apply to the primary structure.

10 (e) Any person proposing to install a temporary family health care structure shall first  
11 obtain a permit from the local government. The local government may charge a fee of up to one  
12 hundred dollars (\$100.00) for the initial permit and an annual renewal fee of up to fifty dollars  
13 (\$50.00). The local government may not withhold a permit if the applicant provides sufficient  
14 proof of compliance with this section. The local government may require that the applicant  
15 provide evidence of compliance with this section on an annual basis as long as the temporary  
16 family health care structure remains on the property. The evidence may involve the inspection  
17 by the local government of the temporary family health care structure at reasonable times  
18 convenient to the caregiver, not limited to any annual compliance confirmation and annual  
19 renewal of the doctor's certification.

20 (f) Notwithstanding subsection (i) of this section, any temporary family health care  
21 structure installed under this section may be required to connect to any water, sewer, and  
22 electric utilities serving the property and shall comply with all applicable State law, local  
23 ordinances, and other requirements, including Article 11 of this Chapter, as if the temporary  
24 family health care structure were permanent real property.

25 (g) No signage advertising or otherwise promoting the existence of the temporary  
26 health care structure shall be permitted either on the exterior of the temporary family health  
27 care structure or elsewhere on the property.

28 (h) Any temporary family health care structure installed pursuant to this section shall be  
29 removed within 60 days in which the mentally or physically impaired person is no longer  
30 receiving or is no longer in need of the assistance provided for in this section. If the temporary  
31 family health care structure is needed for another mentally or physically impaired person, the  
32 temporary family health care structure may continue to be used or may be reinstated on the  
33 property within 60 days of its removal, as applicable.

34 (i) The local government may revoke the permit granted pursuant to subsection (e) of  
35 this section if the permit holder violates any provision of this section or G.S. 160A-202. The  
36 local government may seek injunctive relief or other appropriate actions or proceedings to  
37 ensure compliance with this section or G.S. 160A-202.

38 (j) Temporary family health care structures shall be treated as tangible personal  
39 property for purposes of taxation.

40 **"§ 160D-9-15. Streets and transportation.**

41 (a) Street Setbacks and Curb Cut Regulations. – Local governments may establish street  
42 setback and driveway connection regulations pursuant to G.S. 160A-306 and G.S. 160A-307 or  
43 as a part of development regulations adopted pursuant to this Chapter. If adopted pursuant to  
44 this Chapter, the regulations are also subject to the provisions of G.S. 160A-306 and  
45 G.S. 160A-307.

46 (b) Transportation Corridor Official Maps. – Any local government may establish  
47 official transportation corridor maps and may enact and enforce ordinances pursuant to Article  
48 2E of Chapter 136 of the General Statutes.

49 **"§ 160D-9-16. Bee hives.**

50 Restrictions on bee hives in local development regulations shall be consistent with the  
51 limitations of G.S. 106-645.

1 "§§ 160D-9-17 through 160D-9-19: Reserved for future codification purposes.

2 "Part 2. Environmental Regulation.

3 "§ 160D-9-20. Local environmental regulations.

4 (a) Local governments are authorized to exercise the powers conferred by Article 8 of  
5 Chapter 160A of the General Statutes and Article 6 of Chapter 153A of the General Statutes to  
6 adopt and enforce local ordinances pursuant to this Part to the extent necessary to comply with  
7 State and federal law, rules, and regulations or permits consistent with the interpretations and  
8 directions of the State or federal agency issuing the permit.

9 (b) Local environmental regulations adopted pursuant to this Part are not subject to the  
10 variance provisions of G.S. 160D-7-5 unless that is specifically authorized by the local  
11 ordinance.

12 "§ 160D-9-21. Forestry activities.

13 (a) The following definitions apply to this section:

14 (1) Development. – Any activity, including timber harvesting, that is associated  
15 with the conversion of forestland to nonforest use.

16 (2) Forest management plan. – A document that defines a landowner's forest  
17 management objectives and describes specific measures to be taken to  
18 achieve those objectives. A forest management plan shall include  
19 silvicultural practices that both ensure optimal forest productivity and  
20 environmental protection of land by either commercially growing timber  
21 through the establishment of forest stands or by ensuring the proper  
22 regeneration of forest stands to commercial levels of production after the  
23 harvest of timber.

24 (3) Forestland. – Land that is devoted to growing trees for the production of  
25 timber, wood, and other forest products.

26 (4) Forestry. – The professional practice embracing the science, business, and  
27 art of creating, conserving, and managing forests and forestland for the  
28 sustained use and enjoyment of their resources, materials, or other forest  
29 products.

30 (5) Forestry activity. – Any activity associated with the growing, managing,  
31 harvesting, and related transportation, reforestation, or protection of trees  
32 and timber, provided that such activities comply with existing State rules and  
33 regulations pertaining to forestry.

34 (b) A local government shall not adopt or enforce any ordinance, rule, regulation, or  
35 resolution that regulates either of the following:

36 (1) Forestry activity on forestland that is taxed on the basis of its present-use  
37 value as forestland under Article 12 of Chapter 105 of the General Statutes.

38 (2) Forestry activity that is conducted in accordance with a forest management  
39 plan that is prepared or approved by a forester registered in accordance with  
40 Chapter 89B of the General Statutes.

41 (c) This section shall not be construed to limit, expand, or otherwise alter the authority  
42 of a local government to:

43 (1) Regulate activity associated with development. A local government may  
44 deny a building permit or refuse to approve a site or subdivision plan for  
45 either a period of up to:

46 a. Three years after the completion of a timber harvest if the harvest  
47 results in the removal of all or substantially all of the trees that were  
48 protected under local government regulations governing development  
49 from the tract of land for which the permit or approval is sought.

50 b. Five years after the completion of a timber harvest if the harvest  
51 results in the removal of all or substantially all of the trees that were

1 protected under local government regulations governing development  
2 from the tract of land for which the permit or approval is sought and  
3 the harvest was a willful violation of the local government  
4 regulations.

5 (2) Regulate trees pursuant to any local act of the General Assembly.

6 (3) Adopt ordinances that are necessary to comply with any federal or State law,  
7 regulation, or rule.

8 (4) Exercise its planning or zoning authority under this Chapter.

9 (5) Regulate and protect streets.

10 **"§ 160D-9-22. Erosion and sedimentation control.**

11 Any local government may enact and enforce erosion and sedimentation control regulations  
12 as authorized by Article 4 of Chapter 113A of the General Statutes and shall comply with all  
13 applicable provisions of that Article and, to the extent not inconsistent with that Article, with  
14 this Chapter.

15 **"§ 160D-9-23. Floodplain regulations.**

16 Any local government may enact and enforce floodplain regulation or flood damage  
17 prevention regulations as authorized by Part 6 of Article 21 of Chapter 143 of the General  
18 Statutes and shall comply with all applicable provisions of that Part and, to the extent not  
19 inconsistent with that Article, with this Chapter.

20 **"§ 160D-9-24. Mountain ridge protection.**

21 Any local government may enact and enforce a mountain ridge protection regulations  
22 pursuant to Article 14 of Chapter 113A of the General Statutes and shall comply with all  
23 applicable provisions of that Article and, to the extent not inconsistent with that Article, with  
24 this Chapter, unless the local government has removed itself from the coverage of Article 14 of  
25 Chapter 113A of the General Statutes through the procedure provided by law.

26 **"§ 160D-9-25. Stormwater control.**

27 (a) A local government may adopt and enforce a stormwater control regulation to  
28 protect water quality and control water quantity. A local government may adopt a stormwater  
29 management regulation pursuant to this Chapter, its charter, other applicable laws, or any  
30 combination of these powers.

31 (b) A federal, State, or local government project shall comply with the requirements of  
32 a local government stormwater control regulation unless the federal, State, or local government  
33 agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit  
34 that applies to the project. A local government may take enforcement action to compel a State  
35 or local government agency to comply with a stormwater control regulation that implements  
36 the NPDES stormwater permit issued to the local government. To the extent permitted by  
37 federal law, including Chapter 26 of Title 33 of the United States Code, a local government  
38 may take enforcement action to compel a federal government agency to comply with a  
39 stormwater control regulation.

40 (c) A local government may implement illicit discharge detection and elimination  
41 controls, construction site stormwater runoff controls, and post-construction runoff controls  
42 through an ordinance or other regulatory mechanism to the extent allowable under State law.

43 (d) A local government that holds an NPDES permit issued pursuant to G.S. 143-214.7  
44 may adopt a regulation, applicable within its planning and development regulation jurisdiction,  
45 to establish the stormwater control program necessary for the local government to comply with  
46 the permit. A local government may adopt a regulation that bans illicit discharges within its  
47 planning and development regulation jurisdiction. A local government may adopt a regulation,  
48 applicable within its planning and development regulation jurisdiction, that requires (i) deed  
49 restrictions and protective covenants to ensure that each project, including the stormwater  
50 management system, will be maintained so as to protect water quality and control water

1 quantity and (ii) financial arrangements to ensure that adequate funds are available for the  
2 maintenance and replacement costs of the project.

3 (e) Unless the local government requests the permit condition in its permit application,  
4 the Environmental Management Commission may not require as a condition of an NPDES  
5 stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure  
6 required by 40 Code of Federal Regulations § 122.34(b)(3)(1 July 2003 Edition) in its  
7 extraterritorial jurisdiction.

8 **"§§ 160D-9-26 through 160D-9-29: Reserved for future codification purposes.**

9 **"Part 3. Wireless Telecommunication Facilities.**

10 **"§ 160D-9-30. Purpose and compliance with federal law.**

11 (a) The purpose of this section is to ensure the safe and efficient integration of facilities  
12 necessary for the provision of advanced mobile broadband and wireless telecommunications  
13 services throughout the community and to ensure the ready availability of reliable wireless  
14 service to the public, government agencies, and first responders, with the intention of furthering  
15 the public safety and general welfare.

16 (b) The deployment of wireless infrastructure is critical to ensuring first responders can  
17 provide for the health and safety of all residents of North Carolina and, consistent with section  
18 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), create  
19 a national wireless emergency communications network for use by first responders that in large  
20 measure will be dependent on facilities placed on existing wireless communications support  
21 structures. Therefore, it is the policy of this State to facilitate the placement of wireless  
22 communications support structures in all areas of North Carolina. The following standards shall  
23 apply to a local government's actions, as a regulatory body, in the regulation of the placement,  
24 construction, or modification of a wireless communications facility.

25 (c) The placement, construction, or modification of wireless communications facilities  
26 shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332, as amended,  
27 section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. §  
28 1455(a), and in accordance with the rules promulgated by the Federal Communications  
29 Commission.

30 **"§ 160D-9-31. Definitions.**

31 The following definitions apply in this Part:

- 32 (1) Antenna. – Communications equipment that transmits, receives, or transmits  
33 and receives electromagnetic radio signals used in the provision of all types  
34 of wireless communications services.
- 35 (2) Application. – A formal request submitted to the local government to  
36 construct or modify a wireless support structure or a wireless facility.
- 37 (3) Base station. – A station at a specific site authorized to communicate with  
38 mobile stations, generally consisting of radio receivers, antennas, coaxial  
39 cables, power supplies, and other associated electronics.
- 40 (4) Building permit. – An official administrative authorization issued by the  
41 local government prior to beginning construction consistent with the  
42 provisions of G.S. 160D-11-8.
- 43 (5) Collocation. – The placement or installation of wireless facilities on existing  
44 structures, including electrical transmission towers, water towers, buildings,  
45 and other structures capable of structurally supporting the attachment of  
46 wireless facilities in compliance with applicable codes.
- 47 (6) Eligible facilities request. – A request for modification of an existing  
48 wireless tower or base station that involves collocation of new transmission  
49 equipment or replacement of transmission equipment but does not include a  
50 substantial modification.



- 1           (7)   Equipment compound. – An area surrounding or near the base of a wireless  
2           support structure within which a wireless facility is located.
- 3           (8)   Fall zone. – The area in which a wireless support structure may be expected  
4           to fall in the event of a structural failure, as measured by engineering  
5           standards.
- 6           (9)   Land development regulation. – Any ordinance enacted pursuant to this  
7           Chapter.
- 8           (10) Search ring. – The area within which a wireless support facility or wireless  
9           facility must be located in order to meet service objectives of the wireless  
10          service provider using the wireless facility or wireless support structure.
- 11          (11) Substantial modification. – The mounting of a proposed wireless facility on  
12          a wireless support structure that substantially changes the physical  
13          dimensions of the support structure. A mounting is presumed to be a  
14          substantial modification if it meets any one or more of the criteria listed  
15          below. The burden is on the local government to demonstrate that a  
16          mounting that does not meet the listed criteria constitutes a substantial  
17          change to the physical dimensions of the wireless support structure.
- 18           a.    Increasing the existing vertical height of the structure by the greater  
19           of (i) more than ten percent (10%) or (ii) the height of one additional  
20           antenna array with separation from the nearest existing antenna not to  
21           exceed 20 feet.
- 22           b.    Except where necessary to shelter the antenna from inclement  
23           weather or to connect the antenna to the tower via cable, adding an  
24           appurtenance to the body of a wireless support structure that  
25           protrudes horizontally from the edge of the wireless support structure  
26           the greater of (i) more than 20 feet or (ii) more than the width of the  
27           wireless support structure at the level of the appurtenance.
- 28           c.    Increasing the square footage of the existing equipment compound  
29           by more than 2,500 square feet.
- 30          (12) Utility pole. – A structure that is designed for and used to carry lines, cables,  
31          or wires for telephone, cable television, or electricity or to provide lighting.
- 32          (13) Water tower. – A water storage tank, a standpipe, or an elevated tank  
33          situated on a support structure originally constructed for use as a reservoir or  
34          facility to store or deliver water.
- 35          (14) Wireless facility. – The set of equipment and network components, exclusive  
36          of the underlying wireless support structure or tower, including antennas,  
37          transmitters, receivers, base stations, power supplies, cabling, and associated  
38          equipment necessary to provide wireless data and wireless  
39          telecommunications services to a discrete geographic area.
- 40          (15) Wireless support structure. – A new or existing structure, such as a  
41          monopole, lattice tower, or guyed tower that is designed to support or  
42          capable of supporting wireless facilities. A utility pole is not a wireless  
43          support structure.

44    **"§ 160D-9-32. Local authority.**

45    A local government may plan for and regulate the siting or modification of wireless support  
46    structures and wireless facilities in accordance with land development regulations and in  
47    conformity with this Part. Except as expressly stated, nothing in this Part shall limit a local  
48    government from regulating applications to construct, modify, or maintain wireless support  
49    structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support  
50    structure based on consideration of land use, public safety, and zoning considerations,  
51    including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local

1 building code requirements, consistent with the provisions of federal law provided in  
2 G.S. 160D-9-30. For purposes of this Part, public safety includes, without limitation, federal,  
3 State, and local safety regulations but does not include requirements relating to radio frequency  
4 emissions of wireless facilities.

5 **"§ 160D-9-33. Construction of new wireless support structures or substantial**  
6 **modifications of wireless support structures.**

7 (a) Any person that proposes to construct a new wireless support structure or  
8 substantially modify a wireless support structure within the planning and development  
9 regulation jurisdiction of a local government must do both of the following:

10 (1) Submit a completed application with the necessary copies and attachments to  
11 the appropriate planning authority.

12 (2) Comply with any local ordinances concerning land use and any applicable  
13 permitting processes.

14 (b) A local government's review of an application for the placement or construction of a  
15 new wireless support structure or substantial modification of a wireless support structure shall  
16 only address public safety, land development, or zoning issues. In reviewing an application, the  
17 local government may not require information on or evaluate an applicant's business decisions  
18 about its designed service, customer demand for its service, or quality of its service to or from a  
19 particular area or site. A local government may not require information that concerns the  
20 specific need for the wireless support structure, including if the service to be provided from the  
21 wireless support structure is to add additional wireless coverage or additional wireless capacity.  
22 A local government may not require proprietary, confidential, or other business information to  
23 justify the need for the new wireless support structure, including propagation maps and  
24 telecommunication traffic studies. In reviewing an application, the local government may  
25 review the following:

26 (1) Applicable public safety, land-use, or zoning issues addressed in its adopted  
27 regulations, including aesthetics, landscaping, land-use based location  
28 priorities, structural design, setbacks, and fall zones.

29 (2) Information or materials directly related to an identified public safety, land  
30 development, or zoning issue including evidence that no existing or  
31 previously approved wireless support structure can reasonably be used for  
32 the wireless facility placement instead of the construction of a new wireless  
33 support structure that residential, historic, and designated scenic areas cannot  
34 be served from outside the area or that the proposed height of a new wireless  
35 support structure or initial wireless facility placement or a proposed height  
36 increase of a substantially modified wireless support structure or  
37 replacement wireless support structure is necessary to provide the applicant's  
38 designed service.

39 (3) A local government may require applicants for new wireless facilities to  
40 evaluate the reasonable feasibility of collocating new antennas and  
41 equipment on an existing wireless support structure or structures within the  
42 applicant's search ring. Collocation on an existing wireless support structure  
43 is not reasonably feasible if collocation is technically or commercially  
44 impractical or the owner of the existing wireless support structure is  
45 unwilling to enter into a contract for such use at fair market value. Local  
46 governments may require information necessary to determine whether  
47 collocation on existing wireless support structures is reasonably feasible.

48 (c) The local government shall issue a written decision approving or denying an  
49 application under this section within a reasonable period of time consistent with the issuance of  
50 other development approvals in the case of other applications, each as measured from the time  
51 the application is deemed complete.

1        (d) A local government may fix and charge an application fee, consulting fee, or other  
2 fee associated with the submission, review, processing, and approval of an application to site  
3 new wireless support structures or to substantially modify wireless support structures or  
4 wireless facilities that is based on the costs of the services provided and does not exceed what  
5 is usual and customary for such services. Any charges or fees assessed by a local government  
6 on account of an outside consultant shall be fixed in advance and incorporated into a permit or  
7 application fee and shall be based on the reasonable costs to be incurred by the local  
8 government in connection with the regulatory review authorized under this section. The  
9 foregoing does not prohibit a local government from imposing additional reasonable and  
10 cost-based fees for costs incurred should an applicant amend its application. On request, the  
11 amount of the consultant charges incorporated into the permit or application fee shall be  
12 separately identified and disclosed to the applicant. The fee imposed by a local government for  
13 review of the application may not be used for either of the following:

14            (1) Travel time or expenses, meals, or overnight accommodations incurred in  
15 the review of an application by a consultant or other third party.

16            (2) Reimbursements for a consultant or other third party based on a contingent  
17 fee basis or a results-based arrangement.

18        (e) The local government may condition approval of an application for a new wireless  
19 support structure on the provision of documentation prior to the issuance of a building permit  
20 establishing the existence of one or more parties, including the owner of the wireless support  
21 structure, who intend to locate wireless facilities on the wireless support structure. A local  
22 government shall not deny an initial development approval based on such documentation. A  
23 local government may condition a development approval on a requirement to construct  
24 facilities within a reasonable period of time, which shall be no less than 24 months.

25        (f) The local government may not require the placement of wireless support structures  
26 or wireless facilities on local government owned or leased property but may develop a process  
27 to encourage the placement of wireless support structures or facilities on local government  
28 owned or leased property, including an expedited approval process.

29        (g) This section shall not be construed to limit the provisions or requirements of any  
30 historic district or landmark regulation adopted pursuant to this Article.

31 **"§ 160D-9-34. Collocation and eligible facilities requests of wireless support structures.**

32        (a) Pursuant to section 6409 of the Middle Class Tax Relief and Job Creation Act of  
33 2012, 47 U.S.C. § 1455(a), a local government may not deny and shall approve any eligible  
34 facilities request as provided in this section. Nothing in this Part requires an application and  
35 approval for routine maintenance or limits the performance of routine maintenance on wireless  
36 support structures and facilities, including in-kind replacement of wireless facilities. Routine  
37 maintenance includes activities associated with regular and general upkeep of transmission  
38 equipment, including the replacement of existing wireless facilities with facilities of the same  
39 size. A local government may require an application for collocation or an eligible facilities  
40 request.

41        (b) A collocation or eligible facilities request application is deemed complete unless the  
42 local government provides notice that the application is incomplete in writing to the applicant  
43 within 45 days of submission or within some other mutually agreed upon time frame. The  
44 notice shall identify the deficiencies in the application which, if cured, would make the  
45 application complete. A local government may deem an application incomplete if there is  
46 insufficient evidence provided to show that the proposed collocation or eligible facilities  
47 request will comply with federal, State, and local safety requirements. A local government may  
48 not deem an application incomplete for any issue not directly related to the actual content of the  
49 application and subject matter of the collocation or eligible facilities request. An application is  
50 deemed complete on resubmission if the additional materials cure the deficiencies indicated.

1       (c) The local government shall issue a written decision approving an eligible facilities  
2 request application within 45 days of such application being deemed complete. For a  
3 collocation application that is not an eligible facilities request, the local government shall issue  
4 its written decision to approve or deny the application within 45 days of the application being  
5 deemed complete.

6       (d) A local government may impose a fee not to exceed one thousand dollars (\$1,000)  
7 for technical consultation and the review of a collocation or eligible facilities request  
8 application. The fee must be based on the actual, direct, and reasonable administrative costs  
9 incurred for the review, processing, and approval of a collocation application. A local  
10 government may engage a third-party consultant for technical consultation and the review of a  
11 collocation application. The fee imposed by a local government for the review of the  
12 application may not be used for either of the following:

13           (1) Travel expenses incurred in a third-party review of a collocation application.

14           (2) Reimbursement for a consultant or other third party based on a contingent  
15 fee basis or results-based arrangement.

16 **"§§ 160D-9-35 through 160D-9-39: Reserved for future codification purposes.**

17                                   "Part 4. Historic Preservation.

18 **"§ 160D-9-40. Legislative findings.**

19       The heritage of our State is one of our most valued and important assets. The conservation  
20 and preservation of historic districts and landmarks stabilize and increase property values and  
21 strengthen the overall economy of the State. This Part authorizes local governments within their  
22 respective planning and development regulation jurisdictions and by means of listing,  
23 regulation, and acquisition to do the following:

24           (1) To safeguard the heritage of the city or county by preserving any district or  
25 landmark therein that embodies important elements of its culture, history,  
26 architectural history, or prehistory.

27           (2) To promote the use and conservation of such district or landmark for the  
28 education, pleasure, and enrichment of the residents of the city or county and  
29 the State as a whole.

30 **"§ 160D-9-41. Historic preservation commission.**

31       Before it may designate one or more landmarks or historic districts, a local government  
32 shall establish or designate a historic preservation commission in accordance with  
33 G.S. 160D-3-3.

34 **"§ 160D-9-42. Powers of the historic preservation commission.**

35       A preservation commission established pursuant to this Chapter may, within the planning  
36 and development regulation jurisdiction of the local government, do any of the following:

37           (1) Undertake an inventory of properties of historical, prehistorical,  
38 architectural, and/or cultural significance.

39           (2) Recommend to the governing board areas to be designated by ordinance as  
40 "Historic Districts" and individual structures, buildings, sites, areas, or  
41 objects to be designated by ordinance as "Landmarks."

42           (3) Acquire by any lawful means the fee or any lesser included interest,  
43 including options to purchase, to properties within established districts or to  
44 any such properties designated as landmarks to hold, manage, preserve,  
45 restore, and improve such properties, and to exchange or dispose of the  
46 property by public or private sale, lease or otherwise, subject to covenants or  
47 other legally binding restrictions which will secure appropriate rights of  
48 public access and promote the preservation of the property.

49           (4) Restore, preserve, and operate historic properties.

- 1           (5)   Recommend to the governing board that designation of any area as a historic  
2           district or part thereof, or designation of any building, structure, site, area, or  
3           object as a landmark, be revoked or removed for cause.
- 4           (6)   Conduct an educational program regarding historic properties and districts  
5           within its jurisdiction.
- 6           (7)   Cooperate with the State, federal, and local governments in pursuance of the  
7           purposes of this Part. The governing board or the commission, when  
8           authorized by the governing board, may contract with the State, or the  
9           United States of America, or any agency of either, or with any other  
10           organization provided the terms are not inconsistent with State or federal  
11           law.
- 12           (8)   Enter, solely in performance of its official duties and only at reasonable  
13           times, upon private lands for examination or survey thereof. However, no  
14           member, employee, or agent of the commission may enter any private  
15           building or structure without the express consent of the owner or occupant  
16           thereof.
- 17           (9)   Prepare and recommend the official adoption of a preservation element as  
18           part of the local government's comprehensive plan.
- 19           (10)   Review and act upon proposals for alterations, demolitions, or new  
20           construction within historic districts, or for the alteration or demolition of  
21           designated landmarks, pursuant to this Part.
- 22           (11)   Negotiate at any time with the owner of a building, structure, site, area, or  
23           object for its acquisition or its preservation, when such action is reasonably  
24           necessary or appropriate.

25   **"§ 160D-9-43. Appropriations.**

26       A governing board is authorized to make appropriations to a historic preservation  
27       commission established pursuant to this Chapter in any amount determined necessary for the  
28       expenses of the operation of the commission and may make available any additional amounts  
29       necessary for the acquisition, restoration, preservation, operation, and management of historic  
30       buildings, structures, sites, areas, or objects designated as historic landmarks, or within  
31       designated historic districts, or of land on which such buildings or structures are located, or to  
32       which they may be removed.

33   **"§ 160D-9-44. Designation of historic districts.**

34       (a)   Any local government may, as part of a zoning regulation adopted pursuant to  
35       Article 7 of this Chapter or as a development regulation enacted or amended pursuant to Article  
36       6 of this Chapter, designate and from time to time amend one or more historic districts within  
37       the area subject to the regulation. Historic districts established pursuant to this Part shall consist  
38       of areas which are deemed to be of special significance in terms of their history, prehistory,  
39       architecture, and/or culture and to possess integrity of design, setting, materials, feeling, and  
40       association.

41       Such development regulation may treat historic districts either as a separate use district  
42       classification or as districts which overlay other zoning districts. Where historic districts are  
43       designated as separate use districts, the zoning regulation may include as uses by right or as  
44       special uses those uses found by the preservation commission to have existed during the period  
45       sought to be restored or preserved or to be compatible with the restoration or preservation of  
46       the district.

47       (b)   No historic district or districts shall be designated under subsection (a) of this  
48       section until all of the following occur:

- 49           (1)   An investigation and report describing the significance of the buildings,  
50           structures, features, sites, or surroundings included in any such proposed

1 district and a description of the boundaries of such district has been  
2 prepared.

3 (2) The Department of Cultural Resources, acting through the State Historic  
4 Preservation Officer or his or her designee, shall have made an analysis of  
5 and recommendations concerning such report and description of proposed  
6 boundaries. Failure of the department to submit its written analysis and  
7 recommendations to the governing board within 30 calendar days after a  
8 written request for such analysis has been received by the Department of  
9 Cultural Resources shall relieve the governing board of any responsibility  
10 for awaiting such analysis, and the governing board may at any time  
11 thereafter take any necessary action to adopt or amend its zoning regulation.

12 (c) The governing board may also, in its discretion, refer the report and proposed  
13 boundaries under subsection (b) of this section to any local preservation commission or other  
14 interested body for its recommendations prior to taking action to amend the zoning regulation.  
15 With respect to any changes in the boundaries of such district, subsequent to its initial  
16 establishment, or the creation of additional districts within the jurisdiction, the investigative  
17 studies and reports required by subdivision (1) of subsection (b) of this section shall be  
18 prepared by the preservation commission and shall be referred to the planning board for its  
19 review and comment according to procedures set forth in the zoning regulation. Changes in the  
20 boundaries of an initial district or proposal for additional districts shall also be submitted to the  
21 Department of Cultural Resources in accordance with the provisions of subdivision (2) of  
22 subsection (b) of this section.

23 On receipt of these reports and recommendations, the local government may proceed in the  
24 same manner as would otherwise be required for the adoption or amendment of any appropriate  
25 zoning regulation.

26 (d) The provisions of G.S. 160D-9-10 apply to zoning or other development regulations  
27 pertaining to historic districts, and the authority under G.S. 160D-9-10(b) for the ordinance to  
28 regulate the location or screening of solar collectors may encompass requiring the use of  
29 plantings or other measures to ensure that the use of solar collectors is not incongruous with the  
30 special character of the district.

31 **"§ 160D-9-45. Designation of landmarks.**

32 Upon complying with G.S. 160D-9-46, the governing board may adopt and amend or repeal  
33 a regulation designating one or more historic landmarks. No property shall be recommended for  
34 designation as a historic landmark unless it is deemed and found by the preservation  
35 commission to be of special significance in terms of its historical, prehistorical, architectural, or  
36 cultural importance and to possess integrity of design, setting, workmanship, materials, feeling  
37 and/or association.

38 The regulation shall describe each property designated in the regulation, the name or names  
39 of the owner or owners of the property, those elements of the property that are integral to its  
40 historical, architectural, or prehistorical value, including the land area of the property so  
41 designated, and any other information the governing board deems necessary. For each building,  
42 structure, site, area, or object so designated as a historic landmark, the regulation shall require  
43 that the waiting period set forth in this Part be observed prior to its demolition. For each  
44 designated landmark, the regulation may also provide for a suitable sign on the property  
45 indicating that the property has been so designated. If the owner consents, the sign shall be  
46 placed upon the property. If the owner objects, the sign shall be placed on a nearby public  
47 right-of-way.

48 **"§ 160D-9-46. Required landmark designation procedures.**

49 As a guide for the identification and evaluation of landmarks, the preservation commission  
50 shall undertake, at the earliest possible time and consistent with the resources available to it, an  
51 inventory of properties of historical, architectural, prehistorical, and cultural significance within

1 its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as  
2 expeditiously as possible to the Office of Archives and History. No regulation designating a  
3 historic building, structure, site, area, or object as a landmark nor any amendment thereto may  
4 be adopted, nor may any property be accepted or acquired by a preservation commission or the  
5 governing board, until all of the following procedural steps have been taken:

6 (1) The preservation commission shall (i) prepare and adopt rules of procedure  
7 and (ii) prepare and adopt principles and guidelines, not inconsistent with  
8 this Part, for altering, restoring, moving, or demolishing properties  
9 designated as landmarks.

10 (2) The preservation commission shall make or cause to be made an  
11 investigation and report on the historic, architectural, prehistorical,  
12 educational, or cultural significance of each building, structure, site, area, or  
13 object proposed for designation or acquisition. Such investigation or report  
14 shall be forwarded to the Office of Archives and History, North Carolina  
15 Department of Cultural Resources.

16 (3) The Department of Cultural Resources, acting through the State Historic  
17 Preservation Officer, shall, upon request of the department or at the initiative  
18 of the preservation commission, be given an opportunity to review and  
19 comment upon the substance and effect of the designation of any landmark  
20 pursuant to this Part. Any comments shall be provided in writing. If the  
21 Department does not submit its comments or recommendation in connection  
22 with any designation within 30 days following receipt by the Department of  
23 the investigation and report of the preservation commission, the commission  
24 and any governing board shall be relieved of any responsibility to consider  
25 such comments.

26 (4) The preservation commission and the governing board shall hold a joint  
27 legislative hearing or separate legislative hearings on the proposed  
28 regulation. Notice of the hearing shall be made as provided by  
29 G.S. 160D-6-1.

30 (5) Following the hearings, the governing board may adopt the regulation as  
31 proposed, adopt the regulation with any amendments it deems necessary, or  
32 reject the proposed regulation.

33 (6) Upon adoption of the regulation, the owners and occupants of each  
34 designated landmark shall be given written notice of such designation within  
35 a reasonable time. One copy of the regulation and all amendments thereto  
36 shall be filed by the preservation commission in the office of the register of  
37 deeds of the county in which the landmark or landmarks are located. In the  
38 case of any landmark property lying within the planning and development  
39 regulation jurisdiction of a city, a second copy of the regulation and all  
40 amendments thereto shall be kept on file in the office of the city or town  
41 clerk and be made available for public inspection at any reasonable time. A  
42 third copy of the regulation and any amendments shall be given to the local  
43 government building inspector. The fact that a building, structure, site, area,  
44 or object has been designated a landmark shall be clearly indicated on all tax  
45 maps maintained by the local government for such period as the designation  
46 remains in effect.

47 (7) Upon the adoption of the landmark regulation or any amendment thereto, it  
48 shall be the duty of the preservation commission to give notice thereof to the  
49 tax supervisor of the county in which the property is located. The  
50 designation and any recorded restrictions upon the property limiting its use

1 for preservation purposes shall be considered by the tax supervisor in  
2 appraising it for tax purposes.

3 **"§ 160D-9-47. Certificate of appropriateness required.**

4 (a) Certificate Required. – From and after the designation of a landmark or a historic  
5 district, no exterior portion of any building or other structure, including masonry walls, fences,  
6 light fixtures, steps and pavement, or other appurtenant features, nor above-ground utility  
7 structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or  
8 demolished on such landmark or within such district until after an application for a certificate  
9 of appropriateness as to exterior features has been submitted to and approved by the  
10 preservation commission. The local government shall require such a certificate to be issued by  
11 the commission prior to the issuance of a building permit granted for the purposes of  
12 constructing, altering, moving, or demolishing structures, which certificate may be issued  
13 subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of  
14 appropriateness shall be required whether or not a building or other permit is required.

15 For purposes of this Part, "exterior features" shall include the architectural style, general  
16 design, and general arrangement of the exterior of a building or other structure, including the  
17 kind and texture of the building material, the size and scale of the building, and the type and  
18 style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of  
19 outdoor advertising signs, "exterior features" shall be construed to mean the style, material,  
20 size, and location of all such signs. Such "exterior features" may, in the discretion of the local  
21 governing board, include historic signs, color, and significant landscape, archaeological, and  
22 natural features of the area.

23 Except as provided in subsection (b) of this section, the commission shall have no  
24 jurisdiction over interior arrangement. The commission shall take no action under this section  
25 except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition  
26 of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant  
27 features in the district which would be incongruous with the special character of the landmark  
28 or district. In making decisions on certificates of appropriateness, the commission shall apply  
29 the rules and standards adopted pursuant to subsection (c) of this section.

30 (b) Interior Spaces. – Notwithstanding subsection (a) of this section, jurisdiction of the  
31 commission over interior spaces shall be limited to specific interior features of architectural,  
32 artistic, or historical significance in publicly owned landmarks and of privately owned historic  
33 landmarks for which consent for interior review has been given by the owner. Said consent of  
34 an owner for interior review shall bind future owners and/or successors in title, provided such  
35 consent has been filed in the office of the register of deeds of the county in which the property  
36 is located and indexed according to the name of the owner of the property in the grantee and  
37 grantor indexes. The landmark designation shall specify the interior features to be reviewed and  
38 the specific nature of the commission's jurisdiction over the interior.

39 (c) Rules and Standards. – Prior to any action to enforce a landmark or historic district  
40 regulation, the commission shall (i) prepare and adopt rules of procedure and (ii) prepare and  
41 adopt principles and standards not inconsistent with this Part to guide the commission in  
42 determining congruity with the special character of the landmark or district for new  
43 construction, alterations, additions, moving, and demolition. The landmark or historic district  
44 regulation may provide, subject to prior adoption by the preservation commission of detailed  
45 standards, for staff review and approval as an administrative decision of applications for a  
46 certificate of appropriateness for minor work or activity as defined by the regulation; provided,  
47 however, that no application for a certificate of appropriateness may be denied without formal  
48 action by the preservation commission. Other than these administrative decisions on minor  
49 works, decisions on certificates of appropriateness are quasi-judicial and shall follow the  
50 procedures of G.S. 160D-4-6.



1        (d) Time for Review. – All applications for certificates of appropriateness shall be  
2 reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the  
3 application for a certificate of appropriateness is filed, as defined by the regulation or the  
4 commission's rules of procedure. As part of its review procedure, the commission may view the  
5 premises and seek the advice of the Division of Archives and History or such other expert  
6 advice as it may deem necessary under the circumstances.

7        (e) Appeals. –

8            (1) Appeals of administrative decisions allowed by regulation may be made to  
9 the commission.

10           (2) All decisions of the commission in granting or denying a certificate of  
11 appropriateness may, if so provided in the regulation, be appealed to the  
12 board of adjustment in the nature of certiorari within times prescribed for  
13 appeals of administrative decisions in G.S. 160D-4-5(c). To the extent  
14 applicable, the provisions of G.S. 160D-14-2 shall apply to appeals in the  
15 nature of certiorari to the board of adjustment.

16           (3) Appeals from the board of adjustment may be made pursuant to  
17 G.S. 160D-14-2.

18           (4) If the regulation does not provide for an appeal to the board of adjustment,  
19 appeals of decisions on certificates of appropriateness may be made to the  
20 superior court as provided in G.S. 160D-14-2.

21           (5) Petitions for judicial review shall be taken within times prescribed for appeal  
22 of quasi-judicial decisions in G.S. 160D-14-4. Appeals in any such case shall  
23 be heard by the superior court of the county in which the local government is  
24 located.

25        (f) Public Buildings. – All of the provisions of this Part are hereby made applicable to  
26 construction, alteration, moving, and demolition by the State of North Carolina, its political  
27 subdivisions, agencies, and instrumentalities, provided, however, they shall not apply to  
28 interiors of buildings or structures owned by the State of North Carolina. The State and its  
29 agencies shall have a right of appeal to the North Carolina Historical Commission or any  
30 successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a  
31 local preservation commission. The North Carolina Historical Commission shall render its  
32 decision within 30 days from the date that the notice of appeal by the State is received by it.  
33 The current edition of the Secretary of the Interior's Standards for Rehabilitation and  
34 Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used  
35 in reviewing applications of the State for certificates of appropriateness. The decision of the  
36 North Carolina Historical Commission shall be final and binding upon both the State and the  
37 preservation commission.

38 **"§ 160D-9-48. Certain changes not prohibited.**

39        Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any  
40 exterior architectural feature in a historic district or of a landmark which does not involve a  
41 change in design, material, or appearance thereof, nor to prevent the construction,  
42 reconstruction, alteration, restoration, moving, or demolition of any such feature which the  
43 building inspector or similar official shall certify is required by the public safety because of an  
44 unsafe or dangerous condition. Nothing in this Part shall be construed to prevent a property  
45 owner from making any use of his property that is not prohibited by other law. Nothing in this  
46 Part shall be construed to prevent the maintenance or, in the event of an emergency, the  
47 immediate restoration of any existing above-ground utility structure without approval by the  
48 preservation commission.

49 **"§ 160D-9-49. Delay in demolition of landmarks and buildings within historic district.**

50        (a) An application for a certificate of appropriateness authorizing the relocation,  
51 demolition, or destruction of a designated landmark or a building, structure, or site within the

1 district may not be denied, except as provided in subsection (c) of this section. However, the  
2 effective date of such a certificate may be delayed for a period of up to 365 days from the date  
3 of approval. The maximum period of delay authorized by this section shall be reduced by the  
4 preservation commission where it finds that the owner would suffer extreme hardship or be  
5 permanently deprived of all beneficial use of or return from such property by virtue of the  
6 delay. During such period, the preservation commission shall negotiate with the owner and  
7 with any other parties in an effort to find a means of preserving the building or site. If the  
8 preservation commission finds that a building or site within a district has no special  
9 significance or value toward maintaining the character of the district, it shall waive all or part  
10 of such period and authorize earlier demolition or removal.

11 If the preservation commission or planning board has voted to recommend designation of a  
12 property as a landmark or designation of an area as a district and final designation has not been  
13 made by the governing board, the demolition or destruction of any building, site, or structure  
14 located on the property of the proposed landmark or in the proposed district may be delayed by  
15 the preservation commission or planning board for a period of up to 180 days or until the  
16 governing board takes final action on the designation, whichever occurs first.

17 (b) The governing board may enact a regulation to prevent the demolition by neglect of  
18 any designated landmark or any building or structure within an established historic district.  
19 Such regulation shall provide appropriate safeguards to protect property owners from undue  
20 economic hardship.

21 (c) An application for a certificate of appropriateness authorizing the demolition or  
22 destruction of a building, site, or structure determined by the State Historic Preservation Officer  
23 as having statewide significance as defined in the criteria of the National Register of Historic  
24 Places may be denied except where the preservation commission finds that the owner would  
25 suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of  
26 the denial.

27 **"§ 160D-9-50. Demolition by neglect to contributing structures outside local historic**  
28 **districts.**

29 Notwithstanding G.S. 160D-9-49 or any other provision of law, the governing board may  
30 apply its demolition-by-neglect regulations to contributing structures located outside the local  
31 historic district within an adjacent central business district. The governing board may modify  
32 and revise its demolition by neglect regulations as necessary to implement this section and to  
33 further its intent. This section is applicable to any local government provided such local  
34 government (i) has designated portions of the central business district and its adjacent historic  
35 district as an Urban Progress Zone as defined in G.S. 143B-437.09 and (ii) is recognized by the  
36 State Historic Preservation Office and the U.S. Department of the Interior as a Certified Local  
37 Government in accordance with the National Historic Preservation Act of 1966, as amended by  
38 16 U.S.C. § 470, et seq., and the applicable federal regulations 36 C.F.R. Part 61, but is located  
39 in a county that has not received the same certification.

40 **"§ 160D-9-51. Conflict with other laws.**

41 Whenever any regulation adopted pursuant to this Part requires a longer waiting period or  
42 imposes other higher standards with respect to a designated historic landmark or district than  
43 are established under any other statute, charter provision, or regulation, this Part shall govern.  
44 Whenever the provisions of any other statute, charter provision, ordinance, or regulation  
45 require a longer waiting period or impose other higher standards than are established under this  
46 Part, such other statute, charter provision, ordinance or regulation shall govern.

47 **"§§ 160D-9-52 through 160D-9-59: Reserved for future codification purposes.**

48 "Part 5. Community Appearance Commissions.

49 **"§ 160D-9-60. Powers and duties of commission.**

50 A community appearance commission shall make careful study of the visual problems and  
51 needs of the local government within its planning and development regulation jurisdiction and

1 shall make any plans and carry out any programs that will, in accordance with the provisions of  
2 this Part, enhance and improve the visual quality and aesthetic characteristics of the local  
3 government. To this end, the governing board may confer upon the appearance commission the  
4 following powers and duties:

- 5 (1) To initiate, promote, and assist in the implementation of programs of general  
6 community beautification in the local government.
- 7 (2) To coordinate the activities of individuals, agencies, and organizations,  
8 public and private, whose plans, activities, and programs bear upon the  
9 appearance of the local government.
- 10 (3) To provide leadership and guidance in matters of area or community design  
11 and appearance to individuals, to public and private organizations, and to  
12 agencies.
- 13 (4) To make studies of the visual characteristics and problems of the local  
14 government, including surveys and inventories of an appropriate nature, and  
15 to recommend standards and policies of design for the entire area, any  
16 portion or neighborhood thereof, or any project to be undertaken.
- 17 (5) To prepare both general and specific plans for the improved appearance of  
18 the local government. These plans may include the entire area or any part  
19 thereof and may include private as well as public property. The plans shall  
20 set forth desirable standards and goals for the aesthetic enhancement of the  
21 local government or any part thereof within its area of planning and  
22 development regulation jurisdiction, including public ways and areas, open  
23 spaces, and public and private buildings and projects.
- 24 (6) To participate, in any way deemed appropriate by the governing board of the  
25 local government and specified in the ordinance establishing the  
26 commission, in the implementation of its plans. To this end, the governing  
27 board may include in the ordinance the following powers:
  - 28 a. To request from the proper officials of any public agency or body,  
29 including agencies of the State and its political subdivisions, its plans  
30 for public buildings, facilities, or projects to be located within the  
31 local government's planning and development regulation jurisdiction.
  - 32 b. To review these plans and to make recommendations regarding their  
33 aesthetic suitability to the appropriate agency or to the planning or  
34 governing board. All plans shall be reviewed by the commission in a  
35 prompt and expeditious manner, and all recommendations of the  
36 commission with regard to any public project shall be made in  
37 writing. Copies of the recommendations shall be transmitted  
38 promptly to the planning or governing board and to the appropriate  
39 agency.
  - 40 c. To formulate and recommend to the appropriate planning or  
41 governing board the adoption or amendment of ordinances, including  
42 zoning regulations, subdivision regulations, and other local  
43 development regulations, that will, in the opinion of the commission,  
44 serve to enhance the appearance of the city or county and  
45 surrounding areas.
  - 46 d. To direct the attention of local government officials to needed  
47 enforcement of any ordinance that may in any way affect the  
48 appearance of the city or county.
  - 49 e. To seek voluntary adherence to the standards and policies of its  
50 plans.

- 1           f.       To enter, in the performance of its official duties and at reasonable  
2                   times, upon private lands and make examinations or surveys.  
3           g.       To promote public interest in and an understanding of its  
4                   recommendations, studies, and plans, and to that end, prepare,  
5                   publish, and distribute to the public such studies and reports that will,  
6                   in the opinion of the commission, advance the cause of improved  
7                   appearance.  
8           h.       To conduct public meetings and hearings, giving reasonable notice to  
9                   the public thereof.

10 **"§ 160D-9-61. Staff services; advisory council.**

11       The commission may recommend to the governing board suitable arrangements for the  
12 procurement or provision of staff or technical services for the commission, and the governing  
13 board may appropriate such amount as it deems necessary to carry out the purposes for which it  
14 was created. The commission may establish an advisory council or other committees.

15 **"§ 160D-9-62. Annual report.**

16       The commission shall, no later than April 15 of each year, submit to the governing board a  
17 written report of its activities, a statement of its expenditures to date for the current fiscal year,  
18 and its requested budget for the next fiscal year. All accounts and funds of the commission  
19 shall be administered substantially in accordance with the requirements of the Municipal Fiscal  
20 Control Act or the County Fiscal Control Act.

21 **"§ 160D-9-63. Receipt and expenditure of funds.**

22       The commission may receive contributions from private agencies, foundations,  
23 organizations, individuals, the State or federal government, or any other source, in addition to  
24 any sums appropriated for its use by the governing board. It may accept and disburse these  
25 funds for any purpose within the scope of its authority as herein specified. All sums  
26 appropriated by the local government to further the work and purposes of the commission are  
27 deemed to be for a public purpose.

28 **"§§ 160D-9-64 through 160D-9-69:** Reserved for future codification purposes.

29                                   "Article 10.

30                                   "Development Agreements.

31 **"§ 160D-10-1. Authorization.**

32       (a)       The General Assembly finds the following:

- 33           (1)       Development projects often occur in multiple phases over several years,  
34                   requiring a long-term commitment of both public and private resources.  
35           (2)       Such developments often create community impacts and opportunities that  
36                   are difficult to accommodate within traditional zoning processes.  
37           (3)       Because of their scale and duration, such projects often require careful  
38                   coordination of public capital facilities planning, financing, and construction  
39                   schedules and phasing of the private development.  
40           (4)       Such projects involve substantial commitments of private capital, which  
41                   developers are usually unwilling to risk without sufficient assurances that  
42                   development standards will remain stable through the extended period of the  
43                   development.  
44           (5)       Such developments often permit communities and developers to experiment  
45                   with different or nontraditional types of development concepts and  
46                   standards, while still managing impacts on the surrounding areas.  
47           (6)       To better structure and manage development approvals for such  
48                   developments and ensure their proper integration into local capital facilities  
49                   programs, local governments need flexibility to negotiate such  
50                   developments.

1        (b) Local governments may enter into development agreements with developers, subject  
2 to the procedures of this Article. In entering into such agreements, a local government may not  
3 exercise any authority or make any commitment not authorized by general or local act and may  
4 not impose any tax or fee not authorized by otherwise applicable law.

5        (c) This Article is supplemental to the powers conferred upon local governments and  
6 does not preclude or supersede rights and obligations established pursuant to other law  
7 regarding development approvals, site-specific vesting plans, or other provisions of law. A  
8 development agreement shall not exempt the property owner or developer from compliance  
9 with the State Building Code or State or local housing codes that are not part of the local  
10 government's development regulations.

11        (d) Development authorized by a development agreement shall comply with all  
12 applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws  
13 affecting the development of property, including laws governing permitted uses of the property,  
14 density, intensity, design, and improvements.

15 **"§ 160D-10-2. Definitions.**

16        The following definitions apply in this Article:

17        (1) Development. – The planning for or carrying out of a building activity, the  
18 making of a material change in the use or appearance of any structure or  
19 property, or the dividing of land into two or more parcels. When appropriate  
20 to the context, "development" refers to the planning for or the act of  
21 developing or to the result of development. Reference to a specific operation  
22 is not intended to mean that the operation or activity, when part of other  
23 operations or activities, is not development. Reference to particular  
24 operations is not intended to limit the generality of this item.

25        (2) Public facilities. – The major capital improvements, including, but not  
26 limited to, transportation, sanitary sewer, solid waste, drainage, potable  
27 water, educational, parks and recreational, and health systems and facilities.

28 **"§ 160D-10-3. Approval of governing board required.**

29        (a) A local government may establish procedures and requirements, as provided in this  
30 Article, to consider and enter into development agreements with developers. A development  
31 agreement must be approved by the governing board of a local government following the  
32 procedures specified in G.S. 160D-10-5.

33        (b) The development agreement may, by ordinance, be incorporated, in whole or in  
34 part, into any development regulation adopted by the local government. A development  
35 agreement may be considered concurrently with a zoning map or text amendment affecting the  
36 property and development subject to the development agreement. A development agreement  
37 may be concurrently considered with and incorporated by reference with a sketch plan or  
38 preliminary plat required under a subdivision regulation or a site plan or other development  
39 approval required under a zoning regulation. If incorporated into a conditional district, the  
40 provisions of the development agreement shall be treated as a development regulation in the  
41 event of the developer's bankruptcy.

42 **"§ 160D-10-4. Size and duration.**

43        A local government may enter into a development agreement with a developer for the  
44 development of property as provided in this Article for developable property of any size.  
45 Development agreements shall be of a reasonable term specified in the agreement.

46 **"§ 160D-10-5. Public hearing.**

47        Before entering into a development agreement, a local government shall conduct a  
48 legislative hearing on the proposed agreement. The notice provisions of G.S. 160D-6-2  
49 applicable to zoning map amendments shall be followed for this hearing. The notice for the  
50 public hearing must specify the location of the property subject to the development agreement,

1 the development uses proposed on the property, and a place where a copy of the proposed  
2 development agreement can be obtained.

3 **"§ 160D-10-6. Content and modification.**

4 (a) A development agreement shall, at a minimum, include all of the following:

5 (1) A description of the property subject to the agreement and the names of its  
6 legal and equitable property owners.

7 (2) The duration of the agreement. However, the parties are not precluded from  
8 entering into subsequent development agreements that may extend the  
9 original duration period.

10 (3) The development uses permitted on the property, including population  
11 densities and building types, intensities, placement on the site, and design.

12 (4) A description of public facilities that will serve the development, including  
13 who provides the facilities, the date any new public facilities, if needed, will  
14 be constructed, and a schedule to assure public facilities are available  
15 concurrent with the impacts of the development. In the event that the  
16 development agreement provides that the local government shall provide  
17 certain public facilities, the development agreement shall provide that the  
18 delivery date of such public facilities will be tied to successful performance  
19 by the developer in implementing the proposed development, such as  
20 meeting defined completion percentages or other performance standards.

21 (5) A description, where appropriate, of any reservation or dedication of land for  
22 public purposes and any provisions agreed to by the developer that exceed  
23 existing laws related to protection of environmentally sensitive property.

24 (6) A description, where appropriate, of any conditions, terms, restrictions, or  
25 other requirements for the protection of public health, safety, or welfare.

26 (7) A description, where appropriate, of any provisions for the preservation and  
27 restoration of historic structures.

28 (b) A development agreement may also provide that the entire development or any  
29 phase of it be commenced or completed within a specified period of time. If required by  
30 ordinance or in the agreement, the development agreement shall provide a development  
31 schedule, including commencement dates and interim completion dates at no greater than  
32 five-year intervals; provided, however, the failure to meet a commencement or completion date  
33 shall not, in and of itself, constitute a material breach of the development agreement pursuant to  
34 G.S. 160D-10-8 but must be judged based upon the totality of the circumstances. The developer  
35 may request a modification in the dates as set forth in the agreement.

36 (c) If more than one local government is made party to an agreement, the agreement  
37 must specify which local government is responsible for the overall administration of the  
38 development agreement. A local or regional utility authority may also be made a party to the  
39 development agreement.

40 (d) The development agreement also may cover any other matter, including defined  
41 performance standards, not inconsistent with this Chapter. The development agreement may  
42 include mutually acceptable terms regarding provision of public facilities and other amenities  
43 and the allocation of financial responsibility for their provision, provided any impact mitigation  
44 measures offered by the developer beyond those that could be required by the local government  
45 pursuant to G.S. 160D-8-4 shall be expressly enumerated within the agreement, and provided  
46 the agreement may not include a tax or impact fee not otherwise authorized by law.

47 (e) Consideration of a proposed major modification of the agreement shall follow the  
48 same procedures as required for initial approval of a development agreement. What changes  
49 constitute a major modification may be determined by ordinance adopted pursuant to  
50 G.S. 160D-10.3 or as provided for in the development agreement.

1 (f) Any performance guarantees under the development agreement shall comply with  
2 G.S. 160D-8-4(d).

3 **"§ 160D-10-7. Vesting.**

4 (a) Unless the development agreement specifically provides for the application of  
5 subsequently enacted laws, the laws applicable to development of the property subject to a  
6 development agreement are those in force at the time of execution of the agreement.

7 (b) Except for grounds specified in G.S. 160D-1-8(e), a local government may not  
8 apply subsequently adopted ordinances or development policies to a development that is  
9 subject to a development agreement.

10 (c) In the event State or federal law is changed after a development agreement has been  
11 entered into and the change prevents or precludes compliance with one or more provisions of  
12 the development agreement, the local government may modify the affected provisions, upon a  
13 finding that the change in State or federal law has a fundamental effect on the development  
14 agreement.

15 (d) This section does not abrogate any vested rights otherwise preserved by law.

16 **"§ 160D-10-8. Breach and cure.**

17 (a) Procedures established pursuant to G.S. 160D-10-3 may include a provision  
18 requiring periodic review by the zoning administrator or other appropriate officer of the local  
19 government at which time the developer shall demonstrate good-faith compliance with the  
20 terms of the development agreement.

21 (b) If the local government finds and determines that the developer has committed a  
22 material breach of the agreement, the local government shall notify the developer in writing  
23 setting forth with reasonable particularity the nature of the breach and the evidence supporting  
24 the finding and determination and providing the developer a reasonable time in which to cure  
25 the material breach.

26 (c) If the developer fails to cure the material breach within the time given, then the local  
27 government unilaterally may terminate or modify the development agreement, provided the  
28 notice of termination or modification may be appealed to the board of adjustment in the manner  
29 provided by G.S. 160D-4-5.

30 (d) An ordinance adopted pursuant to G.S. 160D-10.3 or the development agreement  
31 may specify other penalties for breach in lieu of termination, including, but not limited to,  
32 penalties allowed for violation of a development regulation. Nothing in this Article shall be  
33 construed to abrogate or impair the power of the local government to enforce applicable law.

34 (e) A development agreement shall be enforceable by any party to the agreement  
35 notwithstanding any changes in the development regulations made subsequent to the effective  
36 date of the development agreement. Any party to the agreement may file an action for  
37 injunctive relief to enforce the terms of a development agreement.

38 **"§ 160D-10-9. Amendment or termination.**

39 Subject to the provisions of G.S. 160D-10.6(e), a development agreement may be amended  
40 or terminated by mutual consent of the parties.

41 **"§ 160D-10-10. Change of jurisdiction.**

42 (a) Except as otherwise provided by this Article, any development agreement entered  
43 into by a local government before the effective date of a change of jurisdiction shall be valid  
44 for the duration of the agreement or eight years from the effective date of the change in  
45 jurisdiction, whichever is earlier. The parties to the development agreement and the local  
46 government assuming jurisdiction have the same rights and obligations with respect to each  
47 other regarding matters addressed in the development agreement as if the property had  
48 remained in the previous jurisdiction.

49 (b) A local government assuming jurisdiction may modify or suspend the provisions of  
50 the development agreement if the local government determines that the failure of the local  
51 government to do so would place the residents of the territory subject to the development

1 agreement or the residents of the local government, or both, in a condition dangerous to their  
2 health or safety, or both.

3 **"§ 160D-10-11. Recordation.**

4 The developer shall record the agreement with the register of deeds in the county where the  
5 property is located within 14 days after the local government and developer execute an  
6 approved development agreement. No development approvals may be issued until the  
7 development agreement has been recorded. The burdens of the development agreement are  
8 binding upon, and the benefits of the agreement shall inure to, all successors in interest to the  
9 parties to the agreement.

10 **"§ 160D-10-12. Applicability of procedures to approve debt.**

11 In the event that any of the obligations of the local government in the development  
12 agreement constitute debt, the local government shall comply, at the time of the obligation to  
13 incur the debt and before the debt becomes enforceable against the local government, with any  
14 applicable constitutional and statutory procedures for the approval of this debt.

15 "Article 11.

16 "Building Code Enforcement.

17 **"§ 160D-11-1. Definitions.**

18 As used in this Article, the following terms shall have their ordinary meaning and shall also  
19 be read to include the following:

- 20 (1) Building or buildings. – Includes other structures.  
21 (2) Governing board or board of commissioners. – Includes the Tribal Council  
22 of a federally recognized Indian tribe.  
23 (3) Local government. – Includes a federally recognized Indian tribe, and, as to  
24 such tribe, includes lands held in trust for the tribe.  
25 (4) Public officer. – Includes the officer or officers who are authorized by  
26 regulations adopted hereunder to exercise the powers prescribed by the  
27 regulations and by this Article.

28 **"§ 160D-11-2. Building code administration.**

29 A local government may create an inspection department and may appoint inspectors who  
30 may be given appropriate titles, such as building inspector, electrical inspector, plumbing  
31 inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire  
32 prevention inspector, or deputy or assistant inspector, or such other titles as may be generally  
33 descriptive of the duties assigned. Every local government shall perform the duties and  
34 responsibilities set forth in G.S. 160D-11-5 either by (i) creating its own inspection department;  
35 (ii) creating a joint inspection department in cooperation with one or more other units of local  
36 government, pursuant to G.S. 160D-11-5 or Part 1 of Article 20 of Chapter 160A of the  
37 General Statutes; (iii) contracting with another unit of local government for the provision of  
38 inspection services pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes; or  
39 (iv) arranging for the county in which a city is located to perform inspection services within the  
40 city's jurisdiction as authorized by G.S. 160D-11-5 and G.S. 160D-2-2.

41 In the event that any local government fails to provide inspection services or ceases to  
42 provide such services, the Commissioner of Insurance shall arrange for the provision of such  
43 services, either through personnel employed by the department or through an arrangement with  
44 other units of government. In either event, the Commissioner shall have and may exercise  
45 within the local government's planning and development regulation jurisdiction all powers  
46 made available to the governing board with respect to building inspection under this Article and  
47 Part 1 of Article 20 of Chapter 160A of the General Statutes. Whenever the Commissioner has  
48 intervened in this manner, the local government may assume provision of inspection services  
49 only after giving the Commissioner two years' written notice of its intention to do so; provided,  
50 however, that the Commissioner may waive this requirement or permit assumption at an earlier



1 date upon finding that such earlier assumption will not unduly interfere with arrangements  
2 made for the provision of those services.

3 **"§ 160D-11-3. Qualifications of inspectors.**

4 No local government shall employ an inspector to enforce the State Building Code who  
5 does not have one of the following types of certificates issued by the North Carolina Code  
6 Officials Qualification Board attesting to the inspector's qualifications to hold such position: (i)  
7 a probationary certificate; (ii) a standard certificate; or (iii) a limited certificate which shall be  
8 valid only as an authorization to continue in the position held on the date specified in  
9 G.S. 143-151.13(c) and which shall become invalid if the inspector does not successfully  
10 complete in-service training specified by the Qualification Board within the period specified in  
11 G.S. 143-151.13(c). An inspector holding one of the above certificates can be promoted to a  
12 position requiring a higher level certificate only upon issuance by the Board of a standard  
13 certificate or probationary certificate appropriate for such new position.

14 **"§ 160D-11-4. Duties and responsibilities.**

15 (a) The duties and responsibilities of an inspection department and of the inspectors in  
16 it shall be to enforce within their planning and development regulation jurisdiction State and  
17 local laws relating to the following:

18 (1) The construction of buildings and other structures.

19 (2) The installation of such facilities as plumbing systems, electrical systems,  
20 heating systems, refrigeration systems, and air-conditioning systems.

21 (3) The maintenance of buildings and other structures in a safe, sanitary, and  
22 healthful condition.

23 (4) Other matters that may be specified by the governing board.

24 (b) The duties and responsibilities set forth in subsection (a) of this section shall include  
25 the receipt of applications for permits and the issuance or denial of permits, the making of any  
26 necessary inspections in a timely manner, the issuance or denial of certificates of compliance,  
27 the issuance of orders to correct violations, the bringing of judicial actions against actual or  
28 threatened violations, the keeping of adequate records, and any other actions that may be  
29 required in order adequately to enforce those laws. The city council shall have the authority to  
30 enact reasonable and appropriate provisions governing the enforcement of those laws.

31 (c) Except as provided in G.S. 160D-11-15 and G.S. 160D-12-7, a local government  
32 may not adopt a local ordinance or resolution or any other policy that requires regular, routine  
33 inspections of buildings or structures constructed in compliance with the North Carolina  
34 Residential Code for One- and Two-Family Dwellings in addition to the specific inspections  
35 required by the North Carolina Building Code without first obtaining approval from the North  
36 Carolina Building Code Council. The North Carolina Building Code Council shall review all  
37 applications for additional inspections requested by a local government and shall, in a  
38 reasonable manner, approve or disapprove the additional inspections. This subsection does not  
39 limit the authority of the local government to require inspections upon unforeseen or unique  
40 circumstances that require immediate action. In performing the specific inspections required by  
41 the North Carolina Residential Building Code, the inspector shall conduct all inspections  
42 requested by the permit holder for each scheduled inspection visit. For each requested  
43 inspection, the inspector shall inform the permit holder of instances in which the work  
44 inspected is incomplete or otherwise fails to meet the requirements of the North Carolina  
45 Residential Code for One- and Two-Family Dwellings.

46 (d) Notwithstanding the requirements of this Article, a local government shall accept  
47 and approve, without further responsibility to inspect, a design or other proposal for a  
48 component or element in the construction of buildings from a licensed architect or licensed  
49 engineer provided all of the following apply:

50 (1) The submission is completed under valid seal of the licensed architect or  
51 licensed engineer.

1           (2) Field inspection of the installation or completion of the construction  
2 component or element of the building is performed by that licensed architect  
3 or licensed engineer.

4           (3) That licensed architect or licensed engineer provides the local government  
5 with a signed written document stating that the component or element of the  
6 building so inspected is in compliance with the North Carolina State  
7 Building Code for One- and Two-Family Dwellings.

8           (e) Upon the acceptance and approval of a signed written document by the local  
9 government as required under subsection (d) of this section, the local government, its  
10 inspection department, and the inspectors shall be discharged and released from any duties and  
11 responsibilities imposed by this Article with respect to the component or element in the  
12 construction of the building for which the signed written document was submitted.

13 **"§ 160D-11-5. Other arrangements for inspections.**

14           A local government may contract with an individual who is not a local government  
15 employee but who holds one of the applicable certificates as provided in G.S. 160D-11-3 or  
16 with the employer of an individual who holds one of the applicable certificates as provided in  
17 G.S. 160D-11-3.

18 **"§ 160D-11-6. Conflicts of interest.**

19           Staff members, agents, or contractors responsible for building inspections shall comply  
20 with G.S. 160D-1-9(c). No member of an inspection department shall be financially interested  
21 or employed by a business that is financially interested in the furnishing of labor, material, or  
22 appliances for the construction, alteration, or maintenance of any building within the local  
23 government's planning and development regulation jurisdiction or any part or system thereof,  
24 or in the making of plans or specifications therefor, unless he is the owner of the building. No  
25 member of an inspection department or other individual or an employee of a company  
26 contracting with a local government to conduct building inspections shall engage in any work  
27 that is inconsistent with his or her duties or with the interest of the local government, as  
28 determined by the local government. The local government must find a conflict of interest if  
29 any of the following is the case:

30           (1) If the individual, company, or employee of a company contracting to  
31 perform building inspections for the local government has worked for the  
32 owner, developer, contractor, or project manager of the project to be  
33 inspected within the last two years.

34           (2) If the individual, company, or employee of a company contracting to  
35 perform building inspections for the local government is closely related to  
36 the owner, developer, contractor, or project manager of the project to be  
37 inspected.

38           (3) If the individual, company, or employee of a company contracting to  
39 perform building inspections for the local government has a financial or  
40 business interest in the project to be inspected.

41           The provisions of this section do not apply to a firefighter whose primary duties are fire  
42 suppression and rescue but who engages in some fire inspection activities as a secondary  
43 responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect  
44 any work actually done, or materials or appliances supplied, by the firefighter or the  
45 firefighter's business within the preceding six years.

46 **"§ 160D-11-7. Failure to perform duties.**

47           (a) If any member of an inspection department shall willfully fail to perform the duties  
48 required by law, or willfully shall improperly issue a building permit, or shall give a certificate  
49 of compliance without first making the inspections required by law, or willfully shall  
50 improperly give a certificate of compliance, the member shall be guilty of a Class 1  
51 misdemeanor.

1        (b) A member of the inspection department shall not be in violation of this section when  
2 the local government, its inspection department, or one of the inspectors accepted a signed  
3 written document of compliance with the North Carolina State Building Code or the North  
4 Carolina Residential Code for One- and Two-Family Dwellings from a licensed architect or  
5 licensed engineer in accordance with G.S. 160D-11-4(d).

6 **"§ 160D-11-8. Building permits.**

7        (a) Except as provided in subsection (c) of this section, no person shall commence or  
8 proceed with any of the following without first securing all permits required by the State  
9 Building Code and any other State or local laws applicable to any of the following activities:

10        (1) The construction, reconstruction, alteration, repair, movement to another  
11 site, removal, or demolition of any building or structure.

12        (2) The installation, extension, or general repair of any plumbing system except  
13 that in any one- or two-family dwelling unit a permit shall not be required  
14 for the connection of a water heater that is being replaced, provided that the  
15 work is performed by a person licensed under G.S. 87-21, who personally  
16 examines the work at completion and ensures that a leak test has been  
17 performed on the gas piping, and provided the energy use rate or thermal  
18 input is not greater than that of the water heater which is being replaced,  
19 there is no change in fuel, energy source, location, capacity, or routing or  
20 sizing of venting and piping, and the replacement is installed in accordance  
21 with the current edition of the State Building Code.

22        (3) The installation, extension, alteration, or general repair of any heating or  
23 cooling equipment system.

24        (4) The installation, extension, alteration, or general repair of any electrical  
25 wiring, devices, appliances, or equipment except that in any one- or  
26 two-family dwelling unit a permit shall not be required for repair or  
27 replacement of electrical lighting fixtures or devices, such as receptacles and  
28 lighting switches, or for the connection of an existing branch circuit to an  
29 electric water heater that is being replaced, provided that all of the following  
30 requirements are met:

31        a. With respect to electric water heaters, the replacement water heater is  
32 placed in the same location and is of the same or less capacity and  
33 electrical rating as the original.

34        b. With respect to electrical lighting fixtures and devices, the  
35 replacement is with a fixture or device having the same voltage and  
36 the same or less amperage.

37        c. The work is performed by a person licensed under G.S. 87-43.

38        d. The repair or replacement installation meets the current edition of the  
39 State Building Code, including the State Electrical Code.

40        However, a building permit is not required for the installation, maintenance, or replacement  
41 of any load control device or equipment by an electric power supplier, as defined in  
42 G.S. 62-133.8, or an electrical contractor contracted by the electric power supplier, so long as  
43 the work is subject to supervision by an electrical contractor licensed under Article 4 of  
44 Chapter 87 of the General Statutes. The electric power supplier shall provide such installation,  
45 maintenance, or replacement in accordance with (i) an activity or program ordered, authorized,  
46 or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or  
47 G.S. 62-133.9 or (ii) a similar program undertaken by a municipal electric service provider,  
48 whether the installation, modification, or replacement is made before or after the point of  
49 delivery of electric service to the customer. The exemption under this subsection applies to all  
50 existing installations.

1       **(b)** A building permit shall be in writing and shall contain a provision that the work  
2 done shall comply with the State Building Code and all other applicable State and local laws.  
3 Nothing in this section shall require a local government to review and approve residential  
4 building plans submitted to the local government pursuant to the North Carolina Residential  
5 Code, provided that the local government may review and approve such residential building  
6 plans as it deems necessary. No building permits shall be issued unless the plans and  
7 specifications are identified by the name and address of the author thereof, and, if the General  
8 Statutes of North Carolina require that plans for certain types of work be prepared only by a  
9 licensed architect or licensed engineer, no building permit shall be issued unless the plans and  
10 specifications bear the North Carolina seal of a licensed architect or of a licensed engineer.  
11 When any provision of the General Statutes of North Carolina or of any ordinance requires that  
12 work be done by a licensed specialty contractor of any kind, no building permit for the work  
13 shall be issued unless the work is to be performed by such a duly licensed contractor.

14       **(c)** No permit issued under Article 9 or 9C of Chapter 143 of the General Statutes shall  
15 be required for any construction, installation, repair, replacement, or alteration performed in  
16 accordance with the current edition of the North Carolina State Building Code costing fifteen  
17 thousand dollars (\$15,000) or less in any single-family residence or farm building unless the  
18 work involves any of the following:

19           **(1)** The addition, repair or replacement of load bearing structures. However, no  
20 permit is required for replacement of windows, doors, exterior siding, or the  
21 pickets, railings, stair treads, and decking of porches and exterior decks.

22           **(2)** The addition or change in the design of plumbing. However, no permit is  
23 required for replacements otherwise meeting the requirements of this  
24 subsection that do not change size or capacity.

25           **(3)** The addition, replacement, or change in the design of heating, air  
26 conditioning, or electrical wiring, devices, appliances, or equipment, other  
27 than like-kind replacement of electrical devices and lighting fixtures.

28           **(4)** The use of materials not permitted by the North Carolina Residential Code  
29 for One- and Two-Family Dwellings.

30           **(5)** The addition (excluding replacement) of roofing.

31       **(d)** A local government shall not require more than one building permit for the  
32 complete installation or replacement of any natural gas, propane gas, or electrical appliance on  
33 an existing structure when the installation or replacement is performed by a person licensed  
34 under G.S. 87-21 or G.S. 87-43. The cost of the building permit for such work shall not exceed  
35 the cost of any one individual trade permit issued by that local government nor shall the local  
36 government increase the costs of any fees to offset the loss of revenue caused by this provision.

37       **(e)** No building permit shall be issued pursuant to subsection (a) of this section for any  
38 land-disturbing activity, as defined in G.S. 113A-52(6), or for any activity covered by  
39 G.S. 113A-57, unless an erosion and sedimentation control plan for the site of the activity or a  
40 tract of land including the site of the activity has been approved under the Sedimentation  
41 Pollution Control Act.

42       **(f)** No building permit shall be issued pursuant to subsection (a) of this section for any  
43 land-disturbing activity that is subject to, but does not comply with, the requirements of  
44 G.S. 113A-71.

45       **(g)** No building permit shall be issued pursuant to subdivision (1) of subsection (a) of  
46 this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than  
47 for improvements to an existing single-family residential dwelling unit as defined in  
48 G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory  
49 building or accessory structure as defined in the North Carolina Uniform Residential Building  
50 Code, the use of which is incidental to that residential dwelling unit, unless the name, physical  
51 and mailing address, telephone number, facsimile number, and electronic mail address of the

1 lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in  
2 the permit or in an attachment thereto. The building permit may contain the lien agent's  
3 electronic mail address. The lien agent information for each permit issued pursuant to this  
4 subsection shall be maintained by the inspection department in the same manner and in the  
5 same location in which it maintains its record of building permits issued.

6 (h) No local government may withhold a building permit or certificate of occupancy  
7 that otherwise would be eligible to be issued under this section to compel, with respect to  
8 another property or parcel, completion of work for a separate permit or compliance with  
9 land-use regulations under this Chapter unless otherwise authorized by law or unless the local  
10 government reasonably determines the existence of a public safety issue directly related to the  
11 issuance of a building permit or certificate of occupancy.

12 (i) Violation of this section constitutes a Class 1 misdemeanor.

13 **"§ 160D-11-9. Expiration of building permits.**

14 A building permit issued pursuant to this Article shall expire by limitation six months, or  
15 any lesser time fixed by ordinance of the city council, after the date of issuance if the work  
16 authorized by the permit has not been commenced. If, after commencement, the work is  
17 discontinued for a period of 12 months, the permit therefor shall immediately expire. No work  
18 authorized by any building permit that has expired shall thereafter be performed until a new  
19 permit has been secured.

20 **"§ 160D-11-10. Changes in work.**

21 After a building permit has been issued, no changes or deviations from the terms of the  
22 application, plans, and specifications or the permit, except where changes or deviations are  
23 clearly permissible under the State Building Code, shall be made until specific written approval  
24 of proposed changes or deviations has been obtained from the inspection department.

25 **"§ 160D-11-11. Inspections of work in progress.**

26 Subject to the limitation imposed by G.S. 160D-11-4(b), as the work pursuant to a building  
27 permit progresses, local inspectors shall make as many inspections thereof as may be necessary  
28 to satisfy them that the work is being done according to the provisions of any applicable State  
29 and local laws and of the terms of the permit. In exercising this power, members of the  
30 inspection department shall have a right to enter on any premises within the jurisdiction of the  
31 department at all reasonable hours for the purposes of inspection or other enforcement action,  
32 upon presentation of proper credentials. If a building permit has been obtained by an owner  
33 exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the  
34 owner being present, unless the plans for the building were drawn and sealed by an architect  
35 licensed pursuant to Chapter 83A of the General Statutes.

36 **"§ 160D-11-12. Appeals of stop orders.**

37 (a) The owner or builder may appeal from a stop order involving alleged violation of  
38 the State Building Code or any approved local modification thereof to the North Carolina  
39 Commissioner of Insurance or his designee within a period of five days after the order is  
40 issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his  
41 designee, with a copy to the local inspector. The Commissioner of Insurance or his designee  
42 shall promptly conduct an investigation and the appellant and the inspector shall be permitted  
43 to submit relevant evidence. The Commissioner of Insurance or his designee shall as  
44 expeditiously as possible provide a written statement of the decision setting forth the facts  
45 found, the decision reached, and the reasons for the decision. Pending the ruling by the  
46 Commissioner of Insurance or his designee on an appeal, no further work shall take place in  
47 violation of a stop order. In the event of dissatisfaction with the decision, the person affected  
48 shall have the following options:

49 (1) Appealing to the Building Code Council.

50 (2) Appealing to the Superior Court as provided in G.S. 143-141.

1       (b) The owner or builder may appeal from a stop order involving alleged violation of a  
2 local development regulation as provided in G.S. 160D-4-5.

3 **"§ 160D-11-13. Revocation of building permits.**

4       The appropriate inspector may revoke and require the return of any building permit by  
5 notifying the permit holder in writing stating the reason for the revocation. Building permits  
6 shall be revoked for any substantial departure from the approved application, plans, or  
7 specifications; for refusal or failure to comply with the requirements of any applicable State or  
8 local laws; or for false statements or misrepresentations made in securing the permit. Any  
9 building permit mistakenly issued in violation of an applicable State or local law may also be  
10 revoked.

11 **"§ 160D-11-14. Certificates of compliance.**

12       At the conclusion of all work done under a building permit, the appropriate inspector shall  
13 make a final inspection, and, if the inspector finds that the completed work complies with all  
14 applicable State and local laws and with the terms of the permit, the inspector shall issue a  
15 certificate of compliance. No new building or part thereof may be occupied, no addition or  
16 enlargement of an existing building may be occupied and no existing building that has been  
17 altered or moved may be occupied, until the inspection department has issued a certificate of  
18 compliance. A temporary certificate of occupancy or compliance may be issued permitting  
19 occupancy for a stated period of time of either the entire building or property or of specified  
20 portions of the building if the inspector finds that such building or property may safely be  
21 occupied prior to its final completion. Violation of this section shall constitute a Class 1  
22 misdemeanor. A local government may require the applicant for a temporary certificate of  
23 occupancy to post suitable security to ensure code compliance.

24 **"§ 160D-11-15. Periodic inspections.**

25       The inspection department may make periodic inspections, subject to the governing board's  
26 directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings  
27 or structures within its planning and development regulation jurisdiction. In exercising this  
28 power, members of the department shall have a right to enter on any premises within the  
29 jurisdiction of the department at all reasonable hours for the purposes of inspection or other  
30 enforcement action, upon presentation of proper credentials. Inspections of dwellings shall  
31 follow the provisions of G.S. 160D-12-7. Nothing in this section shall be construed to prohibit  
32 periodic inspections in accordance with State fire prevention code or as otherwise required by  
33 State law.

34 **"§ 160D-11-16. Defects in buildings to be corrected.**

35       When a local inspector finds any defects in a building, or finds that the building has not  
36 been constructed in accordance with the applicable State and local laws, or that a building  
37 because of its condition is dangerous or contains fire hazardous conditions, it shall be the  
38 inspector's duty to notify the owner or occupant of the building of its defects, hazardous  
39 conditions, or failure to comply with law. The owner or occupant shall each immediately  
40 remedy the defects, hazardous conditions, or violations of law in the property.

41 **"§ 160D-11-17. Unsafe buildings condemned.**

42       (a) Designation of Unsafe Buildings. – Every building that shall appear to the inspector  
43 to be especially dangerous to life because of its liability to fire or because of bad condition of  
44 walls, overloaded floors, defective construction, decay, unsafe wiring or heating system,  
45 inadequate means of egress, or other causes shall be held to be unsafe, and the inspector shall  
46 affix a notice of the dangerous character of the structure to a conspicuous place on the exterior  
47 wall of the building.

48       (b) Nonresidential Building or Structure. – In addition to the authority granted in  
49 subsection (a) of this section, an inspector may declare a nonresidential building or structure  
50 within a community development target area to be unsafe if it meets all of the following  
51 conditions:

1           (1)    It appears to the inspector to be vacant or abandoned.

2           (2)    It appears to the inspector to be in such dilapidated condition as to cause or  
3           contribute to blight, disease, vagrancy, or fire or safety hazard, to be a  
4           danger to children, or to tend to attract persons intent on criminal activities  
5           or other activities that would constitute a public nuisance.

6           (c)    Notice Posted on Structure. – If an inspector declares a nonresidential building or  
7           structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of  
8           the unsafe character of the structure to a conspicuous place on the exterior wall of the building.  
9           For the purposes of this section, the term "community development target area" means an area  
10          that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential  
11          redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics  
12          designated by the governing board as being in special need of revitalization for the benefit and  
13          welfare of its citizens.

14          (d)    Applicability to Residential Structures. – A local government may expand  
15          subsections (b) and (c) of this section to apply to residential buildings by adopting an  
16          ordinance. Before adopting such an ordinance, a local government shall hold a legislative  
17          hearing with published notice as provided by G.S. 160D-6-1.

18          **"§ 160D-11-18. Removing notice from condemned building.**

19          If any person shall remove any notice that has been affixed to any building or structure by a  
20          local inspector of any local government and that states the dangerous character of the building  
21          or structure, that person shall be guilty of a Class 1 misdemeanor.

22          **"§ 160D-11-19. Action in event of failure to take corrective action.**

23          If the owner of a building or structure that has been condemned as unsafe pursuant to  
24          G.S. 160D-11-17 shall fail to take prompt corrective action, the local inspector shall give  
25          written notice, by certified mail to the owner's last known address or by personal service, of all  
26          of the following:

27               (1)    That the building or structure is in a condition that appears to meet one or  
28               more of the following conditions:

29                   a.    Constitutes a fire or safety hazard.

30                   b.    Is dangerous to life, health, or other property.

31                   c.    Is likely to cause or contribute to blight, disease, vagrancy, or danger  
32                   to children.

33                   d.    Has a tendency to attract persons intent on criminal activities or other  
34                   activities which would constitute a public nuisance.

35               (2)    That an administrative hearing will be held before the inspector at a  
36               designated place and time, not later than 10 days after the date of the notice,  
37               at which time the owner shall be entitled to be heard in person or by counsel  
38               and to present arguments and evidence pertaining to the matter.

39               (3)    That following the hearing, the inspector may issue such order to repair,  
40               close, vacate, or demolish the building or structure as appears appropriate.

41          If the name or whereabouts of the owner cannot after due diligence be discovered, the  
42          notice shall be considered properly and adequately served if a copy is posted on the outside of  
43          the building or structure in question at least 10 days prior to the hearing and a notice of the  
44          hearing is published in a newspaper having general circulation in the local government's area of  
45          jurisdiction at least once not later than one week prior to the hearing.

46          **"§ 160D-11-20. Order to take corrective action.**

47          If, upon a hearing held pursuant to the notice prescribed in G.S. 160D-11-19, the inspector  
48          shall find that the building or structure is in a condition that constitutes a fire or safety hazard or  
49          renders it dangerous to life, health, or other property, the inspector shall make an order in  
50          writing, directed to the owner of such building or structure, requiring the owner to remedy the  
51          defective conditions by repairing, closing, vacating, or demolishing the building or structure or

1 taking other necessary steps, within such period, not less than 60 days, as the inspector may  
2 prescribe, provided that where the inspector finds that there is imminent danger to life or other  
3 property, the inspector may order that corrective action be taken in such lesser period as may be  
4 feasible.

5 **"§ 160D-11-21. Appeal; finality of order if not appealed.**

6 Any owner who has received an order under G.S. 160D-11-20 may appeal from the order to  
7 the governing board by giving notice of appeal in writing to the inspector and to the local  
8 government clerk within 10 days following issuance of the order. In the absence of an appeal,  
9 the order of the inspector shall be final. The governing board shall hear in accordance with  
10 G.S. 160D-4-6 and render a decision in an appeal within a reasonable time. The governing  
11 board may affirm, modify and affirm, or revoke the order.

12 **"§ 160D-11-22. Failure to comply with order.**

13 If the owner of a building or structure fails to comply with an order issued pursuant to  
14 G.S. 160D-11-20 from which no appeal has been taken or fails to comply with an order of the  
15 governing board following an appeal, the owner shall be guilty of a Class 1 misdemeanor.

16 **"§ 160D-11-23. Enforcement.**

17 (a) Action Authorized. – Whenever any violation is denominated a misdemeanor under  
18 the provisions of this Article, the local government, either in addition to or in lieu of other  
19 remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or  
20 abate the violation or to prevent the occupancy of the building or structure involved.

21 (b) Removal of Building. – In the case of a building or structure declared unsafe under  
22 G.S. 160D-11-17 or an ordinance adopted pursuant to G.S. 160D-11-17, a local government  
23 may, in lieu of taking action under subsection (a) of this section, cause the building or structure  
24 to be removed or demolished. The amounts incurred by the local government in connection  
25 with the removal or demolition shall be a lien against the real property upon which the cost was  
26 incurred. The lien shall be filed, have the same priority, and be collected in the same manner as  
27 liens for special assessments provided in Article 10 of Chapter 160A of the General Statutes. If  
28 the building or structure is removed or demolished by the local government, the local  
29 government shall sell the usable materials of the building and any personal property, fixtures,  
30 or appurtenances found in or attached to the building. The local government shall credit the  
31 proceeds of the sale against the cost of the removal or demolition. Any balance remaining from  
32 the sale shall be deposited with the clerk of superior court of the county where the property is  
33 located and shall be disbursed by the court to the person found to be entitled thereto by final  
34 order or decree of the court.

35 (c) Additional Lien. – The amounts incurred by a local government in connection with  
36 the removal or demolition shall also be a lien against any other real property owned by the  
37 owner of the building or structure and located within the local government's planning and  
38 development regulation jurisdiction, and for municipalities without extraterritorial planning and  
39 development jurisdiction, within one mile of the city limits, except for the owner's primary  
40 residence. The provisions of subsection (b) of this section apply to this additional lien, except  
41 that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

42 (d) Nonexclusive Remedy. – Nothing in this section shall be construed to impair or  
43 limit the power of the local government to define and declare nuisances and to cause their  
44 removal or abatement by summary proceedings or otherwise.

45 **"§ 160D-11-24. Records and reports.**

46 The inspection department shall keep complete and accurate records in convenient form of  
47 all applications received, permits issued, inspections and reinspections made, defects found,  
48 certificates of compliance or occupancy granted, and all other work and activities of the  
49 department. These records shall be kept in the manner and for the periods prescribed by the  
50 Department of Natural and Cultural Resources. Periodic reports shall be submitted to the



1 governing board and to the Commissioner of Insurance as they shall by ordinance, rule, or  
2 regulation require.

3 **"§ 160D-11-25. Appeals.**

4 Unless otherwise provided by law, appeals from any order, decision, or determination by a  
5 member of a local inspection department pertaining to the State Building Code or other State  
6 building laws shall be taken to the Commissioner of Insurance or the Commissioner's designee  
7 or other official specified in G.S. 143-139, by filing a written notice with the Commissioner  
8 and with the inspection department within a period of 10 days after the order, decision, or  
9 determination. Further appeals may be taken to the State Building Code Council or to the courts  
10 as provided by law.

11 **"§ 160D-11-26. Fire limits.**

12 (a) County Fire Limits. – A county may by ordinance establish and define fire limits in  
13 any area within the county and not within a city. The limits may include only business and  
14 industrial areas. Within any fire limits, no frame or wooden building or addition thereto may be  
15 erected, altered, repaired, or moved, either into the fire limits or from one place to another  
16 within the limits, except upon the permit of the inspection department and approval of the  
17 Commissioner of Insurance. The governing board may make additional regulations necessary  
18 for the prevention, extinguishment, or mitigation of fires within the fire limits.

19 (b) Municipal Fire Limits. – The governing board of every incorporated city shall pass  
20 one or more ordinances establishing and defining fire limits, which shall include the principal  
21 business portions of the city and which shall be known as primary fire limits. In addition, the  
22 governing board may, in its discretion, establish and define one or more separate areas within  
23 the city as secondary fire limits.

24 (c) Restrictions Within Municipal Primary Fire Limits. – Within the primary fire limits  
25 of any city, as established and defined by ordinance, no frame or wooden building or structure  
26 or addition thereto shall hereafter be erected, altered, repaired, or moved, either into the limits  
27 or from one place to another within the limits, except upon the permit of the local inspection  
28 department approved by the governing board and by the Commissioner of Insurance or his  
29 designee. The governing board may make additional regulations for the prevention,  
30 extinguishment, or mitigation of fires within the primary fire limits.

31 (d) Restrictions Within Municipal Secondary Fire Limits. – Within any secondary fire  
32 limits of any city or town, as established and defined by ordinance, no frame or wooden  
33 building or structure or addition thereto shall be erected, altered, repaired, or moved except in  
34 accordance with any rules and regulations established by ordinance of the areas.

35 (e) Failure to Establish Municipal Primary Fire Limits. – If the governing board of any  
36 city shall fail or refuse to establish and define the primary fire limits of the city as required by  
37 law, after having such failure or refusal called to their attention in writing by the State  
38 Commissioner of Insurance, the Commissioner shall have the power to establish the limits upon  
39 making a determination that they are necessary and in the public interest.

40 **"§ 160D-11-27. Regulation authorized as to repair, closing, and demolition of**  
41 **nonresidential buildings or structures; order of public officer.**

42 (a) Authority. – The governing board of the local government may adopt and enforce  
43 regulations relating to nonresidential buildings or structures that fail to meet minimum  
44 standards of maintenance, sanitation, and safety established by the governing board. The  
45 minimum standards shall address only conditions that are dangerous and injurious to public  
46 health, safety, and welfare and identify circumstances under which a public necessity exists for  
47 the repair, closing, or demolition of such buildings or structures. The regulation shall provide  
48 for designation or appointment of a public officer to exercise the powers prescribed by the  
49 regulation, in accordance with the procedures specified in this section. Such regulation shall be  
50 applicable within the local government's entire planning and development regulation  
51 jurisdiction or limited to one or more designated zoning districts or municipal service districts.

1        (b) Investigation. – Whenever it appears to the public officer that any nonresidential  
2 building or structure has not been properly maintained so that the safety or health of its  
3 occupants or members of the general public are jeopardized for failure of the property to meet  
4 the minimum standards established by the governing board, the public officer shall undertake a  
5 preliminary investigation. If entry upon the premises for purposes of investigation is necessary,  
6 such entry shall be made pursuant to a duly issued administrative search warrant in accordance  
7 with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person  
8 legally in possession of the premises.

9        (c) Complaint and Hearing. – If the preliminary investigation discloses evidence of a  
10 violation of the minimum standards, the public officer shall issue and cause to be served upon  
11 the owner of and parties in interest in the nonresidential building or structure a complaint. The  
12 complaint shall state the charges and contain a notice that an administrative hearing will be  
13 held before the public officer, or his or her designated agent, at a place within the county  
14 scheduled not less than 10 days nor more than 30 days after the serving of the complaint; that  
15 the owner and parties in interest shall be given the right to answer the complaint and to appear  
16 in person, or otherwise, and give testimony at the place and time fixed in the complaint; and  
17 that the rules of evidence prevailing in courts of law or equity shall not be controlling in  
18 hearings before the public officer.

19        (d) Order. – If, after notice and hearing, the public officer determines that the  
20 nonresidential building or structure has not been properly maintained so that the safety or  
21 health of its occupants or members of the general public is jeopardized for failure of the  
22 property to meet the minimum standards established by the governing board, the public officer  
23 shall state in writing findings of fact in support of that determination and shall issue and cause  
24 to be served upon the owner thereof an order. The order may require the owner to take remedial  
25 action, within a reasonable time specified, subject to the procedures and limitations herein.

26        (e) Limitations on Orders. –

27            (1) An order may require the owner to repair, alter, or improve the  
28 nonresidential building or structure in order to bring it into compliance with  
29 the minimum standards established by the governing board or to vacate and  
30 close the nonresidential building or structure for any use.

31            (2) An order may require the owner to remove or demolish the nonresidential  
32 building or structure if the cost of repair, alteration, or improvement of the  
33 building or structure would exceed fifty percent (50%) of its then current  
34 value. Notwithstanding any other provision of law, if the nonresidential  
35 building or structure is designated as a local historic landmark, listed in the  
36 National Register of Historic Places, or located in a locally designated  
37 historic district or in a historic district listed in the National Register of  
38 Historic Places and the governing board determines, after a public hearing as  
39 provided by ordinance, that the nonresidential building or structure is of  
40 individual significance or contributes to maintaining the character of the  
41 district, and the nonresidential building or structure has not been condemned  
42 as unsafe, the order may require that the nonresidential building or structure  
43 be vacated and closed until it is brought into compliance with the minimum  
44 standards established by the governing board.

45            (3) An order may not require repairs, alterations, or improvements to be made to  
46 vacant manufacturing facilities or vacant industrial warehouse facilities to  
47 preserve the original use. The order may require such building or structure to  
48 be vacated and closed, but repairs may be required only when necessary to  
49 maintain structural integrity or to abate a health or safety hazard that cannot  
50 be remedied by ordering the building or structure closed for any use.

51        (f) Action by Governing Board Upon Failure to Comply With Order. –

1           (1) If the owner fails to comply with an order to repair, alter, or improve or to  
2 vacate and close the nonresidential building or structure, the governing  
3 board may adopt an ordinance ordering the public officer to proceed to  
4 effectuate the purpose of this section with respect to the particular property  
5 or properties that the public officer found to be jeopardizing the health or  
6 safety of its occupants or members of the general public. The property or  
7 properties shall be described in the ordinance. The ordinance shall be  
8 recorded in the office of the register of deeds and shall be indexed in the  
9 name of the property owner or owners in the grantor index. Following  
10 adoption of an ordinance, the public officer may cause the building or  
11 structure to be repaired, altered, or improved or to be vacated and closed.  
12 The public officer may cause to be posted on the main entrance of any  
13 nonresidential building or structure so closed a placard with the following  
14 words: "This building is unfit for any use; the use or occupation of this  
15 building for any purpose is prohibited and unlawful." Any person who  
16 occupies or knowingly allows the occupancy of a building or structure so  
17 posted shall be guilty of a Class 3 misdemeanor.

18           (2) If the owner fails to comply with an order to remove or demolish the  
19 nonresidential building or structure, the governing board may adopt an  
20 ordinance ordering the public officer to proceed to effectuate the purpose of  
21 this section with respect to the particular property or properties that the  
22 public officer found to be jeopardizing the health or safety of its occupants  
23 or members of the general public. No ordinance shall be adopted to require  
24 demolition of a nonresidential building or structure until the owner has first  
25 been given a reasonable opportunity to bring it into conformity with the  
26 minimum standards established by the governing board. The property or  
27 properties shall be described in the ordinance. The ordinance shall be  
28 recorded in the office of the register of deeds and shall be indexed in the  
29 name of the property owner or owners in the grantor index. Following  
30 adoption of an ordinance, the public officer may cause the building or  
31 structure to be removed or demolished.

32           (g) Action by Governing Board Upon Abandonment of Intent to Repair. – If the  
33 governing board has adopted an ordinance or the public officer has issued an order requiring  
34 the building or structure to be repaired or vacated and closed and the building or structure has  
35 been vacated and closed for a period of two years pursuant to the ordinance or order, the  
36 governing board may make findings that the owner has abandoned the intent and purpose to  
37 repair, alter, or improve the building or structure and that the continuation of the building or  
38 structure in its vacated and closed status would be inimical to the health, safety, and welfare of  
39 the local government in that it would continue to deteriorate, would create a fire or safety  
40 hazard, would be a threat to children and vagrants, would attract persons intent on criminal  
41 activities, or would cause or contribute to blight and the deterioration of property values in the  
42 area. Upon such findings, the governing board may, after the expiration of the two-year period,  
43 enact an ordinance and serve such ordinance on the owner, setting forth the following:

44           (1) If the cost to repair the nonresidential building or structure to bring it into  
45 compliance with the minimum standards is less than or equal to fifty percent  
46 (50%) of its then current value, the ordinance shall require that the owner  
47 either repair or demolish and remove the building or structure within 90  
48 days.

49           (2) If the cost to repair the nonresidential building or structure to bring it into  
50 compliance with the minimum standards exceeds fifty percent (50%) of its

1                   then current value, the ordinance shall require the owner to demolish and  
2                   remove the building or structure within 90 days.

3           In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the  
4 building or structure must have been vacated and closed pursuant to an order or ordinance for a  
5 period of five years before the governing board may take action under this subsection. The  
6 ordinance shall be recorded in the office of the register of deeds in the county wherein the  
7 property or properties are located and shall be indexed in the name of the property owner in the  
8 grantor index. If the owner fails to comply with the ordinance, the public officer shall  
9 effectuate the purpose of the ordinance.

10        (h) Service of Complaints and Orders. – Complaints or orders issued by a public officer  
11 pursuant to an ordinance adopted under this section shall be served upon persons either  
12 personally or by certified mail so long as the means used are reasonably designed to achieve  
13 actual notice. When service is made by certified mail, a copy of the complaint or order may  
14 also be sent by regular mail. Service shall be deemed sufficient if the certified mail is refused,  
15 but the regular mail is not returned by the post office within 10 days after the mailing. If regular  
16 mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the  
17 premises affected. If the identities of any owners or the whereabouts of persons are unknown  
18 and cannot be ascertained by the public officer in the exercise of reasonable diligence and the  
19 public officer makes an affidavit to that effect, the serving of the complaint or order upon the  
20 owners or other persons may be made by publication in a newspaper having general circulation  
21 in the local government at least once no later than the time that personal service would be  
22 required under this section. When service is made by publication, a notice of the pending  
23 proceedings shall be posted in a conspicuous place on the premises affected.

24        (i) Liens. –

25           (1) The amount of the cost of repairs, alterations, or improvements, or vacating  
26 and closing, or removal or demolition by the public officer shall be a lien  
27 against the real property upon which the cost was incurred, which lien shall  
28 be filed, have the same priority, and be collected as the lien for special  
29 assessment provided in Article 10 of Chapter 160A of the General Statutes.

30           (2) If the real property upon which the cost was incurred is located in an  
31 incorporated city, the amount of the costs is also a lien on any other real  
32 property of the owner located within the city limits except for the owner's  
33 primary residence. The additional lien provided in this subdivision is inferior  
34 to all prior liens and shall be collected as a money judgment.

35           (3) If the nonresidential building or structure is removed or demolished by the  
36 public officer, he or she shall offer for sale the recoverable materials of the  
37 building or structure and any personal property, fixtures, or appurtenances  
38 found in or attached to the building or structure and shall credit the proceeds  
39 of the sale, if any, against the cost of the removal or demolition, and any  
40 balance remaining shall be deposited in the superior court by the public  
41 officer, shall be secured in a manner directed by the court, and shall be  
42 disbursed by the court to the persons found to be entitled thereto by final  
43 order or decree of the court. Nothing in this section shall be construed to  
44 impair or limit in any way the power of the governing board to define and  
45 declare nuisances and to cause their removal or abatement by summary  
46 proceedings or otherwise.

47        (j) Ejectment. – If any occupant fails to comply with an order to vacate a nonresidential  
48 building or structure, the public officer may file a civil action in the name of the local  
49 government to remove the occupant. The action to vacate shall be in the nature of summary  
50 ejectment and shall be commenced by filing a complaint naming as parties-defendant any  
51 person occupying the nonresidential building or structure. The clerk of superior court shall

1 issue a summons requiring the defendant to appear before a magistrate at a certain time, date,  
2 and place not to exceed 10 days from the issuance of the summons to answer the complaint.  
3 The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be  
4 returned according to its tenor, and if on its return it appears to have been duly served and if at  
5 the hearing the public officer produces a certified copy of an ordinance adopted by the  
6 governing board pursuant to subsection (f) of this section to vacate the occupied nonresidential  
7 building or structure, the magistrate shall enter judgment ordering that the premises be vacated  
8 and all persons be removed. The judgment ordering that the nonresidential building or structure  
9 be vacated shall be enforced in the same manner as the judgment for summary ejection  
10 entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the  
11 magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be  
12 stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential  
13 building or structure who is a tenant of the owner may not be in the nature of a summary  
14 ejection proceeding pursuant to this subsection unless the occupant was served with notice, at  
15 least 30 days before the filing of the summary ejection proceeding, that the governing board  
16 has ordered the public officer to proceed to exercise his duties under subsection (f) of this  
17 section to vacate and close or remove and demolish the nonresidential building or structure.

18 (k) Civil Penalty. – The governing board may impose civil penalties against any person  
19 or entity that fails to comply with an order entered pursuant to this section. However, the  
20 imposition of civil penalties shall not limit the use of any other lawful remedies available to the  
21 governing board for the enforcement of any ordinances adopted pursuant to this section.

22 (l) Supplemental Powers. – The powers conferred by this section are supplemental to  
23 the powers conferred by any other law. An ordinance adopted by the governing board may  
24 authorize the public officer to exercise any powers necessary or convenient to carry out and  
25 effectuate the purpose and provisions of this section, including the following powers in addition  
26 to others herein granted:

27 (1) To investigate nonresidential buildings and structures in the local  
28 government's planning and development regulation jurisdiction to determine  
29 whether they have been properly maintained in compliance with the  
30 minimum standards so that the safety or health of the occupants or members  
31 of the general public are not jeopardized.

32 (2) To administer oaths, affirmations, examine witnesses, and receive evidence.

33 (3) To enter upon premises pursuant to subsection (b) of this section for the  
34 purpose of making examinations in a manner that will do the least possible  
35 inconvenience to the persons in possession.

36 (4) To appoint and fix the duties of officers, agents, and employees necessary to  
37 carry out the purposes of the ordinances adopted by the governing board.

38 (5) To delegate any of his or her functions and powers under the ordinance to  
39 other officers and agents.

40 (m) Appeals. – The governing board may provide that appeals may be taken from any  
41 decision or order of the public officer to the local government's housing appeals board or board  
42 of adjustment. Any person aggrieved by a decision or order of the public officer shall have the  
43 remedies provided in G.S. 160D-12-8.

44 (n) Funding. – The governing board is authorized to make appropriations from its  
45 revenues necessary to carry out the purposes of this section and may accept and apply grants or  
46 donations to assist in carrying out the provisions of the ordinances adopted by the governing  
47 board.

48 (o) No Effect on Just Compensation for Taking by Eminent Domain. – Nothing in this  
49 section shall be construed as preventing the owner or owners of any property from receiving  
50 just compensation for the taking of property by the power of eminent domain under the laws of

1 this State nor as permitting any property to be condemned or destroyed except in accordance  
2 with the police power of the State.

3 (p) Definitions. – As used in this section, the following definitions apply:

4 (1) Parties in interest. – All individuals, associations, and corporations who have  
5 interests of record in a nonresidential building or structure and any who are  
6 in possession thereof.

7 (2) Vacant industrial warehouse. – Any building or structure designed for the  
8 storage of goods or equipment in connection with manufacturing processes,  
9 which has not been used for that purpose for at least one year and has not  
10 been converted to another use.

11 (3) Vacant manufacturing facility. – Any building or structure previously used  
12 for the lawful production or manufacturing of goods, which has not been  
13 used for that purpose for at least one year and has not been converted to  
14 another use.

15 "Article 12.

16 "Minimum Housing Codes.

17 "**§ 160D-12-1. Authorization.**

18 (a) Occupied Dwellings. – The existence and occupation of dwellings that are unfit for  
19 human habitation are inimical to the welfare and dangerous and injurious to the health and  
20 safety of the people of this State. A public necessity exists for the repair, closing, or demolition  
21 of such dwellings. Whenever any local government finds that there exists in the planning and  
22 development regulation jurisdiction dwellings that are unfit for human habitation due to  
23 dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of  
24 ventilation, light or sanitary facilities, or other conditions rendering the dwellings unsafe or  
25 unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to  
26 the welfare of the residents of the local government, power is conferred upon the local  
27 government to exercise its police powers to repair, close, or demolish the dwellings consistent  
28 with the provisions of this Article.

29 (b) Abandoned Structures. – Any local government may by ordinance provide for the  
30 repair, closing, or demolition of any abandoned structure which the governing board finds to be  
31 a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a  
32 fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants  
33 as living quarters in the absence of sanitary facilities. The ordinance may provide for the repair,  
34 closing, or demolition of such structure pursuant to the same provisions and procedures as are  
35 prescribed by this Article for the repair, closing, or demolition of dwellings found to be unfit  
36 for human habitation.

37 "**§ 160D-12-2. Definitions.**

38 The following terms shall have the meanings whenever used or referred to as indicated  
39 when used in this Part unless a different meaning clearly appears from the context:

40 (1) Owner. – The holder of the title in fee simple and every mortgagee of record.

41 (2) Parties in interest. – All individuals, associations, and corporations who have  
42 interests of record in a dwelling and any who are in possession thereof.

43 (3) Public authority. – Any housing authority or any officer who is in charge of  
44 any department or branch of the government of the city, county, or State  
45 relating to health, fire, building regulations, or other activities concerning  
46 dwellings in the local government.

47 (4) Public officer. – The officer or officers who are authorized by ordinances  
48 adopted hereunder to exercise the powers prescribed by the ordinances and  
49 by this Article.

50 "**§ 160D-12-3. Ordinance authorized as to repair, closing, and demolition; order of public**  
51 **officer.**

1 Upon the adoption of an ordinance finding that dwelling conditions of the character  
2 described in G.S. 160D-12-1 exist, the governing board is authorized to adopt and enforce  
3 ordinances relating to dwellings within the planning and development regulation jurisdiction  
4 that are unfit for human habitation. These ordinances shall include the following provisions:

5 (1) Designation of enforcement officer. – One or more public officers shall be  
6 designated to exercise the powers prescribed by the ordinance.

7 (2) Investigation, complaint, hearing. – Whenever a petition is filed with the  
8 public officer by a public authority or by at least five residents of the  
9 jurisdiction charging that any dwelling is unfit for human habitation or when  
10 it appears to the public officer that any dwelling is unfit for human  
11 habitation, the public officer shall, if a preliminary investigation discloses a  
12 basis for such charges, issue and cause to be served upon the owner of and  
13 parties in interest in such dwellings a complaint stating the charges in that  
14 respect and containing a notice that an administrative hearing will be held  
15 before the public officer, or the officer's designated agent, at a place within  
16 the county in which the property is located. The hearing shall be not less  
17 than 10 days nor more than 30 days after the serving of the complaint. The  
18 owner and parties in interest shall be given the right to file an answer to the  
19 complaint and to appear in person, or otherwise, and give testimony at the  
20 place and time fixed in the complaint. The rules of evidence prevailing in  
21 courts of law shall not be controlling in administrative hearings before the  
22 public officer.

23 (3) Orders. – If, after notice and hearing, the public officer determines that the  
24 dwelling under consideration is unfit for human habitation, the officer shall  
25 state in writing findings of fact in support of that determination and shall  
26 issue and cause to be served upon the owner one of the following orders, as  
27 appropriate:

28 a. If the repair, alteration, or improvement of the dwelling can be made  
29 at a reasonable cost in relation to the value of the dwelling, requiring  
30 the owner, within the time specified, to repair, alter, or improve the  
31 dwelling in order to render it fit for human habitation. The ordinance  
32 may fix a certain percentage of this value as being reasonable. The  
33 order may require that the property be vacated and closed only if  
34 continued occupancy during the time allowed for repair will present a  
35 significant threat of bodily harm, taking into account the nature of the  
36 necessary repairs, alterations, or improvements; the current state of  
37 the property; and any additional risks due to the presence and  
38 capacity of minors under the age of 18 or occupants with physical or  
39 mental disabilities. The order shall state that the failure to make  
40 timely repairs as directed in the order shall make the dwelling subject  
41 to the issuance of an unfit order under subdivision (4) of this section.

42 b. If the repair, alteration, or improvement of the dwelling cannot be  
43 made at a reasonable cost in relation to the value of the dwelling,  
44 requiring the owner, within the time specified in the order, to remove  
45 or demolish such dwelling. The ordinance may fix a certain  
46 percentage of this value as being reasonable. However,  
47 notwithstanding any other provision of law, if the dwelling is located  
48 in a historic district and the Historic District Commission determines,  
49 after a public hearing as provided by ordinance, that the dwelling is  
50 of particular significance or value toward maintaining the character  
51 of the district, and the dwelling has not been condemned as unsafe,

1                   the order may require that the dwelling be vacated and closed  
2                   consistent with G.S. 160D-9-49.

3           (4)   Repair, closing, and posting. – If the owner fails to comply with an order to  
4           repair, alter, or improve or to vacate and close the dwelling, the public  
5           officer may cause the dwelling to be repaired, altered, or improved or to be  
6           vacated and closed and the public officer may cause to be posted on the main  
7           entrance of any dwelling so closed a placard with the following words: "This  
8           building is unfit for human habitation; the use or occupation of this building  
9           for human habitation is prohibited and unlawful." Occupation of a building  
10           so posted shall constitute a Class 1 misdemeanor. The duties of the public  
11           officer set forth in this subdivision shall not be exercised until the governing  
12           board shall have by ordinance ordered the public officer to proceed to  
13           effectuate the purpose of this Article with respect to the particular property  
14           or properties which the public officer shall have found to be unfit for human  
15           habitation and which property or properties shall be described in the  
16           ordinance. This ordinance shall be recorded in the office of the register of  
17           deeds in the county where the property or properties are located and shall be  
18           indexed in the name of the property owner in the grantor index.

19           (5)   Demolition. – If the owner fails to comply with an order to remove or  
20           demolish the dwelling, the public officer may cause such dwelling to be  
21           removed or demolished. The duties of the public officer set forth in this  
22           subdivision shall not be exercised until the governing board shall have by  
23           ordinance ordered the public officer to proceed to effectuate the purpose of  
24           this Article with respect to the particular property or properties which the  
25           public officer shall have found to be unfit for human habitation and which  
26           property or properties shall be described in the ordinance. No such ordinance  
27           shall be adopted to require demolition of a dwelling until the owner has first  
28           been given a reasonable opportunity to bring it into conformity with the  
29           housing code. This ordinance shall be recorded in the office of the register of  
30           deeds in the county wherein the property or properties are located and shall  
31           be indexed in the name of the property owner in the grantor index.

32           (6)   Abandonment of Intent to Repair. – If the dwelling has been vacated and  
33           closed for a period of one year pursuant to an ordinance adopted pursuant to  
34           subdivision (4) of this section or after a public officer issues an order or  
35           proceedings have commenced under the substandard housing regulations  
36           regarding a dwelling to be repaired or vacated and closed as provided in this  
37           subdivision, then the governing board may find that the owner has  
38           abandoned the intent and purpose to repair, alter, or improve the dwelling in  
39           order to render it fit for human habitation and that the continuation of the  
40           dwelling in its vacated and closed status would be inimical to the health,  
41           safety, and welfare of the local government in that the dwelling would  
42           continue to deteriorate, would create a fire and safety hazard, would be a  
43           threat to children and vagrants, would attract persons intent on criminal  
44           activities, would cause or contribute to blight and the deterioration of  
45           property values in the area, and would render unavailable property and a  
46           dwelling which might otherwise have been made available to ease the  
47           persistent shortage of decent and affordable housing in this State, then in  
48           such circumstances, the governing board may, after the expiration of such  
49           one year period, enact an ordinance and serve such ordinance on the owner,  
50           setting forth the following:



1 a. If it is determined that the repair of the dwelling to render it fit for  
2 human habitation can be made at a cost not exceeding fifty percent  
3 (50%) of the then current value of the dwelling, the ordinance shall  
4 require that the owner either repair or demolish and remove the  
5 dwelling within 90 days.

6 b. If it is determined that the repair of the dwelling to render it fit for  
7 human habitation cannot be made at a cost not exceeding fifty  
8 percent (50%) of the then current value of the dwelling, the  
9 ordinance shall require the owner to demolish and remove the  
10 dwelling within 90 days.

11 This ordinance shall be recorded in the office of the register of deeds in  
12 the county wherein the property or properties are located and shall be  
13 indexed in the name of the property owner in the grantor index. If the owner  
14 fails to comply with this ordinance, the public officer shall effectuate the  
15 purpose of the ordinance.

16 (7) Liens. –

17 a. The amount of the cost of repairs, alterations, or improvements, or  
18 vacating and closing, or removal or demolition by the public officer  
19 shall be a lien against the real property upon which the cost was  
20 incurred, which lien shall be filed, have the same priority, and be  
21 collected as the lien for special assessment provided in Article 10 of  
22 Chapter 160A of the General Statutes.

23 b. If the real property upon which the cost was incurred is located in an  
24 incorporated city, then the amount of the cost is also a lien on any  
25 other real property of the owner located within the city limits or  
26 within one mile thereof except for the owner's primary residence.  
27 The additional lien provided in this sub-subdivision is inferior to all  
28 prior liens and shall be collected as a money judgment.

29 c. If the dwelling is removed or demolished by the public officer, the  
30 local government shall sell the materials of the dwelling, and any  
31 personal property, fixtures, or appurtenances found in or attached to  
32 the dwelling, and shall credit the proceeds of the sale against the cost  
33 of the removal or demolition and any balance remaining shall be  
34 deposited in the superior court by the public officer, shall be secured  
35 in a manner directed by the court, and shall be disbursed by the court  
36 to the persons found to be entitled thereto by final order or decree of  
37 the court. Nothing in this section shall be construed to impair or limit  
38 in any way the power of the local government to define and declare  
39 nuisances and to cause their removal or abatement by summary  
40 proceedings or otherwise.

41 (8) Civil action. – If any occupant fails to comply with an order to vacate a  
42 dwelling, the public officer may file a civil action in the name of the local  
43 government to remove such occupant. The action to vacate the dwelling  
44 shall be in the nature of summary ejectment and shall be commenced by  
45 filing a complaint naming as defendant any person occupying such dwelling.  
46 The clerk of superior court shall issue a summons requiring the defendant to  
47 appear before a magistrate at a certain time, date and place not to exceed 10  
48 days from the issuance of the summons to answer the complaint. The  
49 summons and complaint shall be served as provided in G.S. 42-29. If the  
50 summons appears to have been duly served and if at the hearing the public  
51 officer produces a certified copy of an ordinance adopted by the governing

1 board pursuant to subdivision (5) of this section authorizing the officer to  
2 proceed to vacate the occupied dwelling, the magistrate shall enter judgment  
3 ordering that the premises be vacated and that all persons be removed. The  
4 judgment ordering that the dwelling be vacated shall be enforced in the same  
5 manner as the judgment for summary ejection entered under G.S. 42-30.  
6 An appeal from any judgment entered hereunder by the magistrate may be  
7 taken as provided in G.S. 7A-228, and the execution of such judgment may  
8 be stayed as provided in G.S. 7A-227. An action to remove an occupant of a  
9 dwelling who is a tenant of the owner may not be in the nature of a summary  
10 ejection proceeding pursuant to this paragraph unless such occupant was  
11 served with notice at least 30 days before the filing of the summary  
12 ejection proceeding that the governing board has ordered the public officer  
13 to proceed to exercise his duties under subdivisions (4) and (5) of this  
14 section to vacate and close or remove and demolish the dwelling.

15 (9) Additional notices to affordable housing organizations. – Whenever a  
16 determination is made pursuant to subdivision (3) of this section that a  
17 dwelling must be vacated and closed, or removed or demolished, under the  
18 provisions of this section, notice of the order shall be given by first-class  
19 mail to any organization involved in providing or restoring dwellings for  
20 affordable housing that has filed a written request for such notices. A  
21 minimum period of 45 days from the mailing of such notice shall be given  
22 before removal or demolition by action of the public officer, to allow the  
23 opportunity for any organization to negotiate with the owner to make repairs,  
24 lease, or purchase the property for the purpose of providing affordable  
25 housing. The public officer or clerk shall certify the mailing of the notices,  
26 and the certification shall be conclusive in the absence of fraud. Only an  
27 organization that has filed a written request for such notices may raise the  
28 issue of failure to mail such notices, and the sole remedy shall be an order  
29 requiring the public officer to wait 45 days before causing removal or  
30 demolition.

31 **§ 160D-12-4. Heat source required.**

32 (a) A local government shall, by ordinance, require that every dwelling unit leased as  
33 rental property within the city shall have, at a minimum, a central or electric heating system or  
34 sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least  
35 one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit  
36 measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.

37 (b) If a dwelling unit contains a heating system or heating appliances that meet the  
38 requirements of subsection (a) of this section, the owner of the dwelling unit shall not be  
39 required to install a new heating system or heating appliances, but the owner shall be required  
40 to maintain the existing heating system or heating appliances in a good and safe working  
41 condition. Otherwise, the owner of the dwelling unit shall install a heating system or heating  
42 appliances that meet the requirements of subsection (a) of this section and shall maintain the  
43 heating system or heating appliances in a good and safe working condition.

44 (c) Portable kerosene heaters are not acceptable as a permanent source of heat as  
45 required by subsection (a) of this section but may be used as a supplementary source in single  
46 family dwellings and duplex units. An owner who has complied with subsection (a) of this  
47 section shall not be held in violation of this section where an occupant of a dwelling unit uses a  
48 kerosene heater as a primary source of heat.

49 (d) This section applies only to local governments with a population of 200,000 or over  
50 within their planning and development regulation jurisdiction, according to the most recent  
51 decennial federal census.

1       (e) Nothing in this section shall be construed to diminish the rights or remedies  
2 available to a tenant under a lease agreement, statute, or at common law or to prohibit a city  
3 from adopting an ordinance with more stringent heating requirements than provided for by this  
4 section.

5 **"§ 160D-12-5. Standards.**

6       An ordinance adopted under this Article shall provide that the public officer may determine  
7 that a dwelling is unfit for human habitation if the officer finds that conditions exist in the  
8 dwelling that render it dangerous or injurious to the health, safety, or welfare of the occupants  
9 of the dwelling, the occupants of neighboring dwellings, or other residents of the jurisdiction.  
10 Defective conditions may include the following, without limiting the generality of the  
11 foregoing: defects therein increasing the hazards of fire, accident, or other calamities; lack of  
12 adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or  
13 uncleanliness. The ordinances may provide additional standards to guide the public officers in  
14 determining the fitness of a dwelling for human habitation.

15 **"§ 160D-12-6. Service of complaints and orders.**

16       (a) Complaints or orders issued by a public officer pursuant to an ordinance adopted  
17 under this Article shall be served upon persons either personally or by certified mail. When  
18 service is made by certified mail, a copy of the complaint or order may also be sent by regular  
19 mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the  
20 regular mail is not returned by the post office within 10 days after the mailing. If regular mail is  
21 used, a notice of the pending proceedings shall be posted in a conspicuous place on the  
22 premises affected.

23       (b) If the identities of any owners or the whereabouts of persons are unknown and  
24 cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the  
25 owners are known but have refused to accept service by certified mail, and the public officer  
26 makes an affidavit to that effect, then the serving of the complaint or order upon the owners or  
27 other persons may be made by publication in a newspaper having general circulation in the  
28 jurisdiction at least once no later than the time at which personal service would be required  
29 under the provisions of this Article. When service is made by publication, a notice of the  
30 pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

31 **"§ 160D-12-7. Periodic inspections.**

32       (a) Except as provided in subsection (b) of this section, the inspection department may  
33 make periodic inspections only when there is reasonable cause to believe that unsafe,  
34 unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or  
35 structure. However, when the inspection department determines that a safety hazard exists in  
36 one of the dwelling units within a multifamily building, which in the opinion of the inspector  
37 poses an immediate threat to the occupant, the inspection department may inspect, in the  
38 absence of a specific complaint and actual knowledge of the unsafe condition, additional  
39 dwelling units in the multifamily building to determine if that same safety hazard exists. For  
40 purposes of this section, the term "reasonable cause" means any of the following: (i) the  
41 landlord or owner has a history of more than two verified violations of the housing ordinances  
42 or codes within a 12-month period; (ii) there has been a complaint that substandard conditions  
43 exist within the building or there has been a request that the building be inspected; (iii) the  
44 inspection department has actual knowledge of an unsafe condition within the building; or (iv)  
45 violations of the local ordinances or codes are visible from the outside of the property. In  
46 conducting inspections authorized under this section, the inspection department shall not  
47 discriminate between single-family and multifamily buildings or between owner-occupied and  
48 tenant-occupied buildings. In exercising this power, members of the department shall have a  
49 right to enter on any premises within the jurisdiction of the department at all reasonable hours  
50 for the purposes of inspection or other enforcement action, upon presentation of proper

1 credentials. Nothing in this section shall be construed to prohibit periodic inspections in  
2 accordance with State fire prevention code or as otherwise required by State law.

3 (b) A local government may require periodic inspections as part of a targeted effort to  
4 respond to blighted or potentially blighted conditions within a geographic area that has been  
5 designated by the governing board. However, the total aggregate of targeted areas in the local  
6 government jurisdiction at any one time shall not be greater than one square mile or five  
7 percent (5%) of the area within the local government jurisdiction, whichever is greater. A  
8 targeted area designated by the local government shall reflect the local government's stated  
9 neighborhood revitalization strategy and shall consist of property that meets the definition of a  
10 "blighted area" or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and  
11 G.S. 160A-503(2a), respectively, except that for purposes of this subsection the planning board  
12 is not required to make a determination as to the property. The local government shall not  
13 discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice  
14 to all owners and residents of properties in the affected area about the periodic inspections plan  
15 and information regarding a public hearing regarding the plan; (ii) hold a public hearing  
16 regarding the plan; and (iii) establish a plan to address the ability of low-income residential  
17 property owners to comply with minimum housing code standards.

18 (c) In no event may a local government do any of the following: (i) adopt or enforce  
19 any ordinance that would require any owner or manager of rental property to obtain any permit  
20 or permission under Article 11 or Article 12 of this Chapter from the local government to lease  
21 or rent residential real property or to register rental property with the local government, except  
22 for those individual properties that have more than four verified violations in a rolling  
23 12-month period or two or more verified violations in a rolling 30-day period, or upon the  
24 property being identified within the top ten percent (10%) of properties with crime or disorder  
25 problems as set forth in a local ordinance; (ii) require that an owner or manager of residential  
26 rental property enroll or participate in any governmental program as a condition of obtaining a  
27 certificate of occupancy; (iii) levy a special fee or tax on residential rental property that is not  
28 also levied against other commercial and residential properties, unless expressly authorized by  
29 general law or applicable only to an individual rental unit or property described in clause (i) of  
30 this subsection and the fee does not exceed five hundred dollars (\$500.00) in any 12-month  
31 period in which the unit or property is found to have verified violations; (iv) provide that any  
32 violation of a rental registration ordinance is punishable as a criminal offense; or (v) require  
33 any owner or manager of rental property to submit to an inspection before receiving any utility  
34 service provided by the local government. For purposes of this section, the term "verified  
35 violation" means all of the following:

36 (1) The aggregate of all violations of housing ordinances or codes found in an  
37 individual rental unit of residential real property during a 72-hour period.

38 (2) Any violations that have not been corrected by the owner or manager within  
39 21 days of receipt of written notice from the local government of the  
40 violations. Should the same violation occur more than two times in a  
41 12-month period, the owner or manager may not have the option of  
42 correcting the violation. If the housing code provides that any form of  
43 prohibited tenant behavior constitutes a violation by the owner or manager  
44 of the rental property, it shall be deemed a correction of the tenant-related  
45 violation if the owner or manager, within 30 days of receipt of written notice  
46 of the tenant-related violation, brings a summary ejection action to have  
47 the tenant evicted.

48 (d) If a property is identified by the local government as being in the top ten percent  
49 (10%) of properties with crime or disorder problems, the local government shall notify the  
50 landlord of any crimes, disorders, or other violations that will be counted against the property  
51 to allow the landlord an opportunity to attempt to correct the problems. In addition, the local

1 government and the county sheriff's office or city's police department shall assist the landlord  
2 in addressing any criminal activity, which may include testifying in court in a summary  
3 ejectment action or other matter to aid in evicting a tenant who has been charged with a crime.  
4 If the local government or the county sheriff's office or city's police department does not  
5 cooperate in evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a  
6 crime or disorder problem as set forth in the local ordinance and the property may not be  
7 included in the top ten percent (10%) of properties as a result of that tenant's behavior or  
8 activity.

9 (e) If the local government takes action against an individual rental unit under this  
10 section, the owner of the individual rental unit may appeal the decision to the housing appeals  
11 board or the zoning board of adjustment, if operating, or the planning board if created under  
12 G.S. 160D-3-1, or if neither is created, the governing board. The board shall fix a reasonable  
13 time for hearing appeals, shall give due notice to the owner of the individual rental unit, and  
14 shall render a decision within a reasonable time. The owner may appear in person or by agent  
15 or attorney. The board may reverse or affirm the action, wholly or partly, or may modify the  
16 action appealed from, and may make any decision and order that in the opinion of the board  
17 ought to be made in the matter.

18 **"§ 160D-12-8. Remedies.**

19 (a) An ordinance adopted pursuant to this Article may provide for a housing appeals  
20 board as provided by G.S. 160D-3-6. An appeal from any decision or order of the public officer  
21 is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer,  
22 board, or commission of the local government. Any appeal from the public officer shall be  
23 taken within 10 days from the rendering of the decision or service of the order by filing with  
24 the public officer and with the housing appeals board a notice of appeal which shall specify the  
25 grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public  
26 officer shall forthwith transmit to the board all the papers constituting the record upon which  
27 the decision appealed from was made. When an appeal is from a decision of the public officer  
28 refusing to allow the person aggrieved thereby to do any act, the decision shall remain in force  
29 until modified or reversed. When any appeal is from a decision of the public officer requiring  
30 the person aggrieved to do any act, the appeal shall have the effect of suspending the  
31 requirement until the hearing by the board, unless the public officer certifies to the board, after  
32 the notice of appeal is filed with the officer, that because of facts stated in the certificate, a copy  
33 of which shall be furnished the appellant, a suspension of the requirement would cause  
34 imminent peril to life or property. In that case the requirement shall not be suspended except by  
35 a restraining order, which may be granted for due cause shown upon not less than one day's  
36 written notice to the public officer, by the board, or by a court of record upon petition made  
37 pursuant to subsection (f) of this section.

38 (b) The housing appeals board shall fix a reasonable time for hearing appeals, shall give  
39 due notice to the parties, and shall render its decision within a reasonable time. Any party may  
40 appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or  
41 may modify the decision or order appealed from, and may make any decision and order that in  
42 its opinion ought to be made in the matter, and, to that end, it shall have all the powers of the  
43 public officer, but the concurring vote of four members of the board shall be necessary to  
44 reverse or modify any decision or order of the public officer. The board shall have power also  
45 in passing upon appeals, when unnecessary hardships would result from carrying out the strict  
46 letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to  
47 the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and  
48 substantial justice done.

49 (c) Every decision of the housing appeals board shall be subject to review by  
50 proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but  
51 not otherwise.

1        (d) Any person aggrieved by an order issued by the public officer or a decision rendered  
2 by the housing appeals board may petition the superior court for an injunction restraining the  
3 public officer from carrying out the order or decision and the court may, upon such petition,  
4 issue a temporary injunction restraining the public officer pending a final disposition of the  
5 cause. The petition shall be filed within 30 days after issuance of the order or rendering of the  
6 decision. Hearings shall be had by the court on a petition within 20 days and shall be given  
7 preference over other matters on the court's calendar. The court shall hear and determine the  
8 issues raised and shall enter such final order or decree as law and justice may require. It shall  
9 not be necessary to file bond in any amount before obtaining a temporary injunction under this  
10 subsection.

11        (e) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or  
12 used in violation of this Article or of any ordinance or code adopted under authority of this  
13 Article or any valid order or decision of the public officer or board made pursuant to any  
14 ordinance or code adopted under authority of this Article, the public officer or board may  
15 institute any appropriate action or proceedings to prevent the unlawful erection, construction,  
16 reconstruction, alteration, or use, to restrain, correct, or abate the violation, to prevent the  
17 occupancy of the dwelling, or to prevent any illegal act, conduct, or use in or about the  
18 premises of the dwelling.

19 **"§ 160D-12-9. Compensation to owners of condemned property.**

20        Nothing in this Article shall be construed as preventing the owner or owners of any  
21 property from receiving just compensation for the taking of property by the power of eminent  
22 domain under the laws of this State nor as permitting any property to be condemned or  
23 destroyed except in accordance with the police power of the State.

24 **"§ 160D-12-10. Additional powers of public officer.**

25        An ordinance adopted by the governing board may authorize the public officer to exercise  
26 any powers necessary or convenient to carry out and effectuate the purpose and provisions of  
27 this Article, including the following powers in addition to others herein granted:

- 28            (1) To investigate the dwelling conditions in the local government's planning  
29 and development regulation jurisdiction in order to determine which  
30 dwellings therein are unfit for human habitations.
- 31            (2) To administer oaths, affirmations, examine witnesses, and receive evidence.
- 32            (3) To enter upon premises for the purpose of making examinations in a manner  
33 that will do the least possible inconvenience to the persons in possession.
- 34            (4) To appoint and fix the duties of officers, agents, and employees necessary to  
35 carry out the purposes of the ordinances.
- 36            (5) To delegate any of his functions and powers under the ordinance to other  
37 officers and other agents.

38 **"§ 160D-12-11. Administration of ordinance.**

39        A local government adopting an ordinance under this Article shall, as soon as possible  
40 thereafter, prepare an estimate of the annual expenses or costs to provide the equipment,  
41 personnel, and supplies necessary for periodic examinations and investigations of the dwellings  
42 for the purpose of determining the fitness of dwellings for human habitation and for the  
43 enforcement and administration of its ordinances adopted under this Article. The local  
44 government is authorized to make appropriations from its revenues necessary for this purpose  
45 and may accept and apply grants or donations to assist it.

46 **"§ 160D-12-12. Supplemental nature of Article.**

47        Nothing in this Article shall be construed to abrogate or impair the powers of the courts or  
48 of any department of any local government to enforce any provisions of its charter or its  
49 ordinances or regulations nor to prevent or punish violations thereof. The powers conferred by  
50 this Article shall be supplemental to the powers conferred by any other law in carrying out the  
51 provisions of the ordinances.

"Article 13."Additional Authority."Part 1. Open Space Acquisition.**"§ 160D-13-1. Legislative intent.**

It is the intent of the General Assembly to provide a means whereby any local government may acquire by purchase, gift, grant, devise, lease, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment.

**"§ 160D-13-2. Finding of necessity.**

The General Assembly finds that the rapid growth and spread of urban development in the State is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or aesthetic values, which areas and spaces if preserved and maintained in their present open state would constitute important physical, social, esthetic, or economic assets to existing and impending urban development. The General Assembly declares that it is necessary for sound and proper urban development and in the public interest of the people of this State for any local government to expend or advance public funds for, or to accept by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser interest or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas within their respective jurisdictions as defined by this Article.

The General Assembly declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced.

**"§ 160D-13-3. Local governments authorized to acquire and reconvey real property.**

Any local government may acquire by purchase, gift, grant, devise, lease, or otherwise the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any local government may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale.

**"§ 160D-13-4. Joint action by governing bodies.**

A local government may enter into any agreement with any other local government for the purpose of jointly exercising the authority granted by this Part.

**"§ 160D-13-5. Powers of governing bodies.**

A local government, in order to exercise the authority granted by this Part, may:

- (1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which grants or other assistance are made to the local government.
- (2) Accept any assistance or funds that may be granted by the State or federal government with or without a contract.
- (3) Agree to and comply with any reasonable conditions imposed upon grants.
- (4) Make expenditures from any funds so granted.

**"§ 160D-13-6. Appropriations authorized.**

For the purposes set forth in this Part, a local government may appropriate funds not otherwise limited as to use by law.

**"§ 160D-13-7. Definitions.**

As used in this Part, the following definitions apply:

- (1) Open space or open area. – Any space or area characterized by great natural scenic beauty or where the existing openness, natural condition, or present

1 state of use, if retained, would enhance the present or potential value of  
2 abutting or surrounding urban development or would maintain or enhance  
3 the conservation of natural or scenic resources. The terms also include  
4 interests or rights in real property and open space land or uses.

5 (2) Open space land or open space uses. – Any undeveloped or predominantly  
6 undeveloped land in an urban area that has value for or is used for one or  
7 more of the following purposes:

8 a. Park and recreational purposes.

9 b. Conservation of land and other natural resources.

10 c. Historic or scenic purposes.

11  **§§ 160D-13-8 through 160D-13-10: Reserved for future codification purposes.**

12 "Part 2. Community Development and Redevelopment.

13  **§ 160D-13-11. Community development programs and activities.**

14 (a) A local government is authorized to engage in, to accept federal and State grants  
15 and loans for, and to appropriate and expend funds for community development programs and  
16 activities. In undertaking community development programs and activities, in addition to other  
17 authority granted by law, a local government may engage in the following activities:

18 (1) Programs of assistance and financing of rehabilitation of private buildings  
19 principally for the benefit of low- and moderate-income persons, or for the  
20 restoration or preservation of older neighborhoods or properties, including  
21 direct repair, the making of grants or loans, the subsidization of interest  
22 payments on loans, and the guaranty of loans.

23 (2) Programs concerned with employment, economic development, crime  
24 prevention, child care, health, drug abuse, education, and welfare needs of  
25 persons of low and moderate income.

26 (b) A governing board may exercise directly those powers granted by law to local  
27 government redevelopment commissions and those powers granted by law to local government  
28 housing authorities and may do so whether or not a redevelopment commission or housing  
29 authority is in existence in such local government. Any governing board may by agreement  
30 undertake or carry out for another any specified community development activities. Any  
31 governing board may contract with any person, association, or corporation in undertaking any  
32 specified community development activities. Any county or city board of health, county board  
33 of social services, or county or city board of education may by agreement undertake or carry  
34 out for any governing board any specified community development activities.

35 (c) A local government undertaking community development programs or activities  
36 may create one or more advisory committees to advise it and to make recommendations  
37 concerning such programs or activities.

38 (d) A governing board proposing to undertake any loan guaranty or similar program for  
39 rehabilitation of private buildings is authorized to submit to its voters the question whether such  
40 program shall be undertaken, such referendum to be conducted pursuant to the general and  
41 local laws applicable to special elections in such local government. No State or local taxes shall  
42 be appropriated or expended by a county pursuant to this section for any purpose not expressly  
43 authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as  
44 therein provided.

45 (e) A government may receive and dispense funds from the Community Development  
46 Block Grant (CDBG) Section 108 Loan Guarantee program, Subpart M, 24 C.F.R. § 570.700,  
47 et seq., either through application to the North Carolina Department of Commerce or directly  
48 from the federal government, in accordance with State and federal laws governing these funds.  
49 Any local government that receives these funds directly from the federal government may  
50 pledge current and future CDBG funds for use as loan guarantees in accordance with State and  
51 federal laws governing these funds. A local government may implement the receipt, dispensing,



1 and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all  
2 or a portion of those funds to a third party in accordance with applicable laws governing the  
3 CDBG program.

4 A government that has pledged current or future CDBG funds for use as loan guarantees  
5 prior to the enactment of this subsection is authorized to have taken such action. A pledge of  
6 future CDBG funds under this subsection is not a debt or liability of the State or any political  
7 subdivision of the State or a pledge of the faith and credit of the State or any political  
8 subdivision of the State. The pledging of future CDBG funds under this subsection does not  
9 directly, indirectly, or contingently obligate the State or any political subdivision of the State to  
10 levy or to pledge any taxes.

11 (f) All program income from Economic Development Grants from the Small Cities  
12 Community Development Block Grant Program may be retained by recipient cities and  
13 counties in "economically distressed counties," as defined in G.S. 143B-437.01, for the  
14 purposes of creating local economic development revolving loan funds. Such program income  
15 derived through the use by cities of Small Cities Community Development Block Grant money  
16 includes, but is not limited to, (i) payment of principal and interest on loans made by the county  
17 using CDBG funds; (ii) proceeds from the lease or disposition of real property acquired with  
18 CDBG funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above.  
19 The local economic development revolving loan fund set up by the city shall fund only those  
20 activities eligible under Title I of the federal Housing and Community Development Act of  
21 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of  
22 the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or  
23 G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed  
24 counties made prior to its expiration.

25 **"§ 160D-13-12. Acquisition and disposition of property for redevelopment.**

26 Any local government is authorized, either as a part of a community development program  
27 or independently thereof, and without the necessity of compliance with the Urban  
28 Redevelopment Law, to exercise the following powers:

- 29 (1) To acquire, by voluntary purchase from the owner or owners, real property  
30 which meets any of the following criteria:  
31 a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately  
32 developed from the standpoint of sound community development and  
33 growth.  
34 b. Appropriate for rehabilitation or conservation activities.  
35 c. Appropriate for housing construction or the economic development  
36 of the community.  
37 d. Appropriate for the preservation or restoration of historic sites, the  
38 beautification of urban land, the conservation of open space, natural  
39 resources, and scenic areas, the provision of recreational  
40 opportunities, or the guidance of urban development.  
41 (2) To clear, demolish, remove, or rehabilitate buildings and improvements on  
42 land so acquired.  
43 (3) To retain property so acquired for public purposes, or to dispose, through  
44 sale, lease, or otherwise, of any property so acquired to any person, firm,  
45 corporation, or governmental unit, provided the disposition of such property  
46 shall be undertaken in accordance with the procedures of Article 12 of  
47 Chapter 160A of the General Statutes, or the procedures of G.S. 160A-514,  
48 or any applicable local act or charter provision modifying such procedures,  
49 or subdivision (4) of this section.  
50 (4) To sell, exchange, or otherwise transfer real property or any interest therein  
51 in a community development project area to any redeveloper at private sale

1 for residential, recreational, commercial, industrial, or other uses or for  
2 public use in accordance with the community development plan, subject to  
3 such covenants, conditions, and restrictions as may be deemed to be in the  
4 public interest or to carry out the purposes of this Article, provided that such  
5 sale, exchange, or other transfer, and any agreement relating thereto, may be  
6 made only after approval of the governing board and after a public hearing; a  
7 notice of the public hearing shall be given once a week for two successive  
8 weeks in a newspaper having general circulation in the local government's  
9 planning and development jurisdiction area, the notice shall be published the  
10 first time not less than 10 days nor more than 25 days preceding the public  
11 hearing, and the notice shall disclose the terms of the sale, exchange, or  
12 transfer. At the public hearing the appraised value of the property to be sold,  
13 exchanged, or transferred shall be disclosed, and the consideration for the  
14 conveyance shall not be less than the appraised value.

15 **"§ 160D-13-13. Urban Development Action Grants.**

16 Any local government is authorized, either as a part of a community development program  
17 or independently thereof, to enter into contracts or agreements with any person, association, or  
18 corporation to undertake and carry out specified activities in furtherance of the purposes of  
19 Urban Development Action Grants authorized by the Housing and Community Development  
20 Act of 1977, P.L. 95-128, or any amendment thereto which is a continuation of such grant  
21 programs by whatever designation, including the authority to enter into and carry out contracts  
22 or agreements to extend loans, loan subsidies, or grants to persons, associations, or corporations  
23 and to dispose of real or personal property by private sale in furtherance of such contracts or  
24 agreements.

25 Any enabling legislation contained in local acts which refers to "Urban Development  
26 Action Grants" or the Housing and Community Development Act of 1977, P.L. 95-128, shall  
27 be construed also to refer to any continuation of such grant programs by whatever designation.

28 **"§ 160D-13-14. Urban homesteading programs.**

29 A local government may establish a program of urban homesteading, in which residential  
30 property of little or no value is conveyed to persons who agree to rehabilitate the property and  
31 use it, for a minimum number of years, as their principal place of residence. Residential  
32 property is considered of little or no value if the cost of bringing the property into compliance  
33 with the local government's housing code exceeds sixty percent (60%) of the property's  
34 appraised value on the county tax records. In undertaking such a program a local government  
35 may:

- 36 (1) Acquire by purchase, gift, or otherwise, but not eminent domain, residential  
37 property specifically for the purpose of reconveyance in the urban  
38 homesteading program or may transfer to the program residential property  
39 acquired for other purposes, including property purchased at a tax  
40 foreclosure sale.
- 41 (2) Under procedures and standards established by the local government, convey  
42 residential property by private sale under G.S. 160A-267 and for nominal  
43 monetary consideration to persons who qualify as grantees.
- 44 (3) Convey property subject to the following conditions:
- 45 a. A requirement that the grantee shall use the property as the grantee's  
46 principal place of residence for a minimum number of years.
- 47 b. A requirement that the grantee rehabilitate the property so that it  
48 meets or exceeds minimum housing code standards.
- 49 c. A requirement that the grantee maintain insurance on the property.
- 50 d. Any other specific conditions, including, but not limited to, design  
51 standards, or actions that the local government may require.

1           e.     A provision for the termination of the grantee's interest in the  
2                 property and its reversion to the local government upon the grantee's  
3                 failure to meet any condition so established.

4           (4)   Subordinate the local government's interest in the property to any security  
5                 interest granted by the grantee to a lender of funds to purchase or rehabilitate  
6                 the property.

7   **"§ 160D-13-15. Downtown development projects.**

8           (a)   Definition. – As used in this section, "downtown development project" or "joint  
9                 development project" means a capital project, in a central business district, as that district is  
10                defined by the governing board, comprising one or more buildings and including both public  
11                and private facilities. By way of illustration but not limitation, such a project might include a  
12                single building comprising a publicly owned parking structure and publicly owned convention  
13                center and a privately owned hotel or office building.

14           (b)   Authorization. – If the governing board finds that it is likely to have a significant  
15                 effect on the revitalization of the jurisdiction, the local government may acquire, construct,  
16                 own, and operate or participate in the acquisition, construction, ownership, and operation of a  
17                 joint development project or of specific facilities within such a project. The local government  
18                 may enter into binding contracts with one or more private developers with respect to acquiring,  
19                 constructing, owning, or operating such a project. Such a contract may, among other  
20                 provisions, specify the following:

21                (1)   The property interests of both the local government and the developer or  
22                        developers in the project, provided that the property interests of the local  
23                        government shall be limited to facilities for a public purpose.

24                (2)   The responsibilities of the local government and the developer or developers  
25                        for construction of the project.

26                (3)   The responsibilities of the local government and the developer or developers  
27                        with respect to financing the project.

28           Such a contract may be entered into before the acquisition of any real property necessary to  
29           the project.

30           (c)   Eligible Property. – A joint development project may be constructed on property  
31                 acquired by the developer or developers, on property directly acquired by the local government,  
32                 or on property acquired by the local government while exercising the powers, duties, and  
33                 responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or  
34                 G.S. 160D-13-11.

35           (d)   Conveyance of Property Rights. – In connection with a joint development project,  
36                 the local government may convey interests in property owned by it, including air rights over  
37                 public facilities, as follows:

38                (1)   If the property was acquired while the local government was exercising the  
39                        powers, duties, and responsibilities of a redevelopment commission, the  
40                        local government may convey property interests pursuant to the "Urban  
41                        Redevelopment Law" or any local modification thereof.

42                (2)   If the property was acquired by the local government directly, the local  
43                        government may convey property interests pursuant to G.S. 160D-13-12,  
44                        and Article 12 of Chapter 160A of the General Statutes does not apply to  
45                        such dispositions.

46                (3)   In lieu of conveying the fee interest in air rights, the local government may  
47                        convey a leasehold interest for a period not to exceed 99 years, using the  
48                        procedures of subdivision (1) or (2) of this subsection, as applicable.

49           (e)   Construction. – The contract between the local government and the developer or  
50                 developers may provide that the developer or developers shall be responsible for construction  
51                 of the entire joint development project. If so, the contract shall include such provisions as the

1 governing board deems sufficient to assure that the public facility or facilities included in the  
2 project meet the needs of the local government and are constructed at a reasonable price. A  
3 project constructed pursuant to this subsection is not subject to Article 8 of Chapter 143 of the  
4 General Statutes, provided that local government funds constitute no more than fifty percent  
5 (50%) of the total costs of the joint development project. Federal funds available for loan to  
6 private developers in connection with a joint development project shall not be considered local  
7 government funds for purposes of this subsection.

8 (f) Operation. – The local government may contract for the operation of any public  
9 facility or facilities included in a joint redevelopment project by a person, partnership, firm, or  
10 corporation, public or private. Such a contract shall include provisions sufficient to assure that  
11 any such facility or facilities are operated for the benefit of the citizens of the local government.

12 (g) Grant Funds. – To assist in the financing of its share of a joint development project,  
13 the local government may apply for, accept, and expend grant funds from the federal or state  
14 governments.

15 **"§ 160D-13-16. Low- and moderate-income housing programs.**

16 Any local government is authorized to exercise the following powers:

17 (1) To engage in and to appropriate and expend funds for residential housing  
18 construction, new or rehabilitated, for sale or rental to persons and families  
19 of low and moderate income. Any governing board may contract with any  
20 person, association, or corporation to implement the provisions of this  
21 subdivision.

22 (2) To acquire real property by voluntary purchase from the owners to be  
23 developed by the local government or to be used by the local government to  
24 provide affordable housing to persons of low and moderate income.

25 (3) To convey property by private sale to any public or private entity that  
26 provides affordable housing to persons of low or moderate income under  
27 procedures and standards established by the local government. The local  
28 government shall include as part of any such conveyance covenants or  
29 conditions that assure the property will be developed by the entity for sale or  
30 lease to persons of low or moderate income.

31 (4) To convey residential property by private sale to persons of low or moderate  
32 income, in accordance with procedures and standards established by the  
33 local government, with G.S. 160A-267, and with any terms and conditions  
34 that the governing board may determine.

35 **"§§ 160D-13-17 through 160D-13-19: Reserved for future codification purposes.**

36 "Part 3. Miscellaneous.

37 **"§ 160D-13-20. Program to finance energy improvements.**

38 (a) Purpose. – The General Assembly finds it is in the best interest of the citizens of  
39 North Carolina to promote and encourage renewable energy and energy efficiency within the  
40 State in order to conserve energy, promote economic competitiveness, and expand employment  
41 in the State. The General Assembly also finds that a local government has an integral role in  
42 furthering this purpose by promoting and encouraging renewable energy and energy efficiency  
43 within the local government's territorial jurisdiction. In furtherance of this purpose, a local  
44 government may establish a program to finance the purchase and installation of distributed  
45 generation renewable energy sources or energy efficiency improvements that are permanently  
46 affixed to residential, commercial, or other real property.

47 (b) Financing Assistance. – A local government may establish a revolving loan fund  
48 and a loan loss reserve fund for the purpose of financing or assisting in the financing of the  
49 purchase and installation of distributed generation renewable energy sources or energy  
50 efficiency improvements that are permanently fixed to residential, commercial, or other real  
51 property. A local government may establish other local government energy efficiency and

1 distributed generation renewable energy source finance programs funded through federal  
2 grants. A local government may use State and federal grants and loans and its general revenue  
3 for this financing. The annual interest rate charged for the use of funds from the revolving fund  
4 may not exceed eight percent (8%) per annum, excluding other fees for loan application review  
5 and origination. The term of any loan originated under this section may not be greater than 20  
6 years.

7 (c) Definition. – As used in this Article, "renewable energy source" has the same  
8 meaning as "renewable energy resource" in G.S. 62-133.8.

9 "Article 14.

10 "Judicial Review.

11 **"§ 160D-14-1. Declaratory judgments.**

12 Challenges of legislative decisions of governing boards, including the validity of  
13 development regulations adopted pursuant to this Chapter, and actions authorized by  
14 G.S. 160D-4-5(b) may be brought pursuant to Article 26 of Chapter 1 of the General Statutes.  
15 The governmental unit making the challenged legislative decision shall be named a party to the  
16 action.

17 **"§ 160D-14-2. Appeals in the nature of certiorari.**

18 (a) Applicability. – This section applies to appeals of quasi-judicial decisions of  
19 decision-making boards when that appeal is in the nature of certiorari as required by this  
20 Chapter.

21 (b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing  
22 a petition for writ of certiorari with the superior court. The petition shall do all of the following:

23 (1) State the facts that demonstrate that the petitioner has standing to seek  
24 review.

25 (2) Set forth allegations sufficient to give the court and parties notice of the  
26 grounds upon which the petitioner contends that an error was made.

27 (3) Set forth with particularity the allegations and facts, if any, in support of  
28 allegations that, as the result of an impermissible conflict as described in  
29 G.S. 160D-1-9, or locally adopted conflict rules, the decision-making body  
30 was not sufficiently impartial to comply with due process principles.

31 (4) Set forth the relief the petitioner seeks.

32 (c) Standing. – A petition may be filed under this section only by a petitioner who has  
33 standing to challenge the decision being appealed. The following persons shall have standing to  
34 file a petition under this section:

35 (1) Any person possessing any of the following criteria:

36 a. An ownership interest in the property that is the subject of the  
37 decision being appealed, a leasehold interest in the property that is  
38 the subject of the decision being appealed, or an interest created by  
39 easement, restriction, or covenant in the property that is the subject  
40 of the decision being appealed.

41 b. An option or contract to purchase the property that is the subject of  
42 the decision being appealed.

43 c. An applicant before the decision-making board whose decision is  
44 being appealed.

45 (2) Any other person who will suffer special damages as the result of the  
46 decision being appealed.

47 (3) An incorporated or unincorporated association to which owners or lessees of  
48 property in a designated area belong by virtue of their owning or leasing  
49 property in that area, or an association otherwise organized to protect and  
50 foster the interest of the particular neighborhood or local area, so long as at  
51 least one of the members of the association would have standing as an

1 individual to challenge the decision being appealed, and the association was  
2 not created in response to the particular development or issue that is the  
3 subject of the appeal.

4 (4) A local government whose decision-making board has made a decision that  
5 the governing board believes improperly grants a variance from or is  
6 otherwise inconsistent with the proper interpretation of a development  
7 regulation adopted by the governing board.

8 (d) Respondent. – The respondent named in the petition shall be the local government  
9 whose decision-making board made the decision that is being appealed, except that if the  
10 petitioner is a local government that has filed a petition pursuant to subdivision (4) of  
11 subsection (c) of this section, then the respondent shall be the decision-making board. If the  
12 petitioner is not the applicant before the decision-making board whose decision is being  
13 appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may  
14 name as a respondent any person with an ownership or leasehold interest in the property that is  
15 the subject of the decision being appealed who participated in the hearing, or was an applicant,  
16 before the decision-making board.

17 (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition  
18 and a proposed writ of certiorari to the clerk of superior court of the county in which the matter  
19 arose. The writ shall direct the respondent local government or the respondent decision-making  
20 board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4)  
21 of subsection (c) of this section, to prepare and certify to the court the record of proceedings  
22 below within a specified date. The writ shall also direct that the petitioner shall serve the  
23 petition and the writ upon each respondent named therein in the manner provided for service of  
24 a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a  
25 decision-making board, the petition and the writ shall be served upon the chair of that  
26 decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event  
27 the chair of a decision-making board cannot be found. No summons shall be issued. The clerk  
28 shall issue the writ without notice to the respondent or respondents if the petition has been  
29 properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the  
30 court.

31 Upon the filing of a petition for writ of certiorari, a party may request a stay of the  
32 execution or enforcement of the decision of the quasi-judicial board pending superior court  
33 review. The court may grant a stay in its discretion and on such conditions which properly  
34 provide for the security of the adverse party. A stay granted in favor of a city or county shall  
35 not require a bond or other security.

36 (f) Response to the Petition. – The respondent may, but need not, file a response to the  
37 petition, except that, if the respondent contends for the first time that any petitioner lacks  
38 standing to bring the appeal, that contention must be set forth in a response served on all  
39 petitioners at least 30 days prior to the hearing on the petition. If it is not served within that  
40 time period, the matter may be continued to allow the petitioners time to respond.

41 (g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to  
42 intervene as a petitioner or respondent in an action initiated under this section with the  
43 following exceptions:

44 (1) Any person described in subdivision (1) of subsection (c) of this section  
45 shall have standing to intervene and shall be allowed to intervene as a matter  
46 of right.

47 (2) Any person, other than one described in subdivision (1) of subsection (c) of  
48 this section, who seeks to intervene as a petitioner must demonstrate that the  
49 person would have had standing to challenge the decision being appealed in  
50 accordance with subdivisions (2) through (4) of subsection (c) of this  
51 section.

1           (3)    Any person, other than one described in subdivision (1) of subsection (c) of  
2           this section, who seeks to intervene as a respondent must demonstrate that  
3           the person would have had standing to file a petition in accordance with  
4           subdivisions (2) through (4) of subsection (c) of this section if the  
5           decision-making board had made a decision that is consistent with the relief  
6           sought by the petitioner.

7           (h)    The Record. – The record shall consist of the decision and all documents and  
8           exhibits submitted to the decision-making board whose decision is being appealed, together  
9           with the minutes of the meeting or meetings at which the decision being appealed was  
10          considered. Upon request of any party, the record shall also contain an audio or videotape of  
11          the meeting or meetings at which the decision being appealed was considered if such a  
12          recording was made. Any party may also include in the record a transcript of the proceedings,  
13          which shall be prepared at the cost of the party choosing to include it. The parties may agree  
14          that matters unnecessary to the court's decision be deleted from the record or that matters other  
15          than those specified herein be included. The record shall be bound and paginated or otherwise  
16          organized for the convenience of the parties and the court. A copy of the record shall be served  
17          by the local government respondent, or the respondent decision-making board, upon all  
18          petitioners within three days after it is filed with the court.

19          (i)    Hearing on the Record. – The court shall hear and decide all issues raised by the  
20          petition by reviewing the record submitted in accordance with subsection (h) of this section.  
21          The court may, in its discretion, allow the record to be supplemented with affidavits, testimony  
22          of witnesses, or documentary or other evidence if, and to the extent that, the record is not  
23          adequate to allow an appropriate determination of the following issues:

24               (1)    Whether a petitioner or intervenor has standing.

25               (2)    Whether, as a result of impermissible conflict as described in G.S. 160D-1-9  
26               or locally adopted conflict rules, the decision-making body was not  
27               sufficiently impartial to comply with due process principles.

28               (3)    Whether the decision-making body erred for the reasons set forth in  
29               sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

30          (j)    Scope of Review. –

31               (1)    When reviewing the decision under the provisions of this section, the court  
32               shall ensure that the rights of petitioners have not been prejudiced because  
33               the decision-making body's findings, inferences, conclusions, or decisions  
34               were:

35                   a.    In violation of constitutional provisions, including those protecting  
36                   procedural due process rights.

37                   b.    In excess of the statutory authority conferred upon the local  
38                   government or the authority conferred upon the decision-making  
39                   board by ordinance.

40                   c.    Inconsistent with applicable procedures specified by statute or  
41                   ordinance.

42                   d.    Affected by other error of law.

43                   e.    Unsupported by competent, material, and substantial evidence in  
44                   view of the entire record.

45                   f.    Arbitrary or capricious.

46               (2)    When the issue before the court is whether the decision-making board erred  
47               in interpreting an ordinance, the court shall review that issue de novo. The  
48               court shall consider the interpretation of the decision-making board, but is  
49               not bound by that interpretation, and may freely substitute its judgment as  
50               appropriate.

1           (3)    The term "competent evidence," as used in this subsection, shall not preclude  
2           reliance by the decision-making board on evidence that would not be  
3           admissible under the rules of evidence as applied in the trial division of the  
4           General Court of Justice if (i) the evidence was admitted without objection  
5           or (ii) the evidence appears to be sufficiently trustworthy and was admitted  
6           under such circumstances that it was reasonable for the decision-making  
7           board to rely upon it. The term "competent evidence," as used in this  
8           subsection, shall not be deemed to include the opinion testimony of lay  
9           witnesses as to any of the following:

- 10           a.     The use of property in a particular way affects the value of other  
11           property.  
12           b.     The increase in vehicular traffic resulting from a proposed  
13           development poses a danger to the public safety.  
14           c.     Matters about which only expert testimony would generally be  
15           admissible under the rules of evidence.

16           (k)    Decision of the Court. – Following its review of the decision-making board in  
17           accordance with subsection (j) of this section, the court may affirm the decision, reverse the  
18           decision and remand the case with appropriate instructions, or remand the case for further  
19           proceedings. If the court does not affirm the decision below in its entirety, then the court shall  
20           determine what relief should be granted to the petitioners:

21           (1)    If the court concludes that the error committed by the decision-making board  
22           is procedural only, the court may remand the case for further proceedings to  
23           correct the procedural error.

24           (2)    If the court concludes that the decision-making board has erred by failing to  
25           make findings of fact such that the court cannot properly perform its  
26           function, then the court may remand the case with appropriate instructions so  
27           long as the record contains substantial competent evidence that could  
28           support the decision below with appropriate findings of fact. However,  
29           findings of fact are not necessary when the record sufficiently reveals the  
30           basis for the decision below or when the material facts are undisputed and  
31           the case presents only an issue of law.

32           (3)    If the court concludes that the decision by the decision-making board is not  
33           supported by competent, material, and substantial evidence in the record or  
34           is based upon an error of law, then the court may remand the case with an  
35           order that directs the decision-making board to take whatever action should  
36           have been taken had the error not been committed or to take such other  
37           action as is necessary to correct the error. Specifically:

38           a.     If the court concludes that a permit was wrongfully denied because  
39           the denial was not based on competent, material, and substantial  
40           evidence or was otherwise based on an error of law, the court may  
41           remand with instructions that the permit be issued, subject to  
42           reasonable and appropriate conditions.

43           b.     If the court concludes that a permit was wrongfully issued because  
44           the issuance was not based on competent, material, and substantial  
45           evidence or was otherwise based on an error of law, the court may  
46           remand with instructions that the permit be revoked.

47           (l)    Effect of Appeal and Ancillary Injunctive Relief. –

48           (1)    If a development approval is appealed, the applicant shall have the right to  
49           commence work while the appeal is pending. However, if the development  
50           approval is reversed by a final decision of any court of competent  
51           jurisdiction, the applicant shall not be deemed to have gained any vested



1 rights on the basis of actions taken prior to or during the pendency of the  
2 appeal and must proceed as if no development approval had been granted.

3 (2) Upon motion of a party to a proceeding under this section, and under  
4 appropriate circumstances, the court may issue an injunctive order requiring  
5 any other party to that proceeding to take certain action or refrain from  
6 taking action that is consistent with the court's decision on the merits of the  
7 appeal.

8 (m) Joinder. – A declaratory judgment brought under G.S. 160D-14-1 or other civil  
9 action relating to the decision at issue may be joined with the petition for writ of certiorari and  
10 decided in the same proceeding.

11 **"§ 160D-14-3. Appeals of decisions on subdivision plats.**

12 (a) When a subdivision regulation adopted under this Chapter provides that the decision  
13 whether to approve or deny a preliminary or final subdivision plat is quasi-judicial, then that  
14 decision of the board shall be subject to review by the superior court by proceedings in the  
15 nature of certiorari. The provisions of G.S. 160D-4-6 and this section shall apply to those  
16 appeals.

17 (b) When a subdivision regulation adopted under this Chapter provides that the decision  
18 whether to approve or deny a preliminary or final subdivision plat is administrative, then that  
19 decision of the board shall be subject to review by filing an action in superior court seeking  
20 appropriate declaratory or equitable relief within 30 days from receipt of the written notice of  
21 the decision, which shall be made as provided in G.S. 160D-4-3(b).

22 (c) For purposes of this section, a subdivision regulation shall be deemed to authorize a  
23 quasi-judicial decision if the decision-making entity under G.S. 160D-8-3(c) is authorized to  
24 decide whether to approve or deny the plat based not only upon whether the application  
25 complies with the specific requirements set forth in the regulation but also on whether the  
26 application complies with one or more generally stated standards requiring a discretionary  
27 decision to be made.

28 **"§ 160D-14-4. Other civil actions.**

29 Except as expressly stated, this Article does not limit the availability of civil actions  
30 otherwise authorized by law or alter the times in which they may be brought.

31 **"§ 160D-14-5. Statutes of limitation.**

32 (a) Zoning Map Adoption or Amendments. – A cause of action as to the validity of any  
33 regulation adopting or amending a zoning map adopted under this Chapter or other applicable  
34 law or a development agreement adopted under Article 10 of this Chapter shall accrue upon  
35 adoption of such ordinance and shall be brought within sixty days as provided in G.S. 1-54.1.

36 (b) Text Adoption or Amendment. – Except as otherwise provided in subsection (a) of  
37 this section, an action challenging the validity of a development regulation adopted under this  
38 Chapter or other applicable law shall be brought within one year of the accrual of such action.  
39 Such an action accrues when the party bringing such action first has standing to challenge the  
40 ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process  
41 shall be brought within three years after the adoption of the ordinance.

42 (c) Enforcement Defense. – Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1  
43 shall bar a party in an action involving the enforcement of a development regulation from  
44 raising as a defense to such enforcement action the invalidity of the ordinance. Nothing in this  
45 section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an  
46 order, requirement, decision, or determination made by an administrative official contending  
47 that such party is in violation of a zoning or unified development ordinance from raising in the  
48 judicial appeal the invalidity of such ordinance as a defense to such order, requirement,  
49 decision, or determination. A party in an enforcement action or appeal may not assert the  
50 invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the  
51 defense is formally raised within three years of the adoption of the challenged ordinance.

1       (d) Quasi-Judicial Decisions. – Unless specifically provided otherwise, a petition for  
 2 review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of  
 3 30 days after the decision is effective or after a written copy thereof is given in accordance with  
 4 G.S. 160D-4-6(j). When first-class mail is used to deliver notice, three days shall be added to  
 5 the time to file the petition.

6       (e) Others. – Except as provided by this section, the statutes of limitations shall be as  
 7 provided in Subchapter II of Article 2 of Chapter 1 of the General Statutes."

8               **SECTION 4.1.** G.S. 1-54 reads as rewritten:

9       "**§ 1-54. One year.**

10       Within one year an action or proceeding –

11       ...

12       (10) Actions contesting the validity of any zoning or unified development  
 13 ordinance or any provision thereof adopted under ~~Part 3 of Article 18 of~~  
 14 ~~Chapter 153A or Part 3 of Article 19 of Chapter 160A Chapter 160D~~ of the  
 15 General Statutes or other applicable law, other than an ordinance adopting or  
 16 amending a zoning map ~~or approving a special use, conditional use, or~~  
 17 ~~conditional zoning district rezoning request. map.~~ Such an action accrues  
 18 when the party bringing such action first has standing to challenge the  
 19 ordinance; provided that, a challenge to an ordinance on the basis of an  
 20 alleged defect in the adoption process shall be brought within three years  
 21 after the adoption of the ordinance.

22       ...."

23               **SECTION 4.2.** G.S. 1-54.1 reads as rewritten:

24       "**§ 1-54.1. Two months.**

25       Within two months an action contesting the validity of any ordinance adopting or amending  
 26 a zoning map ~~or approving a special use, conditional use, conditional zoning district rezoning~~  
 27 ~~request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article~~  
 28 ~~19 of Chapter 160A of the General Statutes or other applicable law.~~ Article 7 of Chapter 160D  
 29 of the General Statutes. Such an action accrues upon adoption of such ordinance or amendment.  
 30 As used herein, the term two months shall be calculated as 60 days."

31               **SECTION 4.3.** G.S. 63-31(a) reads as rewritten:

32       "**§ 63-31. Adoption of airport zoning regulations.**

33       (a) Every political subdivision may adopt, administer, and enforce, under the police  
 34 power ~~and in the manner and upon the conditions hereinafter prescribed, or as a land~~  
 35 development regulation under Chapter 160D of the General Statutes, airport zoning regulations,  
 36 which regulations shall divide the area surrounding any airport within the jurisdiction of said  
 37 political subdivision into zones, and, within such zones, specify the land uses permitted, and  
 38 regulate and restrict the height to which structures and trees may be erected or allowed to grow.  
 39 In adopting or revising any such zoning regulations, the political subdivision shall consider,  
 40 among other things, the character of the flying operations expected to be conducted at the  
 41 airport, the nature of the terrain, the height of existing structures and trees above the level of the  
 42 airport, the possibility of lowering or removing existing obstructions, and the views of the  
 43 agency of the federal government charged with the fostering of civil aeronautics, as to the aerial  
 44 approaches necessary to safe flying operations at the airport."

45               **SECTION 4.4.** G.S. 63-32(b) reads as rewritten:

46       "**§ 63-32. Permits, new structures, etc., and variances.**

47       ...

48       (b) Variances. – Any person desiring to erect any structures, or increase the height of  
 49 any structure, or permit the growth of any tree, or otherwise use his property, in violation of  
 50 airport zoning regulations adopted under this Article, may apply to the board of appeals, as  
 51 provided in G.S. 63-33, subsection (c), for a variance from the zoning regulations in question.

1 Such variances shall be allowed where a literal application or enforcement of the regulations  
2 would result in practical difficulty or unnecessary hardship and the relief granted would not be  
3 contrary to the public interest but do substantial justice and shall be considered pursuant to  
4 G.S. 160D-7-5(d) and be in accordance with the spirit of the regulations and this Article."

5 **SECTION 4.5.** G.S. 63-33 reads as rewritten:

6 "**§ 63-33. Procedure.**

7 (a) Adoption of Zoning Regulations. – No airport zoning regulations shall be adopted,  
8 amended, or changed under this Article except by action of the legislative body of the political  
9 subdivision in question, or the joint board provided for in G.S. 63-31, subsection (c), ~~after a~~  
10 ~~public hearing in relation thereto, at which parties in interest and citizens shall have an~~  
11 ~~opportunity to be heard. At least 10 days' notice of the hearing shall be published in an official~~  
12 ~~paper, or a paper of general circulation, in the political subdivision or subdivisions in which the~~  
13 ~~airport is located, following the procedures set for adoption of development regulations in~~  
14 Article 6 of Chapter 160D of the General Statutes.

15 ...

16 (c) Administration of Airport Zoning Regulations – Board of Appeals. – Airport zoning  
17 regulations adopted under this Article shall provide for a board of appeals to have and exercise  
18 the following powers:

- 19 (1) To hear and decide appeals from any order, requirement, decision, or  
20 determination made by the administrative agency in the enforcement of this  
21 ~~Article or of any ordinance adopted pursuant thereto;~~Article.  
22 (2) To hear and decide special ~~exceptions to the terms of the ordinance use~~  
23 ~~permits upon which such board may be required to pass under such~~  
24 ~~ordinance;~~ordinance.  
25 (3) To hear and decide specific ~~variances under G.S. 63-32, subsection~~  
26 ~~(b);~~variances.

27 ~~Where a A zoning board of appeals or adjustment already exists, it may be appointed as the~~  
28 ~~board of appeals. Otherwise, the board of appeals shall consist of five members, each to be~~  
29 ~~appointed for a term of three years and to be removable for cause by the appointing authority~~  
30 ~~upon written charges and after public hearing. G.S. 160D-4-5 and G.S. 160D-4-6 shall be~~  
31 ~~applicable to appeals, special use permits, and variance petitions made pursuant to this section.~~

32 ~~The board shall adopt rules in accordance with the provisions of any ordinance adopted~~  
33 ~~under this Article. Meetings of the board shall be held at the call of the chairman and at such~~  
34 ~~other times as the board may determine. The chairman, or in his absence the acting chairman,~~  
35 ~~may administer oaths and compel the attendance of witnesses. All meetings of the board shall~~  
36 ~~be public. The board shall keep minutes of its proceedings, showing the vote of each member~~  
37 ~~upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records~~  
38 ~~of its examinations and other official actions, all of which shall immediately be filed in the~~  
39 ~~office of the board and shall be a public record.~~

40 ~~Appeals to the board may be taken by any person aggrieved, or by any officer, department,~~  
41 ~~board, or bureau of the political subdivision affected, by any decision of the administrative~~  
42 ~~agency. An appeal must be taken within a reasonable time, as provided by the rules of the~~  
43 ~~board, by filing with the agency from which the appeal is taken and with the board, a notice of~~  
44 ~~appeal specifying the grounds thereof. The agency from which the appeal is taken shall~~  
45 ~~forthwith transmit to the board all the papers constituting the record upon which the action~~  
46 ~~appealed from was taken.~~

47 ~~An appeal shall stay all proceedings in furtherance of the action appealed from, unless the~~  
48 ~~agency from which the appeal is taken certifies to the board, after the notice of appeal has been~~  
49 ~~filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion,~~  
50 ~~cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise~~

1 than by a restraining order which may be granted by the board or by a court of record on  
2 application on notice to the agency from which the appeal is taken and on due cause shown.

3 The board shall fix a reasonable time for the hearing of the appeal, give public notice and  
4 due notice to the parties in interest, and decide the same within a reasonable time. Upon the  
5 hearing any party may appear in person or by agent or by attorney.

6 The board may, in conformity with the provisions of this Article, reverse or affirm, wholly  
7 or partly, or modify, the order, requirement, decision or determination appealed from and may  
8 make such order, requirement, decision or determination as ought to be made, and to that end  
9 shall have all the powers of the administrative agency from which the appeal is taken.

10 The concurring vote of a majority of the members of the board shall be sufficient to reverse  
11 any order, requirement, decision, or determination of the administrative agency, or to decide in  
12 favor of the applicant on any matter upon which it is required to pass under any such ordinance,  
13 or to effect any variation in such ordinance."

14 **SECTION 4.6.** G.S. 63-34 reads as rewritten:

15 "**§ 63-34. Judicial review.**

16 (a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or  
17 any officer, department, board, or bureau of the political subdivision, may present to the  
18 superior court a verified petition setting forth that the decision is illegal, in whole or in part, and  
19 specifying the grounds of the illegality. Such petition shall be presented to the court within 30  
20 days after the decision is filed in the office of the board. Such petition shall comply with the  
21 provisions of G.S. 160A-393.

22 (b) The allowance of the writ shall not stay proceedings upon the decision appealed  
23 from, but the court may, on application, on notice to the board and on due cause shown, grant a  
24 restraining order.

25 (c) The board of appeals shall not be required to return the original papers acted upon  
26 by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions  
27 thereof as may be called for by the writ. The return shall concisely set forth such other facts as  
28 may be pertinent and material to show the grounds of the decision appealed from and shall be  
29 verified.

30 (d) Repealed by Session Laws 2009-421, s. 3, effective January 1, 2010.

31 (e) Costs shall not be allowed against the board of appeals unless it appears to the court  
32 that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed  
33 from.

34 G.S. 160D-14-1 shall be applicable to judicial review of administrative and quasi-judicial  
35 decisions made pursuant to this Article."

36 **SECTION 4.7.** G.S. 63-35 reads as rewritten:

37 "**§ 63-35. Enforcement and remedies.**

38 Each violation of this Article or of any regulations, order, or ruling promulgated or made  
39 pursuant to this Article, shall constitute a Class 3 misdemeanor, and each day a violation  
40 continues to exist shall constitute a separate offense. In addition, the political subdivision  
41 within which the property is located may institute in any court of competent jurisdiction, an  
42 action to prevent, restrain, correct or abate any violation of this Article, or of airport zoning  
43 regulations adopted under this Article, or of any order or ruling made in connection with their  
44 administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of  
45 injunction (which may be mandatory) or otherwise, as may be proper under all the facts and  
46 circumstances of the case, in order fully to effectuate the purposes of this Article and of the  
47 regulations adopted and orders and rulings made pursuant thereto.G.S. 160D-4-4 shall be  
48 applicable to ordinances adopted pursuant to this Article."

49 **SECTION 4.8.** G.S. 143-215.57 reads as rewritten:

50 "**§ 143-215.57. Procedures in issuing permits.**

51 ...

1 (b) In prescribing standards and requirements for the issuance of permits under this Part  
2 and in issuing permits, local governments shall proceed as in the case of an ordinance for the  
3 better government of the county or city as the case may be. ~~A city may exercise the powers  
4 granted in this Part not only within its corporate boundaries but also within the area of its  
5 extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any  
6 place within the county that is outside the zoning jurisdiction of a city in the county. If a city  
7 does not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction,  
8 the county may exercise the powers granted in this Part in the city's extraterritorial zoning  
9 jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose  
10 governing body, by resolution, agrees to the regulation. The governing body of a city may,  
11 upon one year's written notice, withdraw its approval of the county regulations, and those  
12 regulations shall have no further effect within the city's jurisdiction.~~ Local government  
13 jurisdiction for these ordinances shall be as specified in Article 2 of Chapter 160D of the  
14 General Statutes. Article 4 of Chapter 160D of the General Statutes shall apply to the  
15 administration, enforcement, and appeals regarding these ordinances.

16 (c) ~~The local governing body is hereby empowered to adopt regulations it may deem  
17 necessary concerning the form, time, and manner of submission of applications for permits  
18 under this Part. These regulations may provide for the issuance of permits under this Part by the  
19 local governing body or by an agency designated by the local governing body, as prescribed by  
20 the governing body. Every final decision granting or denying a permit under this Part shall be  
21 subject to review by the superior court of the county, with the right of jury trial at the election  
22 of the party seeking review. The time and manner of election of a jury trial shall be governed  
23 by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an  
24 appeal, no action shall be taken that would be unlawful in the absence of a permit issued under  
25 this Part."~~

26 **SECTION 4.9.** G.S. 143-215.58 reads as rewritten:

27 **"§ 143-215.58. Violations and penalties.**

28 ...

29 (a) A local government may use all of the remedies available for the enforcement of  
30 ordinances under Chapters ~~153A and 160A~~ 153A, 160A, and 160D of the General Statutes to  
31 enforce an ordinance adopted pursuant to this Part.

32 (b) Failure to remove any artificial obstruction or enlargement or replacement thereof,  
33 that violates this Part or any ordinance adopted (or the provision of any permit issued) under  
34 the authority of this Part, shall constitute a separate violation of this Part for each day that the  
35 failure continues after written notice from the county board of commissioners or governing  
36 body board of a city.

37 (c) In addition to or in lieu of other remedies, the county board of commissioners or  
38 governing body board of a city may institute any appropriate action or proceeding to restrain or  
39 prevent any violation of this Part or of any ordinance adopted (or of the provisions of any  
40 permit issued) under the authority of this Part, or to require any person, firm or corporation that  
41 has committed a violation to remove a violating obstruction or restore the conditions existing  
42 before the placement of the obstruction."

43 **SECTION 4.10.** G.S. 130A-55(17) reads as rewritten:

44 **"§ 130A-55. Corporate powers.**

45 A sanitary district board shall be a body politic and corporate and may sue and be sued in  
46 matters relating to the sanitary district. Notwithstanding any limitation in the petition under  
47 G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may  
48 exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary  
49 district board shall have the following powers:

50 ...

1 (17) For the purpose of promoting and protecting the public health, safety and the  
 2 general welfare of the State, a sanitary district board is authorized to  
 3 establish as zoning units any portions of the sanitary district not under the  
 4 control of the United States or this State or any agency or instrumentality of  
 5 either, in accordance with the following:

6 ...

7 b. When a zoning area is established within a sanitary district, the  
 8 sanitary district board as to the zoning area shall have all rights,  
 9 privileges, powers and duties granted to ~~municipal corporations~~  
 10 ~~under Part 3, Article 19, Chapter 160A~~ local governments under  
 11 Article 7 of Chapter 160D of the General Statutes. However, the  
 12 sanitary district board shall not be required to appoint any zoning  
 13 commission or board of adjustment. If neither a zoning commission  
 14 nor board of adjustment is appointed, the sanitary district board shall  
 15 have all rights.

16 ...."

17 **SECTION 4.11.** G.S. 143-214.5(d) reads as rewritten:

18 "(d) Mandatory Local Programs. – The Department shall assist local governments to  
 19 develop water supply watershed protection programs that comply with this section. Local  
 20 government compliance programs shall include an implementing local ordinance and shall  
 21 provide for maintenance, inspection, and enforcement procedures. As part of its assistance to  
 22 local governments, the Commission shall approve and make available a model local water  
 23 supply watershed management and protection ordinance. The model management and  
 24 protection ordinance adopted by the Commission shall, at a minimum, include as options (i)  
 25 controlling development density, (ii) providing for performance-based alternatives to  
 26 development density controls that are based on sound engineering principles, and (iii) a  
 27 combination of both (i) and (ii). Local governments shall administer and enforce the minimum  
 28 management requirements. Every local government that has within its jurisdiction all or a  
 29 portion of a water supply watershed shall submit a local water supply watershed management  
 30 and protection ordinance to the Commission for approval. Local governments may adopt such  
 31 ordinances pursuant to their general police power, power to regulate the subdivision of land,  
 32 zoning power, or any combination of such powers. In adopting a local ordinance that imposes  
 33 water supply watershed management requirements that are more stringent than those adopted  
 34 by the Commission, a ~~county local government~~ must comply with ~~the notice provisions of G.S.~~  
 35 ~~153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384.~~ Article  
 36 6 of Chapter 160D of the General Statutes. This section shall not be construed to affect the  
 37 validity of any local ordinance adopted for the protection of water supply watersheds prior to  
 38 completion of the review of the ordinance by the Commission or prior to the assumption by the  
 39 Commission of responsibility for a local water supply watershed protection program. Local  
 40 governments may create or designate agencies to administer and enforce such programs. The  
 41 Commission shall approve a local program only if it determines that the requirements of the  
 42 program equal or exceed the minimum statewide water supply watershed management  
 43 requirements adopted pursuant to this section."

44 **SECTION 4.12.** G.S. 113A-208 reads as rewritten:

45 "**§ 113A-208. Regulation of mountain ridge construction by counties and cities.**

46 (a) Any county or city may adopt, effective not later than January 1, 1984, and may  
 47 enforce an ordinance that regulates the construction of tall buildings or structures on protected  
 48 mountain ridges by any person. The ordinance may provide for the issuance of permits to  
 49 construct tall buildings on protected mountain ridges, the conditioning of such permits, and the  
 50 denial of permits for such construction. Any ordinance adopted hereunder shall be based upon  
 51 studies of the mountain ridges within the county, a statement of objectives to be sought by the

1 ordinance, and plans for achieving these objectives. Any such county ordinance shall apply  
 2 countywide except as otherwise provided in ~~G.S. 160A-360~~, Article 2 of Chapter 160D of the  
 3 General Statutes and any such city ordinance shall apply citywide, to construction of tall  
 4 buildings on protected mountain ridges within the city or county, as the case may be.

5 A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an  
 6 ordinance eliminating the requirement for an elevation of 3,000 feet, as permitted by  
 7 G.S. 113A-206(6).

8 (b) Under the ordinance, permits shall be denied if a permit application (and shall be  
 9 revoked if a project) fails to provide for:

10 ...

11 (4) Adequate consideration to protecting the natural beauty of the mountains, as  
 12 determined by the local governing ~~body~~.board.

13 ...

14 (f) Any county or city that adopts an ordinance pursuant to this section ~~must hold a~~  
 15 ~~public hearing before adopting the ordinance upon the question of adopting the ordinance or of~~  
 16 ~~allowing the construction of tall buildings on protected mountain ridges to be governed by G.S.~~  
 17 ~~113A-209. The public hearing required by this section shall be held upon at least 10 days'~~  
 18 ~~notice in a newspaper of general circulation in the unit adopting the ordinance. Testimony at~~  
 19 ~~the hearing shall be recorded and any and all exhibits shall be preserved within the custody of~~  
 20 ~~the governing body. The testimony and evidence shall be made available for inspection and~~  
 21 ~~scrutiny by any person.~~ shall follow the procedures of Article 6 of Chapter 160D of the General  
 22 Statutes.

23 (g) ~~Any resident of a county or city that adopted an ordinance pursuant to this section,~~  
 24 ~~or of an adjoining county, may bring a civil action against the ordinance-adopting unit,~~  
 25 ~~contesting the ordinance as not meeting the requirements of this section. If the ordinance is~~  
 26 ~~found not to meet all of the requirements of this section, the county or city shall be enjoined~~  
 27 ~~from enforcing the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this~~  
 28 ~~Article authorizes the State of North Carolina or any of its agencies to bring a civil action to~~  
 29 ~~contest an ordinance, or for a violation of this Article or of an ordinance adopted pursuant to~~  
 30 ~~this Article."~~

31 **SECTION 4.13.** G.S. 113A-211(a) reads as rewritten:

32 "(a) Violations of this Article shall be subject to the same criminal sanctions, civil  
 33 penalties and equitable remedies as ~~violations of county ordinances under G.S.~~  
 34 ~~153A-123 provided by G.S. 160D-4-4."~~

35 **SECTION 4.14.** G.S. 160A-75 reads as rewritten:

36 "**§ 160A-75. Voting.**

37 No member shall be excused from voting except upon matters involving the consideration  
 38 of the member's own financial interest or official conduct or on matters on which the member is  
 39 prohibited from voting under ~~G.S. 14-234, 160A-381(d), or 160A-388(e)(2)~~.G.S. 14-234 or  
 40 G.S. 160D-1-9. In all other cases except votes taken under ~~G.S. 160A-385, G.S. 160D-6-1,~~ a  
 41 failure to vote by a member who is physically present in the council chamber, or who has  
 42 withdrawn without being excused by a majority vote of the remaining members present, shall  
 43 be recorded as an affirmative vote. The question of the compensation and allowances of  
 44 members of the council is not a matter involving a member's own financial interest or official  
 45 conduct.

46 An affirmative vote equal to a majority of all the members of the council not excused from  
 47 voting on the question in issue, including the mayor's vote in case of an equal division, shall be  
 48 required to adopt an ordinance, take any action having the effect of an ordinance, authorize or  
 49 commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of  
 50 the city. In addition, no ordinance nor any action having the effect of any ordinance may be  
 51 finally adopted on the date on which it is introduced except by an affirmative vote equal to or

1 greater than two thirds of all the actual membership of the council, excluding vacant seats and  
2 not including the mayor unless the mayor has the right to vote on all questions before the  
3 council. For purposes of this section, an ordinance shall be deemed to have been introduced on  
4 the date the subject matter is first voted on by the council."

5 **SECTION 5.1.** G.S. 153A-102.1 is repealed.

6 **SECTION 5.2.** G.S. 160A-4.1 is repealed

7 **SECTION 5.3.** G.S. 160A-181.1 is repealed.

8 **SECTION 5.4.** G.S. 153A-143 is repealed.

9 **SECTION 5.5.** G.S. 160A-199 is repealed.

10 **SECTION 5.6.** G.S. 153A-144 is repealed.

11 **SECTION 5.7.** G.S. 160A-201 is repealed.

12 **SECTION 5.8.** G.S. 153A-452 is repealed

13 **SECTION 5.9.** G.S. 153A-455 is repealed.

14 **SECTION 5.10.** Article 3 of Chapter 168 of the General Statutes is repealed.

15 **SECTION 6.** Article 23 of Chapter 153A of the General Statutes is amended by

16 adding the following new sections to read:

17 **"§ 153A-458. Submission of statement concerning improvements.**

18 A county may by ordinance require that when a property owner improves property at a cost  
19 of more than two thousand five hundred dollars (\$2,500) but less than five thousand dollars  
20 (\$5,000), the property owner must, within 14 days after the completion of the work, submit to  
21 the county assessor a statement setting forth the nature of the improvement and the total cost  
22 thereof.

23 **"§ 153A-459. Authorization to provide grants.**

24 A county may provide grants to unaffiliated qualified private providers of high-speed  
25 Internet access service, as that term is defined in G.S. 160A-340(4), for the purpose of  
26 expanding service in unserved areas for economic development in the county. The grants shall  
27 be awarded on a technology neutral basis, shall be open to qualified applicants, and may  
28 require matching funds by the private provider. A county shall seek and consider request for  
29 proposals from qualified private providers within the county prior to awarding a broadband  
30 grant and shall use reasonable means to ensure that potential applicants are made aware of the  
31 grant, including, at a minimum, compliance with the notice procedures set forth in  
32 G.S. 160A-340.6(c). The county shall use only unrestricted general fund revenue for the grants.  
33 For the purposes of this section, a qualified private provider is a private provider of high-speed  
34 Internet access service in the State prior to the issuance of the grant proposal. Nothing in this  
35 section authorizes a county to provide high-speed Internet broadband service."

36 **SECTION 7.** If any provision of this act or its application is held invalid, the  
37 invalidity does not affect other provisions or applications of this act that can be given effect  
38 without the invalid provisions or application, and to this end, the provisions of this act are  
39 severable.

40 **SECTION 8.1.** Any otherwise valid permit or development approval made prior to  
41 January 1, 2019, shall not be invalid based on inconsistency with the provisions of this act. The  
42 validity of any plan adopted prior to January 1, 2019, is not affected by a failure to comply with  
43 the procedural requirements of G.S. 160D-5-1(b).

44 **SECTION 8.2.** Any special use district or conditional use district zoning district  
45 that is valid and in effect as of January 1, 2019, shall be deemed a conditional zoning district  
46 consistent with the terms of this act and the special or conditional use permits issued  
47 concurrently with establishment of those districts shall be valid as specified in Section 8.1 of  
48 this act. Any valid "conditional use permit" issued prior to January 1, 2019, shall be deemed a  
49 "special use permit" consistent with the provisions of this act.



1           **SECTION 8.3.** Any local government that has adopted zoning regulations but that  
2 has not adopted a comprehensive plan shall adopt such plan no later than December 31, 2019,  
3 in order to retain the authority to adopt and apply zoning regulations.

4           **SECTION 9.1.** G.S. 160D-6-5, as enacted by Section 3 of this act, reads as  
5 rewritten:

6       "**§ 160D-6-5. Governing board statement.**

7       (a) Plan Consistency. – When adopting or rejecting any zoning text or map amendment,  
8 the governing board shall approve a statement describing whether its action is consistent or  
9 inconsistent with an adopted comprehensive plan ~~and any other applicable adopted plan and~~  
10 ~~briefly explain why the board considers the action taken to be reasonable and in the public~~  
11 ~~interest. That plan.~~ If the amendment is adopted and the action was deemed inconsistent with  
12 the adopted plan, the zoning amendment shall be deemed an amendment to the plan and no  
13 additional request or application for a plan amendment shall be required. In such instances, the  
14 statement shall also explain the change in conditions the governing board took into account in  
15 making the zoning amendment to meet the development needs of the community. The  
16 statement is not subject to judicial review. If a zoning map amendment qualifies as a  
17 "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement describing plan  
18 consistency may address the overall rezoning and describe how the analysis and polices in the  
19 relevant adopted plans were considered in the action taken.

20       (b) Additional Reasonableness Statement for Rezoning. – When adopting or rejecting  
21 any petition for a zoning map amendment, a statement ~~analyzing~~ briefly explaining the  
22 reasonableness of the proposed rezoning shall be approved by the governing board. This  
23 statement of reasonableness may consider, among other factors, (i) the size, physical  
24 conditions, and other attributes of the tract; (ii) the benefits and detriment to the landowner, the  
25 neighbors, and the surrounding community; ~~and~~ (iii) the relationship between the current actual  
26 and permissible development on the tract and adjoining areas and the development that would  
27 be permissible under the proposed ~~amendment.~~ amendment; and (iv) why the action taken is in  
28 the public interest. If a zoning map amendment qualifies as a "large-scale rezoning" under  
29 G.S. 160D-6-2(b), the governing board statement on reasonableness may address the overall  
30 rezoning.

31       (c) Single Statement Permissible. – The statement of reasonableness and the plan  
32 consistency statement required by this section may be approved as a single statement."

33       **SECTION 9.2.** G.S. 160D-10-1(c), as enacted by Section 3 of this act, reads as  
34 rewritten:

35       "(c) This Article is supplemental to the powers conferred upon local governments and  
36 does not preclude or supersede rights and obligations established pursuant to other law  
37 regarding development approvals, site-specific vesting plans, or other provisions of law. A  
38 development agreement shall not exempt the property owner or developer from compliance  
39 with the State Building Code or State or local housing codes that are not part of the local  
40 government's development regulations. When the governing board approves the rezoning of  
41 any property associated with a development agreement executed and recorded pursuant to this  
42 Article, the provisions of G.S. 160D-6-5(a) apply."

43       **SECTION 9.3.** G.S. 160D-8-2, as enacted by Section 3 of this act, reads as  
44 rewritten:

45       "**§ 160D-8-2. Applicability.**

46       (a) For the purpose of this Article, subdivision regulations shall be applicable to all  
47 divisions of a tract or parcel of land into two or more lots, building sites, or other divisions  
48 when any one or more of those divisions is created for the purpose of sale or building  
49 development, whether immediate or future, and shall include all divisions of land involving the  
50 dedication of a new street or a change in existing streets; but the following shall not be included  
51 within this definition nor be subject to the regulations authorized by this Article:

1

...

2

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

3

4

5

(b) A local government may provide for expedited review of specified classes of subdivisions.

6

7

(c) The county may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

8

9

(1) The tract or parcel to be divided is not exempted under subdivision (2) of subsection (a) of this section.

10

11

(2) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.

12

13

(3) The entire area of the tract or parcel to be divided is greater than five acres.

14

(4) After division, no more than three lots result from the division.

15

(5) After division, all resultant lots comply with all of the following:

16

a. Any lot dimension size requirements of the applicable land-use regulations, if any.

17

b. The use of the lots is in conformity with the applicable zoning requirements, if any.

18

19

c. A permanent means of ingress and egress is recorded for each lot."

20

**SECTION 9.4.** If this act becomes law in 2017, it is the intent of the General Assembly that legislation in other acts enacted in the 2017 Regular Session of the 2017 General Assembly that affects statutes repealed and replaced by similar provisions in Chapter 160D of the General Statutes, as enacted by this act, also be incorporated into Chapter 160D of the General Statutes. Such other legislation includes, if so enacted, the following bills introduced in the 2017 Regular Session of the 2017 General Assembly: Senate Bill 615, House Bill 158, House Bill 252, House Bill 310, House Bill 376, House Bill 457, House Bill 530, House Bill 581, and House Bill 794. The North Carolina General Statutes Commission shall study the need for legislation to accomplish this intent and shall report its findings and recommendations, including any legislative proposals, to the 2018 Regular Session of the 2017 General Assembly.

21

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**SECTION 10.** Sections 9.4 and 10 of this act are effective when they become law. The remainder of this act becomes effective January 1, 2019, and applies to local government development regulation decisions made on or after that date. This act clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and after the effective date.

32

33

34