

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS35172-MQ-38A*

Short Title: Planning/Development Changes. (Public)

Sponsors: Senators McKissick and Newton (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REORGANIZE, CONSOLIDATE, MODERNIZE, AND CLARIFY STATUTES
3 REGARDING LOCAL 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 of
9 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 160A
15 of the General Statutes in 1971 and Article 18 of Chapter 153A of the General Statutes in 1973,
16 no comprehensive reorganization of North Carolina's planning and development regulation
17 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 materially 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27 **SECTION 1.** Article 18 of Chapter 153A of the General Statutes is repealed.

28 **SECTION 2.** Article 19 of Chapter 160A of the General Statutes is repealed.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

35 (a) The provisions of this Article shall apply to all development regulations and programs
36 adopted pursuant to this Chapter or applicable or related local acts. To the extent there are



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1 contrary provisions in local charters or acts, G.S. 160D-1-11 is applicable unless this Chapter
2 expressly provides otherwise. The provisions of this Article also apply to any other local
3 ordinance that 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 are conflicts between the provisions of this
6 Article and the provisions of other Articles of this Chapter, the more specific provisions shall
7 control.

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

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

16 **"§ 160D-1-2. Definitions.**

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

- 20 (1) Administrative decision. – Decisions made in the implementation,
21 administration, or enforcement of development regulations that involve the
22 determination of facts and the application of objective standards set forth in
23 this Chapter or local government development regulations. These are
24 sometimes referred to as ministerial decisions or administrative
25 determinations.
- 26 (2) Administrative hearing. – A proceeding to gather facts needed to make an
27 administrative decision.
- 28 (3) Bona fide farm purposes. – Agricultural activities as set forth in
29 G.S. 160D-9-3.
- 30 (4) Charter. – As defined in G.S. 160A-1(2).
- 31 (5) City. – As defined in G.S. 160A-1(2).
- 32 (6) Comprehensive plan. – The comprehensive plan, land-use plan, small area
33 plans, neighborhood plans, transportation plan, capital improvement plan, and
34 any other plans regarding land use and development that have been officially
35 adopted by the governing board.
- 36 (7) Conditional zoning. – A legislative zoning map amendment with site-specific
37 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 This definition does not alter the scope of regulatory authority granted by this
9 Chapter.

10 (13) Development approval. – An administrative or quasi-judicial approval made
11 pursuant to this Chapter that is written and that is required prior to
12 commencing development or undertaking a specific activity, project, or
13 development proposal. Development approvals include, but are not limited to,
14 zoning permits, site plan approvals, special use permits, variances, and
15 certificates of appropriateness. The term also includes all other regulatory
16 approvals required by regulations adopted pursuant to this Chapter, including
17 plat approvals, permits issued, development agreements entered into, and
18 building permits issued.

19 (14) Development regulation. – A unified development ordinance, zoning
20 regulation, subdivision regulation, erosion and sedimentation control
21 regulation, floodplain or flood damage prevention regulation, mountain ridge
22 protection regulation, stormwater control regulation, wireless
23 telecommunication facility regulation, historic preservation or landmark
24 regulation, housing code, State Building Code enforcement, or any other
25 regulation adopted pursuant to this Chapter, or a local act or charter that
26 regulates land use or development.

27 (15) Dwelling. – Any building, structure, manufactured home, or mobile home, or
28 part thereof, used and occupied for human habitation or intended to be so used,
29 and includes any outhouses and appurtenances belonging thereto or usually
30 enjoyed therewith. For the purposes of Article 12 of this Chapter, the term
31 does not include any manufactured home, mobile home, or recreational
32 vehicle, if used solely for a seasonal vacation purpose.

33 (16) Evidentiary hearing. – A hearing to gather competent, material, and
34 substantial evidence in order to make findings for a quasi-judicial decision
35 required by a development regulation adopted under this Chapter.

36 (17) Governing board. – The city council or board of county commissioners. The
37 term is interchangeable with the terms "board of aldermen" and "boards of
38 commissioners" and shall mean any governing board without regard to the
39 terminology employed in charters, local acts, other portions of the General
40 Statutes, or local customary usage.

41 (18) Landowner or owner. – The holder of the title in fee simple. Absent evidence
42 to the contrary, a local government may rely on the county tax records to
43 determine who is a landowner. The landowner may authorize a person holding
44 a valid option, lease, or contract to purchase to act as his or her agent or
45 representative for the purpose of making applications for development
46 approvals.

47 (19) Legislative decision. – The adoption, amendment, or repeal of a regulation
48 under this Chapter or an applicable local act. The term also includes the
49 decision to approve, amend, or rescind a development agreement consistent
50 with the provisions of Article 10 of this Chapter.

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

- 1 (32) Subdivision regulation. – A subdivision regulation authorized by Article 8 of
2 this Chapter.
- 3 (33) Vested right. – The right to undertake and complete the development and use
4 of property under the terms and conditions of an approval secured as specified
5 in G.S. 160D-1-8 or under common law.
- 6 (34) Zoning map amendment or rezoning. – An amendment to a zoning regulation
7 for the purpose of changing the zoning district that is applied to a specified
8 property or properties. The term also includes (i) the initial application of
9 zoning when land is added to the territorial jurisdiction of a local government
10 that has previously adopted zoning regulations and (ii) the application of an
11 overlay zoning district or a conditional zoning district. The term does not
12 include (i) the initial adoption of a zoning map by a local government, (ii) the
13 repeal of a zoning map and readoption of a new zoning map for the entire
14 planning and development regulation jurisdiction, or (iii) updating the zoning
15 map to incorporate amendments to the names of zoning districts made by
16 zoning text amendments where there are no changes in the boundaries of the
17 zoning district or land uses permitted in the district.
- 18 (35) Zoning regulation. – A zoning regulation authorized by Article 7 of this
19 Chapter.

20 **"§ 160D-1-3. Unified development ordinance.**

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

28 **"§ 160D-1-4. Development approvals run with the land.**

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

31 **"§ 160D-1-5. Maps.**

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

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

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

51 **"§ 160D-1-6. Refund of illegal fees.**

1 If a local government is found to have illegally imposed a tax, fee, or monetary contribution
2 for development or a development approval not specifically authorized by law, the local
3 government shall return the tax, fee, or monetary contribution plus interest of six percent (6%)
4 per annum to the person who made the payment or as directed by a court if the person making
5 the payment is no longer in existence.

6 **"§ 160D-1-7. Moratoria.**

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

13 (b) Hearing Required. – Except in cases of imminent and substantial threat to public
14 health or safety, before adopting a development regulation imposing a development moratorium
15 with a duration of 60 days or any shorter period, the governing board shall hold a legislative
16 hearing and shall publish a notice of the hearing in a newspaper having general circulation in the
17 area not less than seven days before the date set for the hearing. A development moratorium with
18 a duration of 61 days or longer, and any extension of a moratorium so that the total duration is
19 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-6-1.

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

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

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

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

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

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

48 (e) Limit on Renewal or Extension. – No moratorium may be subsequently renewed or
49 extended for any additional period unless the local government shall have taken all reasonable
50 and feasible steps proposed to be taken in its ordinance establishing the moratorium to address
51 the problems or conditions leading to imposition of the moratorium and unless new facts and

1 conditions warrant an extension. Any ordinance renewing or extending a development
2 moratorium must include, at the time of adoption, the findings set forth in subdivisions (1)
3 through (4) of subsection (d) of this section, including what new facts or conditions warrant the
4 extension.

5 (f) Expedited Judicial Review. – Any person aggrieved by the imposition of a
6 moratorium on development approvals required by law may apply to the General Court of Justice
7 for an order enjoining the enforcement of the moratorium. Actions brought pursuant to this
8 section shall be scheduled for expedited hearing, and subsequent proceedings in those actions
9 shall be accorded priority by the trial and appellate courts. In such actions, the local government
10 shall have the burden of showing compliance with the procedural requirements of this subsection.
11 **§ 160D-1-8. Vested rights and permit choice.**

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

20 (b) Permit Choice. – If an application made in accordance with local regulation is
21 submitted for a development approval required pursuant to this Chapter and a development
22 regulation changes between the time the application was submitted and a decision is made, the
23 applicant may choose which version of the development regulation will apply to the application.
24 If the development permit applicant chooses the version of the rule or ordinance applicable at the
25 time of the permit application, the development permit applicant shall not be required to await
26 the outcome of the amendment to the rule, map, or ordinance prior to acting on the development
27 permit. This section applies to all development approvals issued by the State and by local
28 governments. The duration of vested rights created by development approvals is as set forth in
29 subsection (d) of this section.

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

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

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

50 (2) One year – Other local development approvals. – Pursuant to
51 G.S. 160D-4-3(c), unless otherwise specified by statute or local ordinance, all

1 other local development approvals expire one year after issuance unless work
2 has substantially commenced. Expiration of a local development approval
3 shall not affect the duration of a vested right established under this section or
4 vested rights established under common law.

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

6 a. Duration. – A vested right for a site-specific vesting plan shall remain
7 vested for a period of two years. This vesting shall not be extended by
8 any amendments or modifications to a site-specific vesting plan unless
9 expressly provided by the local government. A local government may
10 provide that rights regarding a site-specific vesting plan shall be vested
11 for a period exceeding two years, but not exceeding five years, if
12 warranted by the size and phasing of development, the level of
13 investment, the need for the development, economic cycles, and
14 market conditions, or other considerations. This determination shall be
15 in the discretion of the local government and shall be made following
16 the process specified for the particular form of a site-specific vesting
17 plan involved in accordance with sub-subdivision c. of this
18 subdivision.

19 b. Relation to building permits. – A right vested as provided in this
20 subsection shall terminate at the end of the applicable vesting period
21 with respect to buildings and uses for which no valid building permit
22 applications have been filed. Upon issuance of a building permit, the
23 provisions of G.S. 160D-11-9 and G.S. 160D-11-13 shall apply,
24 except that the permit shall not expire or be revoked because of the
25 running of time while a vested right under this subsection exists.

26 c. Requirements for site-specific vesting plans. – For the purposes of this
27 section, a "site-specific vesting plan" means a plan submitted to a local
28 government pursuant to this section describing with reasonable
29 certainty the type and intensity of use for a specific parcel or parcels
30 of property. The plan may be in the form of, but not be limited to, any
31 of the following plans or approvals: a planned unit development plan,
32 a subdivision plat, a site plan, a preliminary or general development
33 plan, a special use permit, a conditional zoning, or any other
34 development approval as may be used by a local government. Unless
35 otherwise expressly provided by the local government, the plan shall
36 include the approximate boundaries of the site; significant
37 topographical and other natural features affecting development of the
38 site; the approximate location on the site of the proposed buildings,
39 structures, and other improvements; the approximate dimensions,
40 including height, of the proposed buildings and other structures; and
41 the approximate location of all existing and proposed infrastructure on
42 the site, including water, sewer, roads, and pedestrian walkways. What
43 constitutes a site-specific vesting plan shall be defined by the relevant
44 development regulation, and the development approval that triggers
45 vesting shall be so identified at the time of its approval. At a minimum,
46 the regulation shall designate a vesting point earlier than the issuance
47 of a building permit. In the event a local government fails to adopt a
48 regulation setting forth what constitutes a site-specific vesting plan,
49 any development approval shall be considered to be a site-specific
50 vesting plan. A variance shall not constitute a site-specific vesting plan
51 and approval of a site-specific vesting plan with the condition that a

1 variance be obtained shall not confer a vested right unless and until the
2 necessary variance is obtained. If a sketch plan or other document fails
3 to describe with reasonable certainty the type and intensity of use for
4 a specified parcel or parcels of property, it may not constitute a
5 site-specific vesting plan.

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

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

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

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

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

2 (1) A vested right, once established as provided for by subdivision (3) or (4) of
3 subsection (d) of this section, precludes any zoning action by a local
4 government that would change, alter, impair, prevent, diminish, or otherwise
5 delay the development or use of the property as set forth in an approved vested
6 right, except when any of the following conditions are present:

7 a. The written consent of the affected landowner.

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

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

21 d. Findings made, after notice and an evidentiary hearing, that the
22 landowner or the landowner's representative intentionally supplied
23 inaccurate information or made material misrepresentations that made
24 a difference in the approval by the local government of the vested
25 right.

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

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

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

46 (g) Miscellaneous Provisions. – A vested right obtained under this section is not a
47 personal right but shall attach to and run with the applicable property. After approval of a vested
48 right under this section, all successors to the original landowner shall be entitled to exercise such
49 rights. Nothing in this section shall preclude judicial determination, based on common law
50 principles or other statutory provisions, that a vested right exists in a particular case or that a

1 compensable taking has occurred. Except as expressly provided in this section, nothing in this
2 section shall be construed to alter the existing common law.

3 **"§ 160D-1-9. Conflicts of interest.**

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

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

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

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

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

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

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

44 **"§ 160D-1-10. Chapter construction.**

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

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

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

51 **"§ 160D-1-11. Effect on prior laws.**

1 (a) The enactment of this Chapter shall not require the readoption of any local
2 government ordinance enacted pursuant to laws that were in effect before the effective date of
3 this Chapter and are restated or revised herein. The provisions of this Chapter shall not affect any
4 act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution
5 begun or cause of action accrued as of the effective date of this Chapter. The enactment of this
6 Chapter shall not be deemed to amend the geographic area within which local government
7 development regulations adopted prior to January 1, 2019, are effective.

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

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

18 "Article 2.

19 "Planning and Development Regulation Jurisdiction.

20 "**§ 160D-2-1. Planning and development regulation jurisdiction.**

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

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

27 "**§ 160D-2-2. Municipal extraterritorial jurisdiction.**

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

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

45 (c) County Approval of City Jurisdiction. – Notwithstanding subsection (a) of this
46 section, no city may extend its extraterritorial powers into any area for which the county has
47 adopted and is enforcing county zoning and subdivision regulations. However, the city may do
48 so where the county is not exercising both of these powers, or when the city and the county have
49 agreed upon the area within which each will exercise the powers conferred by this Chapter. No
50 city may extend its extraterritorial powers beyond one mile from its corporate limits without the
51 approval of the board or boards of county commissioners with jurisdiction 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 of
6 the extension of extraterritorial jurisdiction, of the landowner's right to participate in a legislative
7 hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as
8 provided in G.S. 160D-6-1, and of the right of all residents of the area to apply to the board of
9 county commissioners to serve as a representative on the planning board and the board of
10 adjustment, as provided in G.S. 160D-3-3. The notice shall be mailed at least 30 days prior to the
11 date of the hearing. The person or persons mailing the notices shall certify to the city council that
12 the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the
13 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 whose
22 projected development will have minimal impact on the city. The boundaries specified in the
23 ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a
24 combination of these techniques. This delineation shall be maintained in the manner provided in
25 G.S. 160A-22 for the delineation of the corporate limits and shall be recorded in the office of the
26 register of deeds of each county in which any portion of the area lies.

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

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

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

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

50 (i) Process for Local Government Approval. – When a local government is granted
51 powers by this section subject to the request, approval, or agreement of another local government,

1 the request, approval, or agreement shall be evidenced by a formally adopted resolution of the
2 governing board of the local government. Any such request, approval, or agreement can be
3 rescinded upon two years' written notice to the other governing boards concerned by repealing
4 the resolution. The resolution may be modified at any time by mutual agreement of the governing
5 boards concerned.

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

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

18 **"§ 160D-2-3. Split jurisdiction.**

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

28 **"§ 160D-2-4. Pending jurisdiction.**

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

36 "Article 3.

37 "Boards and Organizational Arrangements.

38 **"§ 160D-3-1. Planning boards.**

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

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

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

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

49 (1) To prepare, review, maintain, monitor, and periodically update and
50 recommend to the governing board a comprehensive plan, and such other

1 plans as deemed appropriate, and conduct ongoing related research, data
2 collection, mapping, and analysis.

3 (2) To facilitate and coordinate citizen engagement and participation in the
4 planning process.

5 (3) To develop and recommend policies, ordinances, development regulations,
6 administrative procedures, and other means for carrying out plans in a
7 coordinated and efficient manner.

8 (4) To advise the governing board concerning the implementation of plans,
9 including, but not limited to, review and comment on all zoning text and map
10 amendments as required by G.S. 160D-6-4.

11 (5) To exercise any functions in the administration and enforcement of various
12 means for carrying out plans that the governing board may direct.

13 (6) To provide a preliminary forum for review of quasi-judicial decisions,
14 provided that no part of the forum or recommendation may be used as a basis
15 for the deciding board.

16 (7) To perform any other related duties that the governing board may direct.

17 **"§ 160D-3-2. Boards of adjustment.**

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

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

36 **"§ 160D-3-3. Historic preservation commission.**

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

49 (b) Alternative Forms. – In lieu of establishing a historic preservation commission, a local
50 government may designate as its historic preservation commission (i) a separate historic districts
51 commission or a separate historic landmarks commission established pursuant to this Chapter to

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

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

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

15 **"§ 160D-3-4. Appearance commission.**

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

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

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

35 **"§ 160D-3-5. Housing appeals board.**

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

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

42 **"§ 160D-3-6. Other advisory boards.**

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

46 **"§ 160D-3-7. Extraterritorial representation on boards.**

47 (a) Proportional Representation. – When a city elects to exercise extraterritorial powers
48 under this Chapter, it shall provide a means of proportional representation based on population
49 for residents of the extraterritorial area to be regulated. The population estimates for this
50 calculation shall be updated no less frequently than after each decennial census. Representation
51 shall be provided by appointing at least one resident of the entire extraterritorial planning and

1 development regulation area to the planning board, board of adjustment, appearance commission,
2 and the historic preservation commission if there are historic districts or designated landmarks in
3 the extraterritorial area.

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

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

23 **"§ 160D-3-8. Rules of procedure.**

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

31 **"§ 160D-3-9. Oath of office.**

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

34 **"§ 160D-3-10. Appointments to boards.**

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

38 "Article 4.

39 "Administration, Enforcement, and Appeals.

40 **"§ 160D-4-1. Application.**

41 (a) The provisions of this Article shall apply to all development regulations adopted
42 pursuant to this Chapter. Local governments may apply any of the definitions and procedures
43 authorized by this Article to any ordinance adopted under the general police power of cities and
44 counties, Article 8 of Chapter 160A of the General Statutes, and Article 6 of Chapter 153A of
45 the General Statutes, respectively, and may employ any organizational structure, board,
46 commission, or staffing arrangement authorized by this Article to any or all aspects of those
47 ordinances. The provisions of this Article also apply to any other local ordinance that
48 substantially affects land use and development.

49 (b) The provisions of this Article are supplemental to specific provisions included in
50 other Articles of this Chapter. To the extent there is a conflict between the provisions of this

1 Article and other Articles, the more specific provision shall control. This Article does not expand,
2 diminish, or alter the scope of authority for development regulations authorized by this Chapter.

3 **"§ 160D-4-2. Administrative staff.**

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

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

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

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

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

44 (d) Financial Support. – The local government may appropriate for the support of the
45 staff any funds that it deems necessary. It shall have power to fix reasonable fees for support,
46 administration, and implementation of programs authorized by this Chapter, and all such fees
47 shall be used for no other purposes. When an inspection, for which the permit holder has paid a
48 fee to the local government, is performed by a marketplace pool Code-enforcement official upon
49 request of the Insurance Commissioner under G.S. 143-151.12(9)a., the local government shall
50 promptly return to the permit holder the fee collected by the local government for such inspection.
51 This subsection applies to the following types of inspection: plumbing, electrical systems,

1 general building restrictions and regulations, heating and air-conditioning, and the general
2 construction of buildings.

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

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

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

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

24 It shall be conclusively presumed that all persons with standing to appeal have constructive
25 notice of the determination from the date a sign providing notice that a determination has been
26 made is prominently posted on the property that is the subject of the determination, provided the
27 sign remains on the property for at least 10 days. The sign shall contain the words "Zoning
28 Decision" or "Subdivision Decision" or similar language for other determinations in letters at
29 least 6 inches high and shall identify the means to contact a local government staff member for
30 information about the determination. Posting of signs is not the only form of constructive notice.
31 Any such posting shall be the responsibility of the landowner, applicant, or person who sought
32 the determination. Verification of the posting shall be provided to the staff member responsible
33 for the determination. Absent an ordinance provision to the contrary, posting of signs shall not
34 be required.

35 (c) Duration of Development Approval. – Unless a different period is specified by this
36 Chapter or other specific applicable law, or a different period is provided by a quasi-judicial
37 development approval, a development agreement, or a local ordinance, a development approval
38 issued pursuant to this Chapter shall expire one year after the date of issuance if the work
39 authorized by the development approval has not been substantially commenced. Local
40 development regulations may provide for development approvals of shorter duration for
41 temporary land uses, special events, temporary signs, and similar development. Unless provided
42 otherwise by this Chapter or other specific applicable law or a longer period is provided by local
43 ordinance, if after commencement the work or activity is discontinued for a period of 12 months
44 after commencement, the development approval shall immediately expire. The time periods set
45 out in this subsection shall be tolled during the pendency of any appeal. No work or activity
46 authorized by any development approval that has expired shall thereafter be performed until a
47 new development approval has been secured. Nothing in this subsection shall be deemed to limit
48 any vested rights secured under G.S. 160D-1-8.

49 (d) Changes. – After a development approval has been issued, no deviations from the
50 terms of the application or the development approval shall be made until written approval of
51 proposed changes or deviations has been obtained. A local government may define by ordinance

1 minor modifications to development approvals that can be exempted or administratively
2 approved. The local government shall follow the same development review and approval process
3 required for issuance of the development approval in the review and approval of any major
4 modification of that approval.

5 (e) Inspections. – Administrative staff may inspect work undertaken pursuant to a
6 development approval to assure that the work is being done in accordance with applicable State
7 and local laws and of the terms of the approval. In exercising this power, staff are authorized to
8 enter any premises within the jurisdiction of the local government at all reasonable hours for the
9 purposes of inspection or other enforcement action, upon presentation of proper credentials;
10 provided, however, that the appropriate consent has been given for inspection of areas not open
11 to the public or that an appropriate inspection warrant has been secured.

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

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

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

37 **"§ 160D-4-4. Enforcement.**

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

1 (b) Stop Work Orders. – Whenever any work or activity subject to regulation pursuant to
2 this Chapter or other applicable local development regulation or any State law delegated to the
3 local government for enforcement purposes in lieu of the State is undertaken in substantial
4 violation of any State or local law, or in a manner that endangers life or property, staff may order
5 the specific part of the work or activity that is in violation or presents such a hazard to be
6 immediately stopped. The order shall be in writing, directed to the person doing the work or
7 activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the
8 conditions under which the work or activity may be resumed. A copy of the order shall be
9 delivered to the holder of the development approval and to the owner of the property involved
10 (if that person is not the holder of the development approval) by personal delivery, electronic
11 delivery, or first-class mail. The person or persons delivering the stop work order shall certify to
12 the local government that the order was delivered and that certificate shall be deemed conclusive
13 in the absence of fraud. Except as provided by G.S. 160D-11-12 and G.S. 160D-12-8, a stop
14 work order may be appealed pursuant to G.S. 160D-4-5. No further work or activity shall take
15 place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work
16 order shall constitute a Class 1 misdemeanor.

17 (c) Remedies. –

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

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

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

1 site, area, or object. Such remedies shall be in addition to any others authorized
2 by this Chapter for violation of an ordinance.

3 **"§ 160D-4-5. Appeals of administrative decisions.**

4 (a) Appeals. – Except as provided in subsection (c) of this section, appeals of decisions
5 made by the staff under this Chapter shall be made to the board of adjustment unless a different
6 board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this
7 Chapter. If this function of the board of adjustment is assigned to any other board pursuant to
8 G.S. 160D-3-2(b), that board shall comply with all of the procedures and processes applicable to
9 a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and
10 sedimentation control regulation, a stormwater control regulation, or a provision of the housing
11 code shall not be made to the board of adjustment unless required by a local government
12 ordinance or code provision.

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

17 (c) Judicial Challenge. – A person with standing may bring a separate and original civil
18 action to challenge the constitutionality of an ordinance or development regulation, or whether
19 the ordinance or development regulation is ultra vires, preempted, or otherwise in excess of
20 statutory authority, without filing an appeal under subsection (a) of this section.

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

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

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

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

50 **"§ 160D-4-6. Quasi-judicial procedure.**

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

4 (b) Notice of Hearing. – Notice of evidentiary hearings conducted pursuant to this
5 Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject
6 of the hearing; to the owner of the property that is the subject of the hearing if the owner did not
7 initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the
8 subject of the hearing; and to any other persons entitled to receive notice as provided by the local
9 development regulation. In the absence of evidence to the contrary, the local government may
10 rely on the county tax listing to determine owners of property entitled to mailed notice. The notice
11 must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the
12 hearing. Within that same time period, the local government shall also prominently post a notice
13 of the hearing on the site that is the subject of the hearing or on an adjacent street or highway
14 right-of-way. The board may continue an evidentiary hearing that has been convened without
15 further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board
16 is not then present, the hearing shall be continued until the next regular board meeting without
17 further advertisement.

18 (c) Administrative Materials. – The administrator or staff to the board shall transmit to
19 the board all applications, reports, and written materials relevant to the matter being considered.
20 The administrative materials may be distributed to the members of the board prior to the hearing
21 if at the same time they are distributed to the board a copy is also provided to the appellant or
22 applicant and to the landowner if that person is not the appellant or applicant. The administrative
23 materials shall become a part of the hearing record. The administrative materials may be provided
24 in written or electronic form. Objections to inclusion or exclusion of administrative materials
25 may be made before or during the hearing. Rulings on unresolved objections shall be made by
26 the board at the hearing.

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

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

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

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

46 (g) Subpoenas. – The board making a quasi-judicial decision under this Chapter through
47 the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel
48 the production of evidence. To request issuance of a subpoena, the applicant, the local
49 government, and any person with standing under G.S. 160D-14-2(c) may make a written request
50 to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The
51 chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature

1 and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena.
2 Decisions regarding subpoenas made by the chair may be immediately appealed to the full board.
3 If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the
4 party seeking the subpoena may apply to the General Court of Justice for an order requiring that
5 its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to
6 all proper parties.

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

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

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

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

35 "Article 5.

36 "Planning.

37 **"§ 160D-5-1. Plans.**

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

42 A comprehensive plan is intended to guide coordinated, efficient, and orderly development
43 within the planning and development regulation jurisdiction based on an analysis of present and
44 future needs. Planning analysis may address inventories of existing conditions and assess future
45 trends regarding demographics and economic, environmental, and cultural factors. The planning
46 process shall include opportunities for citizen engagement in plan preparation and adoption. In
47 addition to a comprehensive plan, a local government may prepare and adopt such other plans as
48 deemed appropriate. This may include, but is not limited to, land-use plans, small area plans,
49 neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation
50 and open space plans. If adopted pursuant to the process set forth in this section, such plans shall
51 be considered in review of proposed zoning amendments.

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

- 3 (1) Issues and opportunities facing the local government, including consideration
4 of trends, values expressed by citizens, community vision, and guiding
5 principles for growth and development.
6 (2) The pattern of desired growth and development and civic design, including
7 the location, distribution, and characteristics of future land uses, urban form,
8 utilities, and transportation networks.
9 (3) Employment opportunities, economic development, and community
10 development.
11 (4) Acceptable levels of public services and infrastructure to support
12 development, including water, waste disposal, utilities, emergency services,
13 transportation, education, recreation, community facilities, and other public
14 services, including plans and policies for provision of and financing for public
15 infrastructure.
16 (5) Housing with a range of types and affordability to accommodate persons and
17 households of all types and income levels.
18 (6) Recreation and open spaces.
19 (7) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable
20 lands.
21 (8) Protection of the environment and natural resources, including agricultural
22 resources, mineral resources, and water and air quality.
23 (9) Protection of significant architectural, scenic, cultural, historical, or
24 archaeological resources.
25 (10) Analysis and evaluation of implementation measures, including regulations,
26 public investments, and educational programs.

27 (c) Adoption and Effect of Plans. – Plans shall be adopted by the governing board with
28 the advice and consultation of the planning board. Adoption and amendment of a comprehensive
29 plan is a legislative decision and shall follow the process mandated for zoning text amendments
30 set by G.S. 160D-6-1. Plans adopted under this Chapter may be undertaken and adopted as part
31 of or in conjunction with plans required under other statutes, including, but not limited to, the
32 plans required by G.S. 113A-110. Plans adopted under this Chapter shall be advisory in nature
33 without independent regulatory effect. Plans adopted under this Chapter do not expand, diminish,
34 or alter the scope of authority for development regulations adopted under this Chapter. Plans
35 adopted under this Chapter shall be considered by the planning board and governing board when
36 considering proposed amendments to zoning regulations as required by G.S. 160D-6-4 and
37 G.S. 160D-6-5.

38 If a plan is deemed amended by G.S. 160D-6-5 by virtue of adoption of a zoning amendment
39 that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan
40 is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not
41 be effective until that review and approval is completed.

42 **"§ 160D-5-2. Grants, contracts, and technical assistance.**

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

50 (b) Contracts. – Any local government may enter into and carry out contracts with any
51 other city, county, or regional council, planning agency, or private consultant under which it

1 agrees to furnish technical planning assistance to the other local government or planning agency.
2 Any local government may enter into and carry out contracts with any other city, county, or
3 regional council or planning agency under which it agrees to pay the other local government for
4 technical planning assistance.

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

9 **"§ 160D-5-3. Coordination of planning.**

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

13 "Article 6.

14 "Development Regulation.

15 **"§ 160D-6-1. Procedure for adopting, amending, or repealing development regulations.**

16 (a) Hearing with Published Notice. – Before adopting, amending, or repealing any
17 ordinance or development regulation authorized by this Chapter, the governing board shall hold
18 a legislative hearing. A notice of the hearing shall be given once a week for two successive
19 calendar weeks in a newspaper having general circulation in the area. The notice shall be
20 published the first time not less than 10 days nor more than 25 days before the date scheduled for
21 the hearing. In computing such period, the day of publication is not to be included but the day of
22 the hearing shall be included.

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

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

34 **"§ 160D-6-2. Notice of hearing on proposed zoning map amendments.**

35 (a) Mailed Notice. – An ordinance shall provide for the manner in which zoning
36 regulations and the boundaries of zoning districts shall be determined, established, and enforced,
37 and from time to time amended, supplemented, or changed, in accordance with the provisions of
38 this Chapter. The owners of affected parcels of land and the owners of all parcels of land abutting
39 that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment
40 by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the
41 purpose of this section, properties are "abutting" even if separated by a street, railroad, or other
42 transportation corridor. This notice must be deposited in the mail at least 10 but not more than
43 25 days prior to the date of the hearing. If the zoning map amendment is being proposed in
44 conjunction with an expansion of municipal extraterritorial planning and development regulation
45 jurisdiction under G.S. 160D-2-2, a single hearing on the zoning map amendment and the
46 boundary amendment may be held. In this instance, the initial notice of the zoning map
47 amendment hearing may be combined with the boundary hearing notice and the combined
48 hearing notice mailed at least 30 days prior to the hearing.

49 (b) Optional Notice for Large-Scale Zoning Map Amendments. – The first-class mail
50 notice required under subsection (a) of this section shall not be required if the zoning map
51 amendment proposes to change the zoning designation of more than 50 properties, owned by at

1 least 50 different property owners, and the local government elects to use the expanded published
2 notice provided for in this subsection. In this instance, a local government may elect to make the
3 mailed notice provided for in subsection (a) of this section or, as an alternative, elect to publish
4 notice of the hearing as required by G.S. 160D-6-1, provided that each advertisement shall not
5 be less than one-half of a newspaper page in size. The advertisement shall only be effective for
6 property owners who reside in the area of general circulation of the newspaper that publishes the
7 notice. Property owners who reside outside of the newspaper circulation area, according to the
8 address listed on the most recent property tax listing for the affected property, shall be notified
9 according to the provisions of subsection (a) of this section.

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

16 (d) Actual Notice. – Except for a government-initiated zoning map amendment, when an
17 application is filed to request a zoning map amendment and that application is not made by the
18 landowner or authorized agent, the applicant shall certify to the local government that the owner
19 of the parcel of land as shown on the county tax listing has received actual notice of the proposed
20 amendment and a copy of the notice of the hearing. Actual notice shall be provided in any manner
21 permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal
22 delivery, certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §
23 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). The person
24 or persons required to provide notice shall certify to the local government that actual notice has
25 been provided, and such certificate shall be deemed conclusive in the absence of fraud.

26 (e) Optional Communication Requirements. – When a zoning map amendment is
27 proposed, a zoning regulation may require communication by the person proposing the map
28 amendment to neighboring property owners and residents and may require the person proposing
29 the zoning map amendment to report on any communication with neighboring property owners
30 and residents.

31 **"§ 160D-6-3. Citizen comments.**

32 Subject to the limitations of this Chapter, zoning regulations may from time to time be
33 amended, supplemented, changed, modified, or repealed. If any resident or property owner in the
34 local government submits a written statement regarding a proposed amendment, modification, or
35 repeal to a zoning regulation, including a text or map amendment, to the clerk to the board at
36 least two business days prior to the proposed vote on such change, the clerk to the board shall
37 deliver such written statement to the governing board. If the proposed change is the subject of a
38 quasi-judicial proceeding under G.S. 160D-7-5 or any other statute, the clerk shall provide only
39 the names and addresses of the individuals providing written comment, and the provision of such
40 names and addresses to all members of the board shall not disqualify any member of the board
41 from voting.

42 **"§ 160D-6-4. Planning board review and comment.**

43 (a) Initial Zoning. – In order to exercise zoning powers conferred by this Chapter for the
44 first time, a local government shall create or designate a planning board under the provisions of
45 this Article or of a special act of the General Assembly. The planning board shall prepare or shall
46 review and comment upon a proposed zoning regulation, including the full text of such regulation
47 and maps showing proposed district boundaries. The planning board may hold public meetings
48 and legislative hearings in the course of preparing the regulation. Upon completion, the planning
49 board shall make a written recommendation regarding adoption of the regulation to the governing
50 board. The governing board shall not hold its required hearing or take action until it has received
51 a recommendation regarding the regulation from the planning board. Following its required

1 hearing, the governing board may refer the regulation back to the planning board for any further
2 recommendations that the board may wish to make prior to final action by the governing board
3 in adopting, modifying and adopting, or rejecting the regulation.

4 (b) Zoning Amendments. – Subsequent to initial adoption of a zoning regulation, all
5 proposed amendments to the zoning regulation or zoning map shall be submitted to the planning
6 board for review and comment. If no written report is received from the planning board within
7 30 days of referral of the amendment to that board, the governing board may act on the
8 amendment without the planning board report. The governing board is not bound by the
9 recommendations, if any, of the planning board.

10 (c) Review of Other Ordinances and Actions. – Any development regulation other than
11 a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to the
12 planning board for review and comment. Any development regulation other than a zoning
13 regulation may provide that future proposed amendments of that ordinance be submitted to the
14 planning board for review and comment. Any other action proposed to be taken pursuant to this
15 Chapter may be referred to the planning board for review and comment.

16 (d) Plan Consistency. – When conducting a review of proposed zoning text or map
17 amendments pursuant to this section, the planning board shall advise and comment on whether
18 the proposed action is consistent with any comprehensive plan that has been adopted and any
19 other officially adopted plan that is applicable. The planning board shall provide a written
20 recommendation to the governing board that addresses plan consistency and other matters as
21 deemed appropriate by the planning board, but a comment by the planning board that a proposed
22 amendment is inconsistent with the comprehensive plan shall not preclude consideration or
23 approval of the proposed amendment by the governing board. If a zoning map amendment
24 qualifies as a "large-scale rezoning" under G.S. 160D-6-2(b), the planning board statement
25 describing plan consistency may address the overall rezoning and describe how the analysis and
26 policies in the relevant adopted plans were considered in the recommendation made.

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

31 **"§ 160D-6-5. Governing board statement.**

32 (a) Plan Consistency. – When adopting or rejecting any zoning text or map amendment,
33 the governing board shall approve a brief statement describing whether its action is consistent or
34 inconsistent with an adopted comprehensive plan. The requirement for a plan consistency
35 statement may also be met by a clear indication in the minutes of the governing board that at the
36 time of action on the amendment the governing board was aware of and considered the planning
37 board's recommendations and any relevant portions of an adopted comprehensive plan. If a
38 zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan,
39 the zoning amendment shall have the effect of also amending any future land-use map in the
40 approved plan, and no additional request or application for a plan amendment shall be required.
41 A plan amendment and a zoning amendment may be considered concurrently. The plan
42 consistency statement is not subject to judicial review. If a zoning map amendment qualifies as
43 a "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement describing plan
44 consistency may address the overall rezoning and describe how the analysis and policies in the
45 relevant adopted plans were considered in the action taken.

46 (b) Additional Reasonableness Statement for Rezoning. – When adopting or rejecting
47 any petition for a zoning map amendment, a statement analyzing the reasonableness of the
48 proposed rezoning shall be approved by the governing board. This statement of reasonableness
49 may consider, among other factors, (i) the size, physical conditions, and other attributes of the
50 area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors,
51 and the surrounding community; (iii) the relationship between the current actual and permissible

1 development on the tract and adjoining areas and the development that would be permissible
2 under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any
3 changed conditions warranting the amendment. If a zoning map amendment qualifies as a
4 "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement on reasonableness
5 may address the overall rezoning.

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

8 "Article 7.

9 "Zoning Regulation.

10 **"§ 160D-7-1. Purposes.**

11 Zoning regulations shall be made in accordance with a comprehensive plan and shall be
12 designed to promote the public health, safety, and general welfare. To that end, the regulations
13 may address, among other things, the following public purposes: to provide adequate light and
14 air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen
15 congestion in the streets; to secure safety from fire, panic, and dangers; to facilitate the efficient
16 and adequate provision of transportation, water, sewerage, schools, parks, and other public
17 requirements; and to promote the health, safety, morals, or general welfare of the community.
18 The regulations shall be made with reasonable consideration, among other things, as to the
19 character of the district and its peculiar suitability for particular uses and with a view to
20 conserving the value of buildings and encouraging the most appropriate use of land throughout
21 the local government's planning and development regulation jurisdiction. The regulations may
22 not include, as a basis for denying a zoning or rezoning request from a school, the level of service
23 of a road facility or facilities abutting the school or proximately located to the school.

24 **"§ 160D-7-2. Grant of power.**

25 (a) **A Local Government May Adopt Zoning Regulations.** – A zoning regulation may
26 regulate and restrict the height, number of stories, and size of buildings and other structures; the
27 percentage of lots that may be occupied; the size of yards, courts, and other open spaces; the
28 density of population; the location and use of buildings, structures, and land. A local government
29 may regulate development, including floating homes, over estuarine waters and over lands
30 covered by navigable waters owned by the State pursuant to G.S. 146-12. A zoning regulation
31 shall provide density credits or severable development rights for dedicated rights-of-way
32 pursuant to G.S. 136-66.10 or G.S. 136-66.11. Where appropriate, a zoning regulation may
33 include requirements that street and utility rights-of-way be dedicated to the public, that provision
34 be made of recreational space and facilities, and that performance guarantees be provided, all to
35 the same extent and with the same limitations as provided for in G.S. 160D-8-4.

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

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

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

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

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

20 **"§ 160D-7-3. Zoning districts.**

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

- 26 (1) Conventional districts, in which a variety of uses are allowed as permitted uses
27 or uses by right and that may also include uses permitted only with a special
28 use permit.
- 29 (2) Conditional districts, in which site plans or individualized development
30 conditions are imposed.
- 31 (3) Form-based districts, or development form controls, that address the physical
32 form, mass, and density of structures, public spaces, and streetscapes.
- 33 (4) Overlay districts, in which different requirements are imposed on certain
34 properties within one or more underlying conventional, conditional, or
35 form-based districts.
- 36 (5) Districts allowed by charter.

37 (b) Conditional Districts. – Property may be placed in a conditional district only in
38 response to a petition by all owners of the property to be included. Specific conditions may be
39 proposed by the petitioner or the local government or its agencies, but only those conditions
40 mutually approved by the local government and the petitioner may be incorporated into the
41 zoning regulations. Conditions and site-specific standards imposed in a conditional district shall
42 be limited to those that address the conformance of the development and use of the site to local
43 government ordinances, plans adopted pursuant to G.S. 160D-5-1, or the impacts reasonably
44 expected to be generated by the development or use of the site. The zoning regulation may
45 provide that defined minor modifications in conditional district standards that do not involve a
46 change in uses permitted or the density of overall development permitted may be reviewed and
47 approved administratively. Any other modification of the conditions and standards in a
48 conditional district shall follow the same process for approval as are applicable to zoning map
49 amendments. If multiple parcels of land are subject to a conditional zoning, the owners of
50 individual parcels may apply for modification of the conditions so long as the modification would

1 not result in other properties failing to meet the terms of the conditions. Any modifications
2 approved shall only be applicable to those properties whose owners petition for the modification.

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

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

9 **"§ 160D-7-4. Incentives.**

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

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

- 23 (1) Leadership in Energy and Environmental Design (LEED) certification or
24 higher rating under certification standards adopted by the U.S. Green Building
25 Council.
26 (2) A One Globe or higher rating under the Green Globes program standards
27 adopted by the Green Building Initiative.
28 (3) A certification or rating by another nationally recognized certification or
29 rating system that is equivalent or greater than those listed in subdivisions (1)
30 and (2) of this subsection.

31 **"§ 160D-7-5. Quasi-judicial zoning decisions.**

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

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

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

50 The regulation may provide that defined minor modifications to special use permits that do
51 not involve a change in uses permitted or the density of overall development permitted may be

1 reviewed and approved administratively. Any other modification or revocation of a special use
2 permit shall follow the same process for approval as is applicable to the approval of a special use
3 permit. If multiple parcels of land are subject to a special use permit, the owners of individual
4 parcels may apply for permit modification so long as the modification would not result in other
5 properties failing to meet the terms of the special use permit or regulations. Any modifications
6 approved shall only be applicable to those properties whose owners apply for the modification.
7 The regulation may require that special use permits be recorded with the register of deeds.

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

- 11 (1) Unnecessary hardship would result from the strict application of the
12 regulation. It shall not be necessary to demonstrate that, in the absence of the
13 variance, no reasonable use can be made of the property.
- 14 (2) The hardship results from conditions that are peculiar to the property, such as
15 location, size, or topography. Hardships resulting from personal
16 circumstances, as well as hardships resulting from conditions that are common
17 to the neighborhood or the general public, may not be the basis for granting a
18 variance. A variance may be granted when necessary and appropriate to make
19 a reasonable accommodation under the Federal Fair Housing Act for a person
20 with a disability.
- 21 (3) The hardship did not result from actions taken by the applicant or the property
22 owner. The act of purchasing property with knowledge that circumstances
23 exist that may justify the granting of a variance shall not be regarded as a
24 self-created hardship.
- 25 (4) The requested variance is consistent with the spirit, purpose, and intent of the
26 regulation, such that public safety is secured and substantial justice is
27 achieved.

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

32 **"§ 160D-7-6. Zoning conflicts with other development standards.**

33 (a) When regulations made under authority of this Article require a greater width or size
34 of yards or courts, or require a lower height of a building or fewer number of stories, or require
35 a greater percentage of a lot to be left unoccupied, or impose other higher standards than are
36 required in any other statute or local ordinance or regulation, the regulations made under
37 authority of this Article shall govern. When the provisions of any other statute or local ordinance
38 or regulation require a greater width or size of yards or courts, or require a lower height of a
39 building or a fewer number of stories, or require a greater percentage of a lot to be left
40 unoccupied, or impose other higher standards than are required by the regulations made under
41 authority of this Article, the provisions of that statute or local ordinance or regulation shall
42 govern.

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

46 "Article 8.

47 "Subdivision Regulation.

48 **"§ 160D-8-1. Authority.**

49 A local government may by ordinance regulate the subdivision of land within its planning
50 and development regulation jurisdiction. In addition to final plat approval, the regulation may
51 include provisions for review and approval of sketch plans and preliminary plats. The regulation

1 may provide for different review procedures for different classes of subdivisions. Decisions on
2 approval or denial of preliminary or final plats may be made only on the basis of standards
3 explicitly set forth in the subdivision or unified development ordinance.

4 **"§ 160D-8-2. Applicability.**

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

- 11 (1) The combination or recombination of portions of previously subdivided and
12 recorded lots where the total number of lots is not increased and the resultant
13 lots are equal to or exceed the standards of the local government as shown in
14 its subdivision regulations.
- 15 (2) The division of land into parcels greater than 10 acres where no street
16 right-of-way dedication is involved.
- 17 (3) The public acquisition by purchase of strips of land for the widening or
18 opening of streets or for public transportation system corridors.
- 19 (4) The division of a tract in single ownership whose entire area is no greater than
20 2 acres into not more than three lots, where no street right-of-way dedication
21 is involved and where the resultant lots are equal to or exceed the standards of
22 the local government, as shown in its subdivision regulations.
- 23 (5) The division of a tract into parcels in accordance with the terms of a probated
24 will or in accordance with intestate succession under Chapter 29 of the
25 General Statutes.

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

28 (c) A local government may require only a plat for recordation for the division of a tract
29 or parcel of land in single ownership if all of the following criteria are met:

- 30 (1) The tract or parcel to be divided is not exempted under subdivision (2) of
31 subsection (a) of this section.
- 32 (2) No part of the tract or parcel to be divided has been divided under this
33 subsection in the 10 years prior to division.
- 34 (3) The entire area of the tract or parcel to be divided is greater than 5 acres.
- 35 (4) After division, no more than three lots result from the division.
- 36 (5) After division, all resultant lots comply with all of the following:
 - 37 a. All lot dimension size requirements of the applicable land-use
38 regulations, if any.
 - 39 b. The use of the lots is in conformity with the applicable zoning
40 requirements, if any.
 - 41 c. A permanent means of ingress and egress is recorded for each lot.

42 **"§ 160D-8-3. Review process, filing, and recording of subdivision plats.**

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

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

- 49 (1) The district highway engineer as to proposed State streets, State highways,
50 and related drainage systems.

- 1 (2) The county health director or local public utility, as appropriate, as to
2 proposed water or sewerage systems.
- 3 (3) Any other agency or official designated by the governing board.
- 4 (c) The subdivision regulation may provide that final decisions on preliminary plats and
5 final plats are to be made by any of the following:
- 6 (1) The governing board.
- 7 (2) The governing board on recommendation of a designated body.
- 8 (3) A designated planning board, technical review committee of local government
9 staff members, or other designated body or staff person.

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

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

24 **"§ 160D-8-4. Contents and requirements of regulation.**

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

31 (b) Plats. – The regulation may require a plat be prepared, approved, and recorded
32 pursuant to the provisions of the regulation whenever any subdivision of land takes place. The
33 regulation may include requirements that plats show sufficient data to determine readily and
34 reproduce accurately on the ground the location, bearing, and length of every street and alley
35 line, lot line, easement boundary line, and other property boundaries, including the radius and
36 other data for curved property lines, to an appropriate accuracy and in conformance with good
37 surveying practice.

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

41 The regulation may provide that in lieu of required street construction, a developer be
42 required to provide funds for city use for the construction of roads to serve the occupants,
43 residents, or invitees of the subdivision or development, and these funds may be used for roads
44 which serve more than one subdivision or development within the area. All funds received by
45 the city pursuant to this subsection shall be used only for development of roads, including design,
46 land acquisition, and construction. However, a city may undertake these activities in conjunction
47 with the Department of Transportation under an agreement between the city and the Department
48 of Transportation. Any formula adopted to determine the amount of funds the developer is to pay
49 in lieu of required street construction shall be based on the trips generated from the subdivision
50 or development. The regulation may require a combination of partial payment of funds and partial

1 dedication of constructed streets when the governing board of the city determines that a
2 combination is in the best interests of the citizens of the area to be served.

3 (d) Recreation Areas and Open Space. – The regulation may provide for the dedication
4 or reservation of recreation areas serving residents of the immediate neighborhood within the
5 subdivision or, alternatively, for payment of funds to be used to acquire or develop recreation
6 areas serving residents of the development or subdivision or more than one subdivision or
7 development within the immediate area. All funds received by municipalities pursuant to this
8 subsection shall be used only for the acquisition or development of recreation, park, or open
9 space sites. All funds received by counties pursuant to this subsection shall be used only for the
10 acquisition of recreation, park, or open space sites. Any formula enacted to determine the amount
11 of funds that are to be provided under this subsection shall be based on the value of the
12 development or subdivision for property tax purposes. The regulation may allow a combination
13 or partial payment of funds and partial dedication of land when the governing board determines
14 that this combination is in the best interests of the citizens of the area to be served.

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

18 (f) School Sites. – The regulation may provide for the reservation of school sites in
19 accordance with plans approved by the governing board. In order for this authorization to become
20 effective, before approving such plans, the governing board and the board of education with
21 jurisdiction over the area shall jointly determine the location and size of any school sites to be
22 reserved. Whenever a subdivision is submitted for approval that includes part or all of a school
23 site to be reserved under the plan, the governing board shall immediately notify the board of
24 education and the board of education shall promptly decide whether it still wishes the site to be
25 reserved. If the board of education does not wish to reserve the site, it shall so notify the
26 governing board and no site shall be reserved. If the board of education does wish to reserve the
27 site, the subdivision or site plan shall not be approved without such reservation. The board of
28 education shall then have 18 months beginning on the date of final approval of the subdivision
29 or site plan within which to acquire the site by purchase or by initiating condemnation
30 proceedings. If the board of education has not purchased or begun proceedings to condemn the
31 site within 18 months, the landowner may treat the land as freed of the reservation.

32 (g) Performance Guarantees. – To assure compliance with these and other development
33 regulation requirements, the regulation may provide for performance guarantees to assure
34 successful completion of required improvements at the time the plat is recorded as provided in
35 subsection (b) of this section. For any specific development, the type of performance guarantee
36 shall be at the election of the person required to give the performance guarantee.

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

39 (1) The term "performance guarantee" shall mean any of the following forms of
40 guarantee:

41 a. Surety bond issued by any company authorized to do business in this
42 State.

43 b. Letter of credit issued by any financial institution licensed to do
44 business in this State.

45 c. Other form of guarantee that provides equivalent security to a surety
46 bond or letter of credit.

47 (2) The performance guarantee shall be returned or released, as appropriate, in a
48 timely manner upon the acknowledgement by the local government that the
49 improvements for which the performance guarantee is being required are
50 complete. If the improvements are not complete and the current performance
51 guarantee is expiring, the performance guarantee shall be extended, or a new

1 performance guarantee issued, for an additional period until such required
2 improvements are complete. A developer shall demonstrate reasonable,
3 good-faith progress toward completion of the required improvements that are
4 the subject of the performance guarantee or any extension. The form of any
5 extension shall remain at the election of the developer.

6 (3) The amount of the performance guarantee shall not exceed one hundred
7 twenty-five percent (125%) of the reasonably estimated cost of completion at
8 the time the performance guarantee is issued. Any extension of the
9 performance guarantee necessary to complete required improvements shall
10 not exceed one hundred twenty-five percent (125%) of the reasonably
11 estimated cost of completion of the remaining incomplete improvements still
12 outstanding at the time the extension is obtained.

13 (4) The performance guarantee shall only be used for completion of the required
14 improvements and not for repairs or maintenance after completion.

15 (5) No person shall have or may claim any rights under or to any performance
16 guarantee provided pursuant to this subsection or in the proceeds of any such
17 performance guarantee other than the following:

18 a. The local government to whom such performance guarantee is
19 provided.

20 b. The developer at whose request or for whose benefit such performance
21 guarantee is given.

22 c. The person or entity issuing or providing such performance guarantee
23 at the request of or for the benefit of the developer.

24 **§ 160D-8-5. Notice of new subdivision fees and fee increases; public comment period.**

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

31 (1) Notice of the meeting in a prominent location on a Web site managed or
32 maintained by the local government.

33 (2) Notice of the meeting in a prominent physical location, including, but not
34 limited to, any government building, library, or courthouse within the
35 planning and development regulation jurisdiction of the local government.

36 (3) Notice of the meeting by electronic mail or other reasonable means to a list of
37 interested parties that is created by the local government for the purpose of
38 notification as required by this section.

39 If a city does not maintain its own Web site, it may employ the notice option provided by
40 subdivision (1) of this subsection by submitting a request to a county or counties in which the
41 city is located to post such notice in a prominent location on a Web site that is maintained by the
42 county or counties. Any city that elects to provide such notice shall make its request to the county
43 or counties at least 15 days prior to the date of the first meeting where the imposition of or
44 increase in the fees or charges is on the agenda for consideration.

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

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

50 **§ 160D-8-6. Effect of plat approval on dedications.**

1 The approval of a plat shall not be deemed to constitute the acceptance by the local
2 government or public of the dedication of any street or other ground, public utility line, or other
3 public facility shown on the plat. However, any governing board may by resolution accept any
4 dedication made to the public of lands or facilities for streets, parks, public utility lines, or other
5 public purposes, when the lands or facilities are located within its planning and development
6 regulation jurisdiction. Acceptance of dedication of lands or facilities located within the planning
7 and development regulation jurisdiction but outside the corporate limits of a city shall not place
8 on the city any duty to open, operate, repair, or maintain any street, utility line, or other land or
9 facility, and a city shall in no event be held to answer in any civil action or proceeding for failure
10 to open, repair, or maintain any street located outside its corporate limits. Unless a city, county,
11 or other public entity operating a water system shall have agreed to begin operation and
12 maintenance of the water system or water system facilities within one year of the time of issuance
13 of a certificate of occupancy for the first unit of housing in the subdivision, a city or county shall
14 not, as part of its subdivision regulation applied to facilities or land outside the corporate limits
15 of a city, require dedication of water systems or facilities as a condition for subdivision approval.
16 **"§ 160D-8-7. Penalties for transferring lots in unapproved subdivisions.**

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

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

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

39 (2) Plainly and conspicuously notifies the prospective buyer or lessee that a final
40 subdivision plat has not been approved or recorded at the time of the contract,
41 that no governmental body will incur any obligation to the prospective buyer
42 or lessee with respect to the approval of the final subdivision plat, that changes
43 between the preliminary and final plats are possible, and that the contract or
44 lease may be terminated without breach by the buyer or lessee if the final
45 recorded plat differs in any material respect from the preliminary plat.

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

50 (4) Provides that if the approved and recorded final plat differs in any material
51 respect from the preliminary plat referred to in the contract, the buyer or lessee

1 may not be required by the seller or lessor to close any earlier than 15 days
2 after the delivery of the final recorded plat, during which 15-day period the
3 buyer or lessee may terminate the contract without breach or any further
4 obligation and may receive a refund of all earnest money or prepaid purchase
5 price.

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

15 **"§ 160D-8-8. Appeals of decisions on subdivision plats.**

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

17 "Article 9.

18 "Regulation of Particular Uses and Areas.

19 "Part 1. Particular Land Uses.

20 **"§ 160D-9-1. Regulation of particular uses and areas.**

21 A local government may regulate the uses and areas set forth in this Article in zoning
22 regulations pursuant to Article 7 of this Chapter, a unified development ordinance, or in separate
23 development regulations adopted under this Article. This shall not be deemed to expand,
24 diminish, or alter the scope of authority granted pursuant to those Articles. In all instances, the
25 substance of the local government regulation shall be consistent with the provisions in this
26 Article. The provisions of this Chapter apply to any regulation adopted pursuant to this Article
27 that substantially affects land use and development.

28 **"§ 160D-9-2. Adult businesses.**

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

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

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

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

48 (2) Regulations on operation of sexually oriented businesses, such as limits on
49 hours of operation, open booth requirements, limitations on exterior
50 advertising and noise, age of patrons and employees, required separation of

1 patrons and performers, clothing restrictions for masseuses, and clothing
2 restrictions for servers of alcoholic beverages.

3 (3) Clothing restrictions for entertainers.

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

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

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

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

23 **"§ 160D-9-3. Agricultural uses.**

24 (a) Bona Fide Farming Exempt From County Zoning. – County zoning regulations may
25 not affect property used for bona fide farm purposes; provided, however, that this section does
26 not limit zoning regulation with respect to the use of farm property for nonfarm purposes. Except
27 as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under
28 G.S. 106-743.2, bona fide farm purposes include the production and activities relating or
29 incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants,
30 dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1.
31 Activities incident to the farm include existing or new residences constructed to the applicable
32 residential building code situated on the farm occupied by the owner, lessee, or operator of the
33 farm and other buildings or structures sheltering or supporting the farm use and operation. For
34 purposes of this section, "when performed on the farm" in G.S. 106-581.1(6) shall include the
35 farm within the jurisdiction of the county and any other farm owned or leased to or from others
36 by the bona fide farm operator, no matter where located. For purposes of this section, the
37 production of a nonfarm product that the Department of Agriculture and Consumer Services
38 recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject
39 to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of
40 determining whether a property is being used for bona fide farm purposes, any of the following
41 shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

42 (1) A farm sales tax exemption certificate issued by the Department of Revenue.

43 (2) A copy of the property tax listing showing that the property is eligible for
44 participation in the present-use value program pursuant to G.S. 105-277.3.

45 (3) A copy of the farm owner's or operator's Schedule F from the owner's or
46 operator's most recent federal income tax return.

47 (4) A forest management plan.

48 A building or structure that is used for agritourism is a bona fide farm purpose if the building
49 or structure is located on a property that (i) is owned by a person who holds a qualifying farm
50 sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a)
51 or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to

1 maintain the requirements of this subsection for a period of three years after the date the building
2 or structure was originally classified as a bona fide farm purpose pursuant to this subsection shall
3 subject the building or structure to applicable zoning and development regulation ordinances
4 adopted by a county pursuant to subsection (a) of this section in effect on the date the property
5 no longer meets the requirements of this subsection. For purposes of this section, "agritourism"
6 means any activity carried out on a farm or ranch that allows members of the general public, for
7 recreational, entertainment, or educational purposes, to view or enjoy rural activities, including
8 farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and
9 attractions. A building or structure used for agritourism includes any building or structure used
10 for public or private events, including, but not limited to, weddings, receptions, meetings,
11 demonstrations of farm activities, meals, and other events that are taking place on the farm
12 because of its farm or rural setting.

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

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

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

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

43 **"§ 160D-9-4. Airport zoning.**

44 Any local government may enact and enforce airport zoning regulations pursuant to this
45 Chapter or as authorized by Article 4 of Chapter 63 of the General Statutes. Airport zoning
46 regulations for real property within 6 miles of any cargo airport complex site subject to regulation
47 by the North Carolina Global TransPark Authority are governed by G.S. 63A-18.

48 **"§ 160D-9-5. Amateur radio antennas.**

49 A local government ordinance based on health, safety, or aesthetic considerations that
50 regulates the placement, screening, or height of the antennas or support structures of amateur
51 radio operators must reasonably accommodate amateur radio communications and must

1 represent the minimum practicable regulation necessary to accomplish the purpose of the local
2 government. A local government may not restrict antennas or antenna support structures of
3 amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to achieve
4 a clearly defined health, safety, or aesthetic objective of the local government.

5 **"§ 160D-9-6. Family care homes.**

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

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

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

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

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

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

28 **"§ 160D-9-7. Fence wraps.**

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

38 **"§ 160D-9-8. Fraternities and sororities.**

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

42 **"§ 160D-9-9. Manufactured homes.**

43 (a) The General Assembly finds that manufactured housing offers affordable housing
44 opportunities for low- and moderate-income residents of this State who could not otherwise
45 afford to own their own home. The General Assembly further finds that some local governments
46 have adopted zoning regulations that severely restrict the placement of manufactured homes. It
47 is the intent of the General Assembly in enacting this section that local governments reexamine
48 their land-use practices to assure compliance with applicable statutes and case law and consider
49 allocating more residential land area for manufactured homes based upon local housing needs.

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

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

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

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

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

18 **"§ 160D-9-10. Modular homes.**

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

21 **"§ 160D-9-11. Outdoor advertising.**

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

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

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

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

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

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

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

45 (4) The removal is required for opening, widening, extending, or improving
46 streets or sidewalks, or for establishing, extending, enlarging, or improving
47 any of the public enterprises listed in G.S. 160A-311, and the local
48 government allows the off-premises outdoor advertising to be relocated to a
49 comparable location.

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

4 This subsection shall be construed subject to and without any reduction in the rights afforded
5 to owners of outdoor advertising signs along interstate and federal-aid primary highways in this
6 State as provided in Article 13 of Chapter 136 of the General Statutes.

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

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

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

27 a. The size and format of the sign.

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

31 c. The timing of the relocation.

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

34 a. The actual cost of removing the sign.

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

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

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

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

47 (i) If a local government has offered to enter into an agreement to relocate a
48 nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section
49 and within 120 days after the initial notice by the local government the parties have not been able
50 to agree that the site or sites offered by the local government for relocation of the sign are
51 reasonably comparable to or better than the existing site, the parties shall enter into binding

1 arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon
2 by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall
3 select one arbitrator, and the two arbitrators chosen by the parties shall select the third member
4 of the panel. The American Arbitration Association rules shall apply to the arbitration unless the
5 parties agree otherwise.

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

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

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

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

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

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

37 **"§ 160D-9-12. Public buildings.**

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

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

44 **"§ 160D-9-13. Solar collectors.**

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

1 passive heating, or generating electricity for a residential property. As used in this section, the
2 term "residential property" means property where the predominant use is for residential purposes.

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

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

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

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

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

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

18 **"§ 160D-9-14. Temporary health care structures.**

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

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

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

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

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

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

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

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

50 (d) Only one temporary family health care structure shall be allowed on a lot or parcel of
51 land. The temporary family health care structures under subsections (b) and (c) of this section

1 shall not require a special use permit or be subjected to any other local zoning requirements
2 beyond those imposed upon other authorized accessory use structures, except otherwise provided
3 in this section. Such temporary family health care structures shall comply with all setback
4 requirements that apply to the primary structure and with any maximum floor area ratio
5 limitations that may apply to the primary structure.

6 (e) Any person proposing to install a temporary family health care structure shall first
7 obtain a permit from the local government. The local government may charge a fee of up to one
8 hundred dollars (\$100.00) for the initial permit and an annual renewal fee of up to fifty dollars
9 (\$50.00). The local government may not withhold a permit if the applicant provides sufficient
10 proof of compliance with this section. The local government may require that the applicant
11 provide evidence of compliance with this section on an annual basis as long as the temporary
12 family health care structure remains on the property. The evidence may involve the inspection
13 by the local government of the temporary family health care structure at reasonable times
14 convenient to the caregiver, not limited to any annual compliance confirmation and annual
15 renewal of the doctor's certification.

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

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

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

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

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

36 **"§ 160D-9-15. Streets and transportation.**

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

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

44 **"§ 160D-9-16. Bee hives.**

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

47 **"§§ 160D-9-17 through 160D-9-19:** Reserved for future codification purposes.

48 "Part 2. Environmental Regulation.

49 **"§ 160D-9-20. Local environmental regulations.**

50 (a) Local governments are authorized to exercise the powers conferred by Article 8 of
51 Chapter 160A of the General Statutes and Article 6 of Chapter 153A of the General Statutes to

1 adopt and enforce local ordinances pursuant to this Part to the extent necessary to comply with
2 State and federal law, rules, and regulations or permits consistent with the interpretations and
3 directions of the State or federal agency issuing the permit.

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

7 **"§ 160D-9-21. Forestry activities.**

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

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

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

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

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

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

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

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

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

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

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

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

43 b. Five years after the completion of a timber harvest if the harvest results
44 in the removal of all or substantially all of the trees that were protected
45 under local government regulations governing development from the
46 tract of land for which the permit or approval is sought and the harvest
47 was a willful violation of the local government regulations.

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

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

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

1 (5) Regulate and protect streets.

2 **"§ 160D-9-22. Erosion and sedimentation control.**

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

7 **"§ 160D-9-23. Floodplain regulations.**

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

12 **"§ 160D-9-24. Mountain ridge protection.**

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

18 **"§ 160D-9-25. Stormwater control.**

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

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

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

35 (d) A local government that holds an NPDES permit issued pursuant to G.S. 143-214.7
36 may adopt a regulation, applicable within its planning and development regulation jurisdiction,
37 to establish the stormwater control program necessary for the local government to comply with
38 the permit. A local government may adopt a regulation that bans illicit discharges within its
39 planning and development regulation jurisdiction. A local government may adopt a regulation,
40 applicable within its planning and development regulation jurisdiction, that requires (i) deed
41 restrictions and protective covenants to ensure that each project, including the stormwater
42 management system, will be maintained so as to protect water quality and control water quantity
43 and (ii) financial arrangements to ensure that adequate funds are available for the maintenance
44 and replacement costs of the project.

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

50 **"§ 160D-9-26. Water supply watershed management.**

1 A local government may enact and enforce a water supply watershed management and
2 protection regulation pursuant to G.S. 143-214.5 and shall comply with all applicable provisions
3 of that statute and, to the extent not inconsistent with that statute, with this Chapter.

4 "§§ 160D-9-27 through 160D-9-29: Reserved for future codification purposes.

5 "Part 3. Wireless Telecommunication Facilities.

6 "§ 160D-9-30. Purpose and compliance with federal law.

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

12 (b) The deployment of wireless infrastructure is critical to ensuring first responders can
13 provide for the health and safety of all residents of North Carolina and, consistent with section
14 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), create
15 a national wireless emergency communications network for use by first responders that in large
16 measure will be dependent on facilities placed on existing wireless communications support
17 structures. Therefore, it is the policy of this State to facilitate the placement of wireless
18 communications support structures in all areas of North Carolina. The following standards shall
19 apply to a local government's actions, as a regulatory body, in the regulation of the placement,
20 construction, or modification of a wireless communications facility.

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

25 (d) Nothing in this Part shall be construed to authorize a city to require the construction
26 or installation of wireless facilities or to regulate wireless services other than as set forth herein.

27 "§ 160D-9-31. Definitions.

28 The following definitions apply in this Part:

- 29 (1) Antenna. – Communications equipment that transmits, receives, or transmits
30 and receives electromagnetic radio signals used in the provision of all types
31 of wireless communications services.
- 32 (2) Applicable codes. – The North Carolina State Building Code and any other
33 uniform building, fire, electrical, plumbing, or mechanical codes adopted by
34 a recognized national code organization together with State or local
35 amendments to those codes enacted solely to address imminent threats of
36 destruction of property or injury to persons.
- 37 (3) Application. – A formal request submitted by an applicant to the local
38 government for a permit to collocate wireless facilities or to approve the
39 installation, modification, or replacement of a utility pole, city utility pole, or
40 to construct or modify a wireless support structure or a wireless facility.
- 41 (4) Base station. – A station at a specific site authorized to communicate with
42 mobile stations, generally consisting of radio receivers, antennas, coaxial
43 cables, power supplies, and other associated electronics.
- 44 (5) Building permit. – An official administrative authorization issued by the local
45 government prior to beginning construction consistent with the provisions of
46 G.S. 160D-11-8.
- 47 (6) City right-of-way. – A right-of-way owned, leased, or operated by a city,
48 including any public street or alley that is not a part of the State highway
49 system.
- 50 (7) City utility pole. – A pole owned by a city in the city right-of-way that
51 provides lighting, traffic control, or a similar function.

- 1 (8) Collocation. – The placement, installation, maintenance, modification,
2 operation, or replacement of wireless facilities on, under, within, or on the
3 surface of the earth adjacent to existing structures, including utility poles, city
4 utility poles, water towers, buildings, and other structures capable of
5 structurally supporting the attachment of wireless facilities in compliance with
6 applicable codes. The term does not include the installation of new utility
7 poles, city utility poles, or wireless support structures.
- 8 (9) Communications facility. – The set of equipment and network components,
9 including wires and cables and associated facilities used by a communications
10 service provider to provide communications service.
- 11 (10) Communications service. – Cable service as defined in 47 U.S.C. § 522(6),
12 information service as defined in 47 U.S.C. § 153(24), telecommunications
13 service as defined in 47 U.S.C. § 153(53), or wireless services.
- 14 (11) Communications service provider. – A cable operator as defined in 47 U.S.C.
15 § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24);
16 a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless
17 provider.
- 18 (12) Eligible facilities request. – A request for modification of an existing wireless
19 tower or base station that involves collocation of new transmission equipment
20 or replacement of transmission equipment but does not include a substantial
21 modification.
- 22 (13) Equipment compound. – An area surrounding or near the base of a wireless
23 support structure within which a wireless facility is located.
- 24 (14) Fall zone. – The area in which a wireless support structure may be expected
25 to fall in the event of a structural failure, as measured by engineering
26 standards.
- 27 (15) Land development regulation. – Any ordinance enacted pursuant to this
28 Chapter.
- 29 (16) Micro wireless facility. – A small wireless facility that is no larger in
30 dimension than 24 inches in length, 15 inches in width, and 12 inches in height
31 and that has an exterior antenna, if any, no longer than 11 inches.
- 32 (17) Search ring. – The area within which a wireless support facility or wireless
33 facility must be located in order to meet service objectives of the wireless
34 service provider using the wireless facility or wireless support structure.
- 35 (18) Small wireless facility. – A wireless facility that meets the following
36 qualifications:
- 37 a. Each antenna is located inside an enclosure of no more than 6 cubic
38 feet in volume or, in the case of an antenna that has exposed elements,
39 the antenna and all of its exposed elements, if enclosed, could fit
40 within an enclosure of no more than 6 cubic feet.
- 41 b. All other wireless equipment associated with the facility has a
42 cumulative volume of no more than 28 cubic feet. For the purposes of
43 this sub-subdivision, the following types of ancillary equipment are
44 not included in the calculation of equipment volume: electric meters,
45 concealment elements, telecommunications demarcation boxes,
46 ground-based enclosures, grounding equipment, power transfer
47 switches, cut-off switches, vertical cable runs for the connection of
48 power and other services, or other support structures.
- 49 (19) Substantial modification. – The mounting of a proposed wireless facility on a
50 wireless support structure that substantially changes the physical dimensions
51 of the support structure. The burden is on the local government to demonstrate

1 that a mounting that does not meet the listed criteria constitutes a substantial
2 change to the physical dimensions of the wireless support structure. A
3 mounting is presumed to be a substantial modification if it meets any one or
4 more of the following criteria:

5 a. Increasing the existing vertical height of the structure by the greater of
6 (i) more than ten percent (10%) or (ii) the height of one additional
7 antenna array with separation from the nearest existing antenna not to
8 exceed 20 feet.

9 b. Except where necessary to shelter the antenna from inclement weather
10 or to connect the antenna to the tower via cable, adding an
11 appurtenance to the body of a wireless support structure that protrudes
12 horizontally from the edge of the wireless support structure the greater
13 of (i) more than 20 feet or (ii) more than the width of the wireless
14 support structure at the level of the appurtenance.

15 c. Increasing the square footage of the existing equipment compound by
16 more than 2,500 square feet.

17 (20) Utility pole. – A structure that is designed for and used to carry lines, cables,
18 wires, lighting facilities, or small wireless facilities for telephone, cable
19 television, electricity, lighting, or wireless services.

20 (21) Water tower. – A water storage tank, a standpipe, or an elevated tank situated
21 on a support structure originally constructed for use as a reservoir or facility
22 to store or deliver water.

23 (22) Wireless facility. – Equipment at a fixed location that enables wireless
24 communications between user equipment and a communications network,
25 including (i) equipment associated with wireless communications and (ii)
26 radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and
27 backup power supplies, and comparable equipment, regardless of
28 technological configuration. The term includes small wireless facilities. The
29 term does not include any of the following:

30 a. The structure or improvements on, under, within, or adjacent to which
31 the equipment is collocated.

32 b. Wireline backhaul facilities.

33 c. Coaxial or fiber-optic cable that is between wireless structures or
34 utility poles or city utility poles or that is otherwise not immediately
35 adjacent to or directly associated with a particular antenna.

36 (23) Wireless infrastructure provider. – Any person with a certificate to provide
37 telecommunications service in the State who builds or installs wireless
38 communication transmission equipment, wireless facilities, or wireless
39 support structures for small wireless facilities but that does not provide
40 wireless services.

41 (24) Wireless provider. – A wireless infrastructure provider or a wireless services
42 provider.

43 (25) Wireless services. – Any services, using licensed or unlicensed wireless
44 spectrum, including the use of Wi-Fi, whether at a fixed location or mobile,
45 provided to the public using wireless facilities.

46 (26) Wireless support structure. – A new or existing structure, such as a monopole,
47 lattice tower, or guyed tower that is designed to support or capable of
48 supporting wireless facilities. A utility pole or a city utility pole is not a
49 wireless support structure.

50 **§ 160D-9-32. Local authority.**

1 A local government may plan for and regulate the siting or modification of wireless support
2 structures and wireless facilities in accordance with land development regulations and in
3 conformity with this Part. Except as expressly stated, nothing in this Part shall limit a local
4 government from regulating applications to construct, modify, or maintain wireless support
5 structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support
6 structure based on consideration of land use, public safety, and zoning considerations, including
7 aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building
8 code requirements, consistent with the provisions of federal law provided in G.S. 160D-9-30. For
9 purposes of this Part, public safety includes, without limitation, federal, State, and local safety
10 regulations but does not include requirements relating to radio frequency emissions of wireless
11 facilities.

12 **"§ 160D-9-33. Construction of new wireless support structures or substantial modifications**
13 **of wireless support structures.**

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

- 17 (1) Submit a completed application with the necessary copies and attachments to
18 the appropriate planning authority.
- 19 (2) Comply with any local ordinances concerning land use and any applicable
20 permitting processes.

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

- 32 (1) Applicable public safety, land-use, or zoning issues addressed in its adopted
33 regulations, including aesthetics, landscaping, land-use based location
34 priorities, structural design, setbacks, and fall zones.
- 35 (2) Information or materials directly related to an identified public safety, land
36 development, or zoning issue including evidence that no existing or previously
37 approved wireless support structure can reasonably be used for the wireless
38 facility placement instead of the construction of a new wireless support
39 structure that residential, historic, and designated scenic areas cannot be
40 served from outside the area or that the proposed height of a new wireless
41 support structure or initial wireless facility placement or a proposed height
42 increase of a substantially modified wireless support structure or replacement
43 wireless support structure is necessary to provide the applicant's designed
44 service.
- 45 (3) A local government may require applicants for new wireless facilities to
46 evaluate the reasonable feasibility of collocating new antennas and equipment
47 on an existing wireless support structure or structures within the applicant's
48 search ring. Collocation on an existing wireless support structure is not
49 reasonably feasible if collocation is technically or commercially impractical
50 or the owner of the existing wireless support structure is unwilling to enter
51 into a contract for such use at fair market value. Local governments may

1 require information necessary to determine whether collocation on existing
2 wireless support structures is reasonably feasible.

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

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

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

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

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

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

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

37 **"§ 160D-9-34. Collocation and eligible facilities requests of wireless support structures.**

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

47 (b) A collocation or eligible facilities request application is deemed complete unless the
48 local government provides notice that the application is incomplete in writing to the applicant
49 within 45 days of submission or within some other mutually agreed upon time frame. The notice
50 shall identify the deficiencies in the application which, if cured, would make the application
51 complete. A local government may deem an application incomplete if there is insufficient

1 evidence provided to show that the proposed collocation or eligible facilities request will comply
2 with federal, State, and local safety requirements. A local government may not deem an
3 application incomplete for any issue not directly related to the actual content of the application
4 and subject matter of the collocation or eligible facilities request. An application is deemed
5 complete on resubmission if the additional materials cure the deficiencies indicated.

6 (c) The local government shall issue a written decision approving an eligible facilities
7 request application within 45 days of such application being deemed complete. For a collocation
8 application that is not an eligible facilities request, the local government shall issue its written
9 decision to approve or deny the application within 45 days of the application being deemed
10 complete.

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

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

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

21 **"§ 160D-9-35. Collocation of small wireless facilities.**

22 (a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge
23 for the collocation of small wireless facilities.

24 (b) A city may not establish a moratorium on (i) filing, receiving, or processing
25 applications or (ii) issuing permits or any other approvals for the collocation of small wireless
26 facilities.

27 (c) Small wireless facilities that meet the height requirements of G.S. 160A-400.55(b)(2)
28 shall only be subject to administrative review and approval under subsection (d) of this section
29 if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of city
30 rights-of-way on property other than single-family residential property.

31 (d) A city may require an applicant to obtain a permit to collocate a small wireless facility.
32 A city shall receive applications for, process, and issue such permits subject to the following
33 requirements:

34 (1) A city may not, directly or indirectly, require an applicant to perform services
35 unrelated to the collocation for which approval is sought. For purposes of this
36 subdivision, "services unrelated to the collocation," includes in-kind
37 contributions to the city such as the reservation of fiber, conduit, or pole space
38 for the city.

39 (2) The wireless provider shall complete an application as specified in form and
40 content by the city. A wireless provider shall not be required to provide more
41 information to obtain a permit than communications service providers that are
42 not wireless providers.

43 (3) A permit application shall be deemed complete unless the city provides notice
44 otherwise in writing to the applicant within 30 days of submission or within
45 some other mutually agreed-upon time frame. The notice shall identify the
46 deficiencies in the application which, if cured, would make the application
47 complete. The application shall be deemed complete on resubmission if the
48 additional materials cure the deficiencies identified.

49 (4) The permit application shall be processed on a nondiscriminatory basis and
50 shall be deemed approved if the city fails to approve or deny the application

1 within 45 days from the time the application is deemed complete or a mutually
2 agreed upon time frame between the city and the applicant.

3 (5) A city may deny an application only on the basis that it does not meet any of
4 the following: (i) the city's applicable codes; (ii) local code provisions or
5 regulations that concern public safety, objective design standards for
6 decorative utility poles, city utility poles, or reasonable and nondiscriminatory
7 stealth and concealment requirements, including screening or landscaping for
8 ground-mounted equipment; (iii) public safety and reasonable spacing
9 requirements concerning the location of ground-mounted equipment in a
10 right-of-way; or (iv) the historic preservation requirements in
11 160A-400.55(h). The city must (i) document the basis for a denial, including
12 the specific code provisions on which the denial was based and (ii) send the
13 documentation to the applicant on or before the day the city denies an
14 application. The applicant may cure the deficiencies identified by the city and
15 resubmit the application within 30 days of the denial without paying an
16 additional application fee. The city shall approve or deny the revised
17 application within 30 days of the date on which the application was
18 resubmitted. Any subsequent review shall be limited to the deficiencies cited
19 in the prior denial.

20 (6) An application shall include an attestation that the small wireless facilities
21 must be collocated on the utility pole, city utility pole, or wireless support
22 structure and that the small wireless facilities must be activated for use by a
23 wireless services provider to provide service no later than one year from the
24 permit issuance date, unless the city and the wireless provider agree to extend
25 this period or a delay is caused by a lack of commercial power at the site.

26 (7) An applicant seeking to collocate small wireless facilities at multiple locations
27 within the jurisdiction of a city shall be allowed, at the applicant's discretion,
28 to file a consolidated application for no more than 25 separate facilities and
29 receive a permit for the collocation of all the small wireless facilities meeting
30 the requirements of this section. A city may remove small wireless facility
31 collocations from a consolidated application and treat separately small
32 wireless facility collocations (i) for which incomplete information has been
33 provided or (ii) that are denied. The city may issue a separate permit for each
34 collocation that is approved.

35 (8) The permit may specify that collocation of the small wireless facility shall
36 commence within six months of approval and shall be activated for use no
37 later than one year from the permit issuance date, unless the city and the
38 wireless provider agree to extend this period or a delay is caused by a lack of
39 commercial power at the site.

40 (e) A city may charge an application fee that shall not exceed the lesser of (i) the actual,
41 direct, and reasonable costs to process and review applications for collocated small wireless
42 facilities; (ii) the amount charged by the city for permitting of any similar activity; or (iii) one
43 hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an
44 application, plus fifty dollars (\$50.00) for each additional small wireless facility addressed in the
45 application. In any dispute concerning the appropriateness of a fee, the city has the burden of
46 proving that the fee meets the requirements of this subsection.

47 (f) A city may impose a technical consulting fee for each application, not to exceed five
48 hundred dollars (\$500.00), to offset the cost of reviewing and processing applications required
49 by this section. The fee must be based on the actual, direct, and reasonable administrative costs
50 incurred for the review, processing, and approval of an application. A city may engage an outside

1 consultant for technical consultation and the review of an application. The fee imposed by a city
2 for the review of the application shall not be used for either of the following:

3 (1) Travel expenses incurred in the review of a collocation application by an
4 outside consultant or other third party.

5 (2) Direct payment or reimbursement for an outside consultant or other third party
6 based on a contingent fee basis or results-based arrangement.

7 In any dispute concerning the appropriateness of a fee, the city has the burden of proving that
8 the fee meets the requirements of this subsection.

9 (g) A city may require a wireless services provider to remove an abandoned wireless
10 facility within 180 days of abandonment. Should the wireless services provider fail to timely
11 remove the abandoned wireless facility, the city may cause such wireless facility to be removed
12 and may recover the actual cost of such removal, including legal fees, if any, from the wireless
13 services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned
14 at the earlier of the date that the wireless services provider indicates that it is abandoning such
15 facility or the date that is 180 days after the date that such wireless facility ceases to transmit a
16 signal, unless the wireless services provider gives the city reasonable evidence that it is diligently
17 working to place such wireless facility back in service.

18 (h) A city shall not require an application or permit or charge fees for (i) routine
19 maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that
20 are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro
21 wireless facilities that are suspended on cables strung between existing utility poles or city utility
22 poles in compliance with applicable codes by or for a communications service provider
23 authorized to occupy the city rights-of-way and who is remitting taxes under
24 G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

25 (i) Nothing in this section shall prevent a city from requiring a work permit for work that
26 involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.
27 **§ 160D-9-36. Use of public right-of-way.**

28 (a) A city shall not enter into an exclusive arrangement with any person for use of city
29 rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or
30 wireless support structures or the collocation of small wireless facilities.

31 (b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate
32 small wireless facilities along, across, upon, or under any city right-of-way. Subject to the
33 requirements of this section, a wireless provider may place, maintain, modify, operate, or replace
34 associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities
35 along, across, upon, and under any city right-of-way. The placement, maintenance, modification,
36 operation, or replacement of utility poles and city utility poles associated with the collocation of
37 small wireless facilities, along, across, upon, or under any city right-of-way shall be subject only
38 to review or approval under G.S. 160A-400.54(d) if the wireless provider meets all of the
39 following requirements:

40 (1) Each new utility pole and each modified or replacement utility pole or city
41 utility pole installed in the right-of-way shall not exceed 50 feet above ground
42 level.

43 (2) Each new small wireless facility in the right-of-way shall not extend more
44 than 10 feet above the utility pole, city utility pole, or wireless support
45 structure on which it is collocated.

46 (c) Nothing in this section shall be construed to prohibit a city from allowing utility poles,
47 city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of
48 subsection (b) of this section.

49 (d) Applicants for use of a city right-of-way shall comply with a city's undergrounding
50 requirements prohibiting the installation of above-ground structures in the city rights-of-way
51 without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to

1 type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption
2 of the requirements, and (iii) have a waiver process.

3 (e) Notwithstanding subsection (d) of this section, in no instance in an area zoned
4 single-family residential where the existing utilities are installed underground may a utility pole,
5 city utility pole, or wireless support structure exceed 40 feet above ground level, unless the city
6 grants a waiver or variance approving a taller utility pole, city utility pole, or wireless support
7 structure.

8 (f) Except as provided in this Part, a city may assess a right-of-way charge under this
9 section for use or occupation of the right-of-way by a wireless provider, subject to the restrictions
10 set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet
11 all of the following requirements:

12 (1) The right-of-way charge shall not exceed the direct and actual cost of
13 managing the city rights-of-way and shall not be based on the wireless
14 provider's revenue or customer counts.

15 (2) The right-of-way charge shall not exceed that imposed on other users of the
16 right-of-way, including publicly, cooperatively, or municipally owned
17 utilities.

18 (3) The right-of-way charge shall be reasonable and nondiscriminatory.

19 Nothing in this subsection is intended to establish or otherwise affect rates charged for
20 attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a
21 city may provide free access to city rights-of-way on a nondiscriminatory basis in order to
22 facilitate the public benefits of the deployment of wireless services.

23 (g) Nothing in this section is intended to authorize a person to place, maintain, modify,
24 operate, or replace a privately owned utility pole or wireless support structure or to collocate
25 small wireless facilities on a privately owned utility pole, a privately owned wireless support
26 structure, or other private property without the consent of the property owner.

27 (h) A city may require a wireless provider to repair all damage to a city right-of-way
28 directly caused by the activities of the wireless provider, while occupying, installing, repairing,
29 or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles
30 and to return the right-of-way to its functional equivalence before the damage. If the wireless
31 provider fails to make the repairs required by the city within a reasonable time after written
32 notice, the city may undertake those repairs and charge the applicable party the reasonable and
33 documented cost of the repairs. The city may maintain an action to recover the costs of the repairs.

34 (i) This section shall not be construed to limit local government authority to enforce
35 historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter, the
36 preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility
37 modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, 54
38 U.S.C. § 300101, et seq., as amended, and the regulations, local acts, and city charter provisions
39 adopted to implement those laws.

40 (j) A wireless provider may apply to a city to place utility poles in the city rights-of-way,
41 or to replace or modify utility poles or city utility poles in the public rights-of-way, to support
42 the collocation of small wireless facilities. A city shall accept and process the application in
43 accordance with the provisions of G.S. 160A-400.54(d), applicable codes, and other local codes
44 governing the placement of utility poles or city utility poles in the city rights-of-way, including
45 provisions or regulations that concern public safety, objective design standards for decorative
46 utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment
47 requirements, including those relating to screening or landscaping, or public safety and
48 reasonable spacing requirements. The application may be submitted in conjunction with the
49 associated small wireless facility application.

50 **"§ 160D-9-37. Access to city utility poles to install small wireless facilities.**

1 (a) A city may not enter into an exclusive arrangement with any person for the right to
2 collocate small wireless facilities on city utility poles. A city shall allow any wireless provider to
3 collocate small wireless facilities on its city utility poles at just, reasonable, and
4 nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed fifty
5 dollars (\$50.00) per city utility pole per year. The North Carolina Utilities Commission shall not
6 consider this subsection as evidence in a proceeding initiated pursuant to G.S. 62-350(c).

7 (b) A request to collocate under this section may be denied only if there is insufficient
8 capacity or for reasons of safety, reliability, and generally applicable engineering principles, and
9 those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the
10 facilities at the reasonable and actual cost of the city to be reimbursed by the wireless provider.
11 In granting a request under this section, a city shall require the requesting entity to comply with
12 applicable safety requirements, including the National Electrical Safety Code and the applicable
13 rules and regulations issued by the Occupational Safety and Health Administration.

14 (c) If a city that operates a public enterprise as permitted by Article 16 of this Chapter
15 has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject to
16 termination provisions, that attachment rate, fee, or other term shall apply to collocations by that
17 entity or its related entities on city utility poles.

18 (d) Following receipt of the first request from a wireless provider to collocate on a city
19 utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of
20 or attachment to the city utility poles that it owns or controls. Upon request, a party shall state in
21 writing its objections to any proposed rate, terms, and conditions of the other party.

22 (e) In any controversy concerning the appropriateness of a rate for a collocation
23 attachment to a city utility pole, the city has the burden of proving that the rates are reasonably
24 related to the actual, direct, and reasonable costs incurred for use of space on the pole for such
25 period.

26 (f) The city shall provide a good-faith estimate for any make-ready work necessary to
27 enable the city utility pole to support the requested collocation, including pole replacement, if
28 necessary, within 60 days after receipt of a complete application. Make-ready work, including
29 any pole replacement, shall be completed within 60 days of written acceptance of the good-faith
30 estimate by the applicant. For purposes of this section, the term "make-ready work" means any
31 modification or replacement of a city utility pole necessary for the city utility pole to support a
32 small wireless facility in compliance with applicable safety requirements, including the National
33 Electrical Safety Code, that is performed in preparation for a collocation installation.

34 (g) The city shall not require more make-ready work than that required to meet applicable
35 codes or industry standards. Fees for make-ready work shall not include costs related to
36 preexisting or prior damage or noncompliance. Fees for make-ready work, including any pole
37 replacement, shall not exceed actual costs or the amount charged to other communications service
38 providers for similar work and shall not include any consultant fees or expenses.

39 (h) Nothing in this Part shall be construed to apply to an entity whose poles, ducts, and
40 conduits are subject to regulation under section 224 of the Communications Act of 1934, 47
41 U.S.C. § 151, et seq., as amended, or under G.S. 62-350.

42 (i) This section shall not apply to an excluded entity. Nothing in this section shall be
43 construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the
44 rates, fees, terms, and conditions for the use of or attachment to its utility poles, city utility poles,
45 or wireless support structures by a wireless provider. This section shall not be construed to alter
46 or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles,
47 ducts, or conduits by communications service providers, as defined in G.S. 62-350, are governed
48 solely by G.S. 62-350. For purposes of this section, "excluded entity" means (i) a city that owns
49 or operates a public enterprise pursuant to Article 16 of this Chapter consisting of an electric
50 power generation, transmission, or distribution system or (ii) an electric membership corporation
51 organized under Chapter 117 of the General Statutes that owns or controls poles, ducts, or

1 conduits, but which is exempt from regulation under section 224 of the Communications Act of
2 1934, 47 U.S.C. § 151, et seq., as amended.

3 **"§ 160D-9-38. Applicability.**

4 (a) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that
5 regulates the design, engineering, construction, installation, or operation of any small wireless
6 facility located in an interior structure or upon the site of any stadium or athletic facility. This
7 subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the
8 city. This subsection does not prohibit the enforcement of applicable codes.

9 (b) Nothing contained in this Part shall amend, modify, or otherwise affect any easement
10 between private parties. Any and all rights for the use of a right-of-way are subject to the rights
11 granted pursuant to an easement between private parties.

12 (c) Except as provided in this Part or otherwise specifically authorized by the General
13 Statutes, a city may not adopt or enforce any regulation on the placement or operation of
14 communications facilities in the rights-of-way of State-maintained highways or city
15 rights-of-way by a provider authorized by State law to operate in the rights-of-way of
16 State-maintained highways or city rights-of-way and may not regulate any communications
17 services.

18 (d) Except as provided in this Part or specifically authorized by the General Statutes, a
19 city may not impose or collect any tax, fee, or charge to provide a communications service over
20 a communications facility in the right-of-way.

21 (e) The approval of the installation, placement, maintenance, or operation of a small
22 wireless facility pursuant to this Part does not authorize the provision of any communications
23 services or the installation, placement, maintenance, or operation of any communications facility,
24 including a wireline backhaul facility, other than a small wireless facility, in the right-of-way.

25 **"§ 160D-9-39:** Reserved for future codification purposes.

26 "Part 4. Historic Preservation.

27 **"§ 160D-9-40. Legislative findings.**

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

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

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

39 **"§ 160D-9-41. Historic preservation commission.**

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

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

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

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

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

50 (3) Acquire by any lawful means the fee or any lesser included interest, including
51 options to purchase, to properties within established districts or to any such

1 properties designated as landmarks to hold, manage, preserve, restore, and
2 improve such properties, and to exchange or dispose of the property by public
3 or private sale, lease or otherwise, subject to covenants or other legally
4 binding restrictions that will secure appropriate rights of public access and
5 promote the preservation of the property.

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

7 (5) Recommend to the governing board that designation of any area as a historic
8 district or part thereof, or designation of any building, structure, site, area, or
9 object as a landmark, be revoked or removed for cause.

10 (6) Conduct an educational program regarding historic properties and districts
11 within its jurisdiction.

12 (7) Cooperate with the State, federal, and local governments in pursuance of the
13 purposes of this Part. The governing board or the commission, when
14 authorized by the governing board, may contract with the State, or the United
15 States of America, or any agency of either, or with any other organization
16 provided the terms are not inconsistent with State or federal law.

17 (8) Enter, solely in performance of its official duties and only at reasonable times,
18 upon private lands for examination or survey thereof. However, no member,
19 employee, or agent of the commission may enter any private building or
20 structure without the express consent of the owner or occupant thereof.

21 (9) Prepare and recommend the official adoption of a preservation element as part
22 of the local government's comprehensive plan.

23 (10) Review and act upon proposals for alterations, demolitions, or new
24 construction within historic districts, or for the alteration or demolition of
25 designated landmarks, pursuant to this Part.

26 (11) Negotiate at any time with the owner of a building, structure, site, area, or
27 object for its acquisition or its preservation, when such action is reasonably
28 necessary or appropriate.

29 **"§ 160D-9-43. Appropriations.**

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

37 **"§ 160D-9-44. Designation of historic districts.**

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

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

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

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

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

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

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

32 **"§ 160D-9-45. Designation of landmarks.**

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

39 The regulation shall describe each property designated in the regulation, the name or names
40 of the owner or owners of the property, those elements of the property that are integral to its
41 historical, architectural, or prehistorical value, including the land area of the property so
42 designated, and any other information the governing board deems necessary. For each building,
43 structure, site, area, or object so designated as a historic landmark, the regulation shall require
44 that the waiting period set forth in this Part be observed prior to its demolition. For each
45 designated landmark, the regulation may also provide for a suitable sign on the property
46 indicating that the property has been so designated. If the owner consents, the sign shall be placed
47 upon the property. If the owner objects, the sign shall be placed on a nearby public 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 this
8 Part, for altering, restoring, moving, or demolishing properties designated as
9 landmarks.
- 10 (2) The preservation commission shall make or cause to be made an investigation
11 and report on the historic, architectural, prehistorical, educational, or cultural
12 significance of each building, structure, site, area, or object proposed for
13 designation or acquisition. Such investigation or report shall be forwarded to
14 the Office of Archives and History, North Carolina Department of Cultural
15 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 regulation.
28 Notice of the hearing shall be made as provided by G.S. 160D-6-1.
- 29 (5) Following the hearings, the governing board may adopt the regulation as
30 proposed, adopt the regulation with any amendments it deems necessary, or
31 reject the proposed regulation.
- 32 (6) Upon adoption of the regulation, the owners and occupants of each designated
33 landmark shall be given written notice of such designation within a reasonable
34 time. One copy of the regulation and all amendments thereto shall be filed by
35 the preservation commission in the office of the register of deeds of the county
36 in which the landmark or landmarks are located. In the case of any landmark
37 property lying within the planning and development regulation jurisdiction of
38 a city, a second copy of the regulation and all amendments thereto shall be
39 kept on file in the office of the city or town clerk and be made available for
40 public inspection at any reasonable time. A third copy of the regulation and
41 any amendments shall be given to the local government building inspector.
42 The fact that a building, structure, site, area, or object has been designated a
43 landmark shall be clearly indicated on all tax maps maintained by the local
44 government for such period as the designation remains in effect.
- 45 (7) Upon the adoption of the landmark regulation or any amendment thereto, it
46 shall be the duty of the preservation commission to give notice thereof to the
47 tax supervisor of the county in which the property is located. The designation
48 and any recorded restrictions upon the property limiting its use for
49 preservation purposes shall be considered by the tax supervisor in appraising
50 it for tax purposes.

51 **§ 160D-9-47. Certificate of appropriateness required.**

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

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

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

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

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

48 (d) Time for Review. – All applications for certificates of appropriateness shall be
49 reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the
50 application for a certificate of appropriateness is filed, as defined by the regulation or the
51 commission's rules of procedure. As part of its review procedure, the commission may view the

1 premises and seek the advice of the Division of Archives and History or such other expert advice
2 as it may deem necessary under the circumstances.

3 (e) Appeals. –

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

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

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

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

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

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

33 **"§ 160D-9-48. Certain changes not prohibited.**

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

43 **"§ 160D-9-49. Delay in demolition of landmarks and buildings within historic district.**

44 (a) An application for a certificate of appropriateness authorizing the relocation,
45 demolition, or destruction of a designated landmark or a building, structure, or site within the
46 district may not be denied, except as provided in subsection (c) of this section. However, the
47 effective date of such a certificate may be delayed for a period of up to 365 days from the date
48 of approval. The maximum period of delay authorized by this section shall be reduced by the
49 preservation commission where it finds that the owner would suffer extreme hardship or be
50 permanently deprived of all beneficial use of or return from such property by virtue of the delay.
51 During such period, the preservation commission shall negotiate with the owner and with any

1 other parties in an effort to find a means of preserving the building or site. If the preservation
2 commission finds that a building or site within a district has no special significance or value
3 toward maintaining the character of the district, it shall waive all or part of such period and
4 authorize earlier demolition or removal.

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

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

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

21 **"§ 160D-9-50. Demolition by neglect to contributing structures outside local historic**
22 **districts.**

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

34 **"§ 160D-9-51. Conflict with other laws.**

35 Whenever any regulation adopted pursuant to this Part requires a longer waiting period or
36 imposes other higher standards with respect to a designated historic landmark or district than are
37 established under any other statute, charter provision, or regulation, this Part shall govern.
38 Whenever the provisions of any other statute, charter provision, ordinance, or regulation require
39 a longer waiting period or impose other higher standards than are established under this Part,
40 such other statute, charter provision, ordinance, or regulation shall govern.

41 **"§§ 160D-9-52 through 160D-9-59: Reserved for future codification purposes.**

42 "Part 5. Community Appearance Commissions.

43 **"§ 160D-9-60. Powers and duties of commission.**

44 A community appearance commission shall make careful study of the visual problems and
45 needs of the local government within its planning and development regulation jurisdiction and
46 shall make any plans and carry out any programs that will, in accordance with the provisions of
47 this Part, enhance and improve the visual quality and aesthetic characteristics of the local
48 government. To this end, the governing board may confer upon the appearance commission the
49 following powers and duties:

50 (1) To initiate, promote, and assist in the implementation of programs of general
51 community beautification in the local government.

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

51 **"§ 160D-9-61. Staff services; advisory council.**

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

5 **"§ 160D-9-62. Annual report.**

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

11 **"§ 160D-9-63. Receipt and expenditure of funds.**

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

18 **"§§ 160D-9-64 through 160D-9-69:** Reserved for future codification purposes.

19 "Article 10.

20 "Development Agreements.

21 **"§ 160D-10-1. Authorization.**

22 (a) The General Assembly finds the following:

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

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

44 (c) This Article is supplemental to the powers conferred upon local governments and
45 does not preclude or supersede rights and obligations established pursuant to other law regarding
46 development approvals, site-specific vesting plans, or other provisions of law. A development
47 agreement shall not exempt the property owner or developer from compliance with the State
48 Building Code or State or local housing codes that are not part of the local government's
49 development regulations. When the governing board approves the rezoning of any property
50 associated with a development agreement executed and recorded pursuant to this Article, the
51 provisions of G.S. 160D-6-5(a) apply.

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

5 **"§ 160D-10-2. Definitions.**

6 The following definitions apply in this Article:

7 (1) Development. – The planning for or carrying out of a building activity, the
8 making of a material change in the use or appearance of any structure or
9 property, or the dividing of land into two or more parcels. When appropriate
10 to the context, "development" refers to the planning for or the act of
11 developing or to the result of development. Reference to a specific operation
12 is not intended to mean that the operation or activity, when part of other
13 operations or activities, is not development. Reference to particular operations
14 is not intended to limit the generality of this item.

15 (2) Public facilities. – Major capital improvements, including, but not limited to,
16 transportation, sanitary sewer, solid waste, drainage, potable water,
17 educational, parks and recreational, and health systems and facilities.

18 **"§ 160D-10-3. Approval of governing board required.**

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

23 (b) The development agreement may, by ordinance, be incorporated, in whole or in part,
24 into any development regulation adopted by the local government. A development agreement
25 may be considered concurrently with a zoning map or text amendment affecting the property and
26 development subject to the development agreement. A development agreement may be
27 concurrently considered with and incorporated by reference with a sketch plan or preliminary
28 plat required under a subdivision regulation or a site plan or other development approval required
29 under a zoning regulation. If incorporated into a conditional district, the provisions of the
30 development agreement shall be treated as a development regulation in the event of the
31 developer's bankruptcy.

32 **"§ 160D-10-4. Size and duration.**

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

36 **"§ 160D-10-5. Public hearing.**

37 Before entering into a development agreement, a local government shall conduct a legislative
38 hearing on the proposed agreement. The notice provisions of G.S. 160D-6-2 applicable to zoning
39 map amendments shall be followed for this hearing. The notice for the public hearing must
40 specify the location of the property subject to the development agreement, the development uses
41 proposed on the property, and must specify a place where a copy of the proposed development
42 agreement can be obtained.

43 **"§ 160D-10-6. Content and modification.**

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

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

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

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

- 1 (4) A description of public facilities that will serve the development, including
2 who provides the facilities, the date any new public facilities, if needed, will
3 be constructed, and a schedule to assure public facilities are available
4 concurrent with the impacts of the development. In the event that the
5 development agreement provides that the local government shall provide
6 certain public facilities, the development agreement shall provide that the
7 delivery date of such public facilities will be tied to successful performance
8 by the developer in implementing the proposed development, such as meeting
9 defined completion percentages or other performance standards.
- 10 (5) A description, where appropriate, of any reservation or dedication of land for
11 public purposes and any provisions agreed to by the developer that exceed
12 existing laws related to protection of environmentally sensitive property.
- 13 (6) A description, where appropriate, of any conditions, terms, restrictions, or
14 other requirements for the protection of public health, safety, or welfare.
- 15 (7) A description, where appropriate, of any provisions for the preservation and
16 restoration of historic structures.

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

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

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

36 (e) Consideration of a proposed major modification of the agreement shall follow the
37 same procedures as required for initial approval of a development agreement. What changes
38 constitute a major modification may be determined by ordinance adopted pursuant to
39 G.S. 160D-10-3 or as provided for in the development agreement.

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

42 **"§ 160D-10-7. Vesting.**

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

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

49 (c) In the event State or federal law is changed after a development agreement has been
50 entered into and the change prevents or precludes compliance with one or more provisions of the
51 development agreement, the local government may modify the affected provisions, upon a

1 finding that the change in State or federal law has a fundamental effect on the development
2 agreement.

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

4 **"§ 160D-10-8. Breach and cure.**

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

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

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

18 (d) An ordinance adopted pursuant to G.S. 160D-10-3 or the development agreement
19 may specify other penalties for breach in lieu of termination, including, but not limited to,
20 penalties allowed for violation of a development regulation. Nothing in this Article shall be
21 construed to abrogate or impair the power of the local government to enforce applicable law.

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

26 **"§ 160D-10-9. Amendment or termination.**

27 Subject to the provisions of G.S. 160D-10-6(e), a development agreement may be amended
28 or terminated by mutual consent of the parties.

29 **"§ 160D-10-10. Change of jurisdiction.**

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

37 (b) A local government assuming jurisdiction may modify or suspend the provisions of
38 the development agreement if the local government determines that the failure of the local
39 government to do so would place the residents of the territory subject to the development
40 agreement or the residents of the local government, or both, in a condition dangerous to their
41 health or safety, or both.

42 **"§ 160D-10-11. Recordation.**

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

49 **"§ 160D-10-12. Applicability of procedures to approve debt.**

50 In the event that any of the obligations of the local government in the development agreement
51 constitute debt, the local government shall comply, at the time of the obligation to incur the debt

1 and before the debt becomes enforceable against the local government, with any applicable
2 constitutional and statutory procedures for the approval of this debt.

3 "Article 11.

4 "Building Code Enforcement.

5 **"§ 160D-11-1. Definitions.**

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

- 8 (1) Building or buildings. – Includes other structures.
- 9 (2) Governing board or board of commissioners. – Includes the Tribal Council of
10 a federally recognized Indian tribe.
- 11 (3) Local government. – Includes a federally recognized Indian tribe, and, as to
12 such tribe, includes lands held in trust for the tribe.
- 13 (4) Public officer. – Includes the officer or officers who are authorized by
14 regulations adopted hereunder to exercise the powers prescribed by the
15 regulations and by this Article.

16 **"§ 160D-11-2. Building code administration.**

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

29 In the event that any local government fails to provide inspection services or ceases to provide
30 such services, the Commissioner of Insurance shall arrange for the provision of such services,
31 either through personnel employed by the department or through an arrangement with other units
32 of government. In either event, the Commissioner shall have and may exercise within the local
33 government's planning and development regulation jurisdiction all powers made available to the
34 governing board with respect to building inspection under this Article and Part 1 of Article 20 of
35 Chapter 160A of the General Statutes. Whenever the Commissioner has intervened in this
36 manner, the local government may assume provision of inspection services only after giving the
37 Commissioner two years' written notice of its intention to do so; provided, however, that the
38 Commissioner may waive this requirement or permit assumption at an earlier date upon finding
39 that such earlier assumption will not unduly interfere with arrangements made for the provision
40 of those services.

41 **"§ 160D-11-3. Qualifications of inspectors.**

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

1 **"§ 160D-11-4. Duties and responsibilities.**

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

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

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

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

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

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

18 (c) In performing the specific inspections required by the North Carolina Building Code,
19 the inspector shall conduct all inspections requested by the permit holder for each scheduled
20 inspection visit. For each requested inspection, the inspector shall inform the permit holder of
21 instances in which the work inspected fails to meet the requirements of the North Carolina
22 Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code.

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

38 (e) Each inspection department shall implement a process for an informal internal review
39 of inspection decisions made by the department's inspectors. This process shall include, at a
40 minimum, the following:

41 (1) Initial review by the supervisor of the inspector.

42 (2) The provision in or with each permit issued by the department of (i) the name,
43 phone number, and e-mail address of the supervisor of each inspector and (ii)
44 a notice of availability of the informal internal review process.

45 (3) Procedures the department must follow when a permit holder or applicant
46 requests an internal review of an inspector's decision.

47 Nothing in this subsection shall be deemed to limit or abrogate any rights available under
48 Chapter 150B of the General Statutes to a permit holder or applicant.

49 (f) If a specific building framing inspection as required by the North Carolina Residential
50 Code for One- and Two-Family Dwellings results in 15 or more separate violations of that Code,
51 the inspector shall forward a copy of the inspection report to the Department of Insurance.

1 **"§ 160D-11-5. Other arrangements for inspections.**

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

6 **"§ 160D-11-6. Alternate inspection method for component or element.**

7 (a) Notwithstanding the requirements of this Article, a city shall accept and approve,
8 without further responsibility to inspect, a design or other proposal for a component or element
9 in the construction of buildings from an architect licensed under Chapter 83A of the General
10 Statutes or professional engineer licensed under Chapter 89C of the General Statutes provided
11 all of the following apply:

12 (1) The submission design or other proposal is completed under valid seal of the
13 licensed architect or licensed professional engineer.

14 (2) Field inspection of the installation or completion of a component or element
15 of the building is performed by a licensed architect or licensed professional
16 engineer or a person under the direct supervisory control of the licensed
17 architect or licensed professional engineer.

18 (3) The licensed architect or licensed professional engineer under subdivision (2)
19 of this subsection provides the city with a signed written document stating the
20 component or element of the building inspected under subdivision (2) of this
21 subsection is in compliance with the North Carolina State Building Code or
22 the North Carolina Residential Code for One- and Two-Family Dwellings.
23 The inspection certification required under this subdivision shall be provided
24 by electronic or physical delivery and its receipt shall be promptly
25 acknowledged by the city through reciprocal means.

26 (b) Upon the acceptance and approval receipt of a signed written document by the city as
27 required under subsection (a) of this section, notwithstanding the issuance of a certificate of
28 occupancy, the city, its inspection department, and the inspectors shall be discharged and released
29 from any liabilities, duties, and responsibilities imposed by this Article with respect to or in
30 common law from any claim arising out of or attributed to the component or element in the
31 construction of the building for which the signed written document was submitted.

32 (c) With the exception of the requirements contained in subsection (a) of this section, no
33 further certification by a licensed architect or licensed professional engineer shall be required for
34 any component or element designed and sealed by a licensed architect or licensed professional
35 engineer for the manufacturer of the component or element under the North Carolina State
36 Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings.

37 (d) As used in this section, the following definitions apply:

38 (1) Component. – Any assembly, subassembly, or combination of elements
39 designed to be combined with other components to form part of a building or
40 structure. Examples of a component include an excavated footing trench
41 containing no concrete. The term does not include a system.

42 (2) Element. – A combination of products designed to be combined with other
43 elements to form all or part of a building component. The term does not
44 include a system.

45 **"§ 160D-11-7. Mutual aid contracts.**

46 (a) Any two or more cities or counties may enter into contracts with each other to provide
47 mutual aid and assistance in the administration and enforcement of State and local laws pertaining
48 to the North Carolina State Building Code. Mutual aid contracts may include provisions
49 addressing the scope of aid provided, for reimbursement or indemnification of the aiding party
50 for loss or damage incurred by giving aid, for delegating authority to a designated official or

1 employee to request aid or to send aid upon request, and any other provisions not inconsistent
2 with law.

3 (b) Unless the mutual aid contract says otherwise, while working with the requesting city
4 or county under the authority of this section, a Code-enforcement official shall have the same
5 jurisdiction, powers, rights, privileges, and immunities, including those relating to the defense of
6 civil actions and payment of judgments, as the Code-enforcement officials of the requesting
7 agency.

8 (c) Nothing in this section shall be construed to deprive any party to a mutual aid contract
9 under this section of its discretion to send or decline to provide aid to another party to the contract
10 under any circumstances, whether or not obligated by the contract to do so. In no case shall a
11 party to a mutual aid contract or any of its officials or employees be held to answer in any civil
12 or criminal action for declining to send aid whether or not obligated by contract to do so.

13 **"§ 160D-11-8. Conflicts of interest.**

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

- 25 (1) If the individual, company, or employee of a company contracting to perform
26 building inspections for the local government has worked for the owner,
27 developer, contractor, or project manager of the project to be inspected within
28 the last two years.
- 29 (2) If the individual, company, or employee of a company contracting to perform
30 building inspections for the local government is closely related to the owner,
31 developer, contractor, or project manager of the project to be inspected.
- 32 (3) If the individual, company, or employee of a company contracting to perform
33 building inspections for the local government has a financial or business
34 interest in the project to be inspected.

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

40 **"§ 160D-11-9. Failure to perform duties.**

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

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

50 **"§ 160D-11-10. Building permits.**

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

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

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

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

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

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

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

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

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

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

44 (b) A building permit shall be in writing and shall contain a provision that the work done
45 shall comply with the State Building Code and all other applicable State and local laws. Nothing
46 in this section shall require a local government to review and approve residential building plans
47 submitted to the local government pursuant to the North Carolina Residential Code, provided
48 that the local government may review and approve such residential building plans as it deems
49 necessary. No building permits shall be issued unless the plans and specifications are identified
50 by the name and address of the author thereof, and, if the General Statutes of North Carolina
51 require that plans for certain types of work be prepared only by a licensed architect or licensed

1 engineer, no building permit shall be issued unless the plans and specifications bear the North
2 Carolina seal of a licensed architect or of a licensed engineer. When any provision of the General
3 Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty
4 contractor of any kind, no building permit for the work shall be issued unless the work is to be
5 performed by such a duly licensed contractor.

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

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

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

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

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

22 (5) The addition (excluding replacement) of roofing.

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

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

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

37 (g) No building permit shall be issued pursuant to subdivision (1) of subsection (a) of this
38 section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than for
39 improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7)
40 that the owner occupies as a residence, or for the addition of an accessory building or accessory
41 structure as defined in the North Carolina Uniform Residential Building Code, the use of which
42 is incidental to that residential dwelling unit, unless the name, physical and mailing address,
43 telephone number, facsimile number, and electronic mail address of the lien agent designated by
44 the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an
45 attachment thereto. The building permit may contain the lien agent's electronic mail address. The
46 lien agent information for each permit issued pursuant to this subsection shall be maintained by
47 the inspection department in the same manner and in the same location in which it maintains its
48 record of building permits issued. Where the improvements to a real property leasehold are
49 limited to the purchase, transportation, and setup of a manufactured home, as defined in
50 G.S. 143-143.9(6), the purchase price of the manufactured home shall be excluded in determining
51 whether the cost of the work is thirty thousand dollars (\$30,000) or more.

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

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

8 **"§ 160D-11-11. Expiration of building permits.**

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

15 **"§ 160D-11-12. Changes in work.**

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

20 **"§ 160D-11-13. Inspections of work in progress.**

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

31 **"§ 160D-11-14. Appeals of stop orders.**

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

44 (1) Appealing to the Building Code Council.

45 (2) Appealing to the superior court as provided in G.S. 143-141.

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

48 **"§ 160D-11-15. Revocation of building permits.**

49 The appropriate inspector may revoke and require the return of any building permit by
50 notifying the permit holder in writing stating the reason for the revocation. Building permits shall
51 be revoked for any substantial departure from the approved application, plans, or specifications;

1 for refusal or failure to comply with the requirements of any applicable State or local laws; or for
2 false statements or misrepresentations made in securing the permit. Any building permit
3 mistakenly issued in violation of an applicable State or local law may also be revoked.

4 **"§ 160D-11-16. Certificates of compliance.**

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

17 **"§ 160D-11-17. Periodic inspections.**

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

27 **"§ 160D-11-18. Defects in buildings to be corrected.**

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

34 **"§ 160D-11-19. Unsafe buildings condemned.**

35 (a) Designation of Unsafe Buildings. – Every building that shall appear to the inspector
36 to be especially dangerous to life because of its liability to fire or because of bad condition of
37 walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems,
38 inadequate means of egress, or other causes shall be held to be unsafe, and the inspector shall
39 affix a notice of the dangerous character of the structure to a conspicuous place on the exterior
40 wall of the building.

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

- 45 (1) It appears to the inspector to be vacant or abandoned.
- 46 (2) It appears to the inspector to be in such dilapidated condition as to cause or
47 contribute to blight, disease, vagrancy, or fire or safety hazard, to be a danger
48 to children, or to tend to attract persons intent on criminal activities or other
49 activities that would constitute a public nuisance.

50 (c) Notice Posted on Structure. – If an inspector declares a nonresidential building or
51 structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the

1 unsafe character of the structure to a conspicuous place on the exterior wall of the building. For
2 the purposes of this section, the term "community development target area" means an area that
3 has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential
4 redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated
5 by the governing board as being in special need of revitalization for the benefit and welfare of its
6 citizens.

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

11 **"§ 160D-11-20. Removing notice from condemned building.**

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

15 **"§ 160D-11-21. Action in event of failure to take corrective action.**

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

- 20 (1) That the building or structure is in a condition that appears to meet one or
21 more of the following conditions:
22 a. Constitutes a fire or safety hazard.
23 b. Is dangerous to life, health, or other property.
24 c. Is likely to cause or contribute to blight, disease, vagrancy, or danger
25 to children.
26 d. Has a tendency to attract persons intent on criminal activities or other
27 activities that would constitute a public nuisance.
28 (2) That an administrative hearing will be held before the inspector at a designated
29 place and time, not later than 10 days after the date of the notice, at which time
30 the owner shall be entitled to be heard in person or by counsel and to present
31 arguments and evidence pertaining to the matter.
32 (3) That following the hearing, the inspector may issue such order to repair, close,
33 vacate, or demolish the building or structure as appears appropriate.

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

39 **"§ 160D-11-22. Order to take corrective action.**

40 If, upon a hearing held pursuant to the notice prescribed in G.S. 160D-11-19, the inspector
41 shall find that the building or structure is in a condition that constitutes a fire or safety hazard or
42 renders it dangerous to life, health, or other property, the inspector shall make an order in writing,
43 directed to the owner of such building or structure, requiring the owner to remedy the defective
44 conditions by repairing, closing, vacating, or demolishing the building or structure or taking other
45 necessary steps, within such period, not less than 60 days, as the inspector may prescribe,
46 provided that where the inspector finds that there is imminent danger to life or other property,
47 the inspector may order that corrective action be taken in such lesser period as may be feasible.

48 **"§ 160D-11-23. Appeal; finality of order if not appealed.**

49 Any owner who has received an order under G.S. 160D-11-20 may appeal from the order to
50 the governing board by giving notice of appeal in writing to the inspector and to the local
51 government clerk within 10 days following issuance of the order. In the absence of an appeal,

1 the order of the inspector shall be final. The governing board shall hear in accordance with
2 G.S. 160D-4-6 and render a decision in an appeal within a reasonable time. The governing board
3 may affirm, modify and affirm, or revoke the order.

4 **"§ 160D-11-24. Failure to comply with order.**

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

8 **"§ 160D-11-25. Enforcement.**

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

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

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

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

37 **"§ 160D-11-26. Records and reports.**

38 The inspection department shall keep complete and accurate records in convenient form of
39 all applications received, permits issued, inspections and reinspections made, defects found,
40 certificates of compliance or occupancy granted, and all other work and activities of the
41 department. These records shall be kept in the manner and for the periods prescribed by the
42 Department of Natural and Cultural Resources. Periodic reports shall be submitted to the
43 governing board and to the Commissioner of Insurance as they shall by ordinance, rule, or
44 regulation require.

45 **"§ 160D-11-27. Appeals.**

46 Unless otherwise provided by law, appeals from any order, decision, or determination by a
47 member of a local inspection department pertaining to the State Building Code or other State
48 building laws shall be taken to the Commissioner of Insurance or the Commissioner's designee
49 or other official specified in G.S. 143-139 by filing a written notice with the Commissioner and
50 with the inspection department within a period of 10 days after the order, decision, or

1 determination. Further appeals may be taken to the State Building Code Council or to the courts
2 as provided by law.

3 **"§ 160D-11-28. Fire limits.**

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

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

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

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

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

32 **"§ 160D-11-29. Regulation authorized as to repair, closing, and demolition of
33 nonresidential buildings or structures; order of public officer.**

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

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

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

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

18 (e) Limitations on Orders. –

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

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

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

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

44 (1) If the owner fails to comply with an order to repair, alter, or improve or to
45 vacate and close the nonresidential building or structure, the governing board
46 may adopt an ordinance ordering the public officer to proceed to effectuate
47 the purpose of this section with respect to the particular property or properties
48 that the public officer found to be jeopardizing the health or safety of its
49 occupants or members of the general public. The property or properties shall
50 be described in the ordinance. The ordinance shall be recorded in the office of
51 the register of deeds and shall be indexed in the name of the property owner

1 or owners in the grantor index. Following adoption of an ordinance, the public
2 officer may cause the building or structure to be repaired, altered, or improved
3 or to be vacated and closed. The public officer may cause to be posted on the
4 main entrance of any nonresidential building or structure so closed a placard
5 with the following words: "This building is unfit for any use; the use or
6 occupation of this building for any purpose is prohibited and unlawful." Any
7 person who occupies or knowingly allows the occupancy of a building or
8 structure so posted shall be guilty of a Class 3 misdemeanor.

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

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

35 (1) If the cost to repair the nonresidential building or structure to bring it into
36 compliance with the minimum standards is less than or equal to fifty percent
37 (50%) of its then current value, the ordinance shall require that the owner
38 either repair or demolish and remove the building or structure within 90 days.
39 (2) If the cost to repair the nonresidential building or structure to bring it into
40 compliance with the minimum standards exceeds fifty percent (50%) of its
41 then current value, the ordinance shall require the owner to demolish and
42 remove the building or structure within 90 days.

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

50 (h) Service of Complaints and Orders. – Complaints or orders issued by a public officer
51 pursuant to an ordinance adopted under this section shall be served upon persons either personally

1 or by certified mail so long as the means used are reasonably designed to achieve actual notice.
2 When service is made by certified mail, a copy of the complaint or order may also be sent by
3 regular mail. Service shall be deemed sufficient if the certified mail is refused but the regular
4 mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a
5 notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
6 If the identities of any owners or the whereabouts of persons are unknown and cannot be
7 ascertained by the public officer in the exercise of reasonable diligence and the public officer
8 makes an affidavit to that effect, the serving of the complaint or order upon the owners or other
9 persons may be made by publication in a newspaper having general circulation in the local
10 government at least once no later than the time that personal service would be required under this
11 section. When service is made by publication, a notice of the pending proceedings shall be posted
12 in a conspicuous place on the premises affected.

13 (i) Liens. –

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

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

24 (3) If the nonresidential building or structure is removed or demolished by the
25 public officer, he or she shall offer for sale the recoverable materials of the
26 building or structure and any personal property, fixtures, or appurtenances
27 found in or attached to the building or structure and shall credit the proceeds
28 of the sale, if any, against the cost of the removal or demolition, and any
29 balance remaining shall be deposited in the superior court by the public
30 officer, shall be secured in a manner directed by the court, and shall be
31 disbursed by the court to the persons found to be entitled thereto by final order
32 or decree of the court. Nothing in this section shall be construed to impair or
33 limit in any way the power of the governing board to define and declare
34 nuisances and to cause their removal or abatement by summary proceedings
35 or otherwise.

36 (j) Ejectment. – If any occupant fails to comply with an order to vacate a nonresidential
37 building or structure, the public officer may file a civil action in the name of the local government
38 to remove the occupant. The action to vacate shall be in the nature of summary ejectment and
39 shall be commenced by filing a complaint naming as parties-defendant any person occupying the
40 nonresidential building or structure. The clerk of superior court shall issue a summons requiring
41 the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10
42 days from the issuance of the summons to answer the complaint. The summons and complaint
43 shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor,
44 and if on its return it appears to have been duly served and if at the hearing the public officer
45 produces a certified copy of an ordinance adopted by the governing board pursuant to subsection
46 (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall
47 enter judgment ordering that the premises be vacated and all persons be removed. The judgment
48 ordering that the nonresidential building or structure be vacated shall be enforced in the same
49 manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any
50 judgment entered under this subsection by the magistrate may be taken as provided in
51 G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An

1 action to remove an occupant of a nonresidential building or structure who is a tenant of the
2 owner may not be in the nature of a summary ejection proceeding pursuant to this subsection
3 unless the occupant was served with notice, at least 30 days before the filing of the summary
4 ejection proceeding, that the governing board has ordered the public officer to proceed to
5 exercise his or her duties under subsection (f) of this section to vacate and close or remove and
6 demolish the nonresidential building or structure.

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

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

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

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

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

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

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

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

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

37 (o) No Effect on Just Compensation for Taking by Eminent Domain. – Nothing in this
38 section shall be construed as preventing the owner or owners of any property from receiving just
39 compensation for the taking of property by the power of eminent domain under the laws of this
40 State nor as permitting any property to be condemned or destroyed except in accordance with the
41 police power of the State.

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

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

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

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

"Article 12.

"Minimum Housing Codes.

"§ 160D-12-1. Authorization.

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

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

"§ 160D-12-2. Definitions.

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

- (1) Owner. – The holder of the title in fee simple and every mortgagee of record.
- (2) Parties in interest. – All individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof.
- (3) Public authority. – Any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or State relating to health, fire, building regulations, or other activities concerning dwellings in the local government.
- (4) Public officer. – The officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Article.

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

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

- (1) Designation of enforcement officer. – One or more public officers shall be designated to exercise the powers prescribed by the ordinance.
- (2) Investigation, complaint, hearing. – Whenever a petition is filed with the public officer by a public authority or by at least five residents of the jurisdiction charging that any dwelling is unfit for human habitation or when it appears to the public officer that any dwelling is unfit for human habitation, the public officer shall, if a preliminary investigation discloses a basis for such

1 charges, issue and cause to be served upon the owner of and parties in interest
2 in such dwellings a complaint stating the charges in that respect and
3 containing a notice that an administrative hearing will be held before the
4 public officer, or the officer's designated agent, at a place within the county in
5 which the property is located. The hearing shall be not less than 10 days nor
6 more than 30 days after the serving of the complaint. The owner and parties
7 in interest shall be given the right to file an answer to the complaint and to
8 appear in person, or otherwise, and give testimony at the place and time fixed
9 in the complaint. The rules of evidence prevailing in courts of law shall not be
10 controlling in administrative hearings before the public officer.

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

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

30 b. If the repair, alteration, or improvement of the dwelling cannot be
31 made at a reasonable cost in relation to the value of the dwelling,
32 requiring the owner, within the time specified in the order, to remove
33 or demolish such dwelling. The ordinance may fix a certain percentage
34 of this value as being reasonable. However, notwithstanding any other
35 provision of law, if the dwelling is located in a historic district and the
36 Historic District Commission determines, after a public hearing as
37 provided by ordinance, that the dwelling is of particular significance
38 or value toward maintaining the character of the district, and the
39 dwelling has not been condemned as unsafe, the order may require that
40 the dwelling be vacated and closed consistent with G.S. 160D-9-49.

41 (4) Repair, closing, and posting. – If the owner fails to comply with an order to
42 repair, alter, or improve or to vacate and close the dwelling, the public officer
43 may cause the dwelling to be repaired, altered, or improved or to be vacated
44 and closed, and the public officer may cause to be posted on the main entrance
45 of any dwelling so closed a placard with the following words: "This building
46 is unfit for human habitation; the use or occupation of this building for human
47 habitation is prohibited and unlawful." Occupation of a building so posted
48 shall constitute a Class 1 misdemeanor. The duties of the public officer set
49 forth in this subdivision shall not be exercised until the governing board shall
50 have by ordinance ordered the public officer to proceed to effectuate the
51 purpose of this Article with respect to the particular property or properties that

1 the public officer shall have found to be unfit for human habitation and which
2 property or properties shall be described in the ordinance. This ordinance shall
3 be recorded in the office of the register of deeds in the county where the
4 property or properties are located and shall be indexed in the name of the
5 property owner in the grantor index.

6 (5) Demolition. – If the owner fails to comply with an order to remove or
7 demolish the dwelling, the public officer may cause such dwelling to be
8 removed or demolished. The duties of the public officer set forth in this
9 subdivision shall not be exercised until the governing board shall have by
10 ordinance ordered the public officer to proceed to effectuate the purpose of
11 this Article with respect to the particular property or properties that the public
12 officer shall have found to be unfit for human habitation and which property
13 or properties shall be described in the ordinance. No such ordinance shall be
14 adopted to require demolition of a dwelling until the owner has first been
15 given a reasonable opportunity to bring it into conformity with the housing
16 code. This ordinance shall be recorded in the office of the register of deeds in
17 the county where the property or properties are located and shall be indexed
18 in the name of the property owner in the grantor index.

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

37 a. If it is determined that the repair of the dwelling to render it fit for
38 human habitation can be made at a cost not exceeding fifty percent
39 (50%) of the then current value of the dwelling, the ordinance shall
40 require that the owner either repair or demolish and remove the
41 dwelling within 90 days.

42 b. If it is determined that the repair of the dwelling to render it fit for
43 human habitation cannot be made at a cost not exceeding fifty percent
44 (50%) of the then current value of the dwelling, the ordinance shall
45 require the owner to demolish and remove the dwelling within 90 days.

46 This ordinance shall be recorded in the office of the register of deeds in
47 the county wherein the property or properties are located and shall be indexed
48 in the name of the property owner in the grantor index. If the owner fails to
49 comply with this ordinance, the public officer shall effectuate the purpose of
50 the ordinance.

51 (7) Liens. –

- 1 a. The amount of the cost of repairs, alterations, or improvements, or
2 vacating and closing, or removal or demolition by the public officer
3 shall be a lien against the real property upon which the cost was
4 incurred, which lien shall be filed, have the same priority, and be
5 collected as the lien for special assessment provided in Article 10 of
6 Chapter 160A of the General Statutes.
- 7 b. If the real property upon which the cost was incurred is located in an
8 incorporated city, then the amount of the cost is also a lien on any other
9 real property of the owner located within the city limits or within one
10 mile thereof except for the owner's primary residence. The additional
11 lien provided in this sub-subdivision is inferior to all prior liens and
12 shall be collected as a money judgment.
- 13 c. If the dwelling is removed or demolished by the public officer, the
14 local government shall sell the materials of the dwelling, and any
15 personal property, fixtures, or appurtenances found in or attached to
16 the dwelling, and shall credit the proceeds of the sale against the cost
17 of the removal or demolition, and any balance remaining shall be
18 deposited in the superior court by the public officer, shall be secured
19 in a manner directed by the court, and shall be disbursed by the court
20 to the persons found to be entitled thereto by final order or decree of
21 the court. Nothing in this section shall be construed to impair or limit
22 in any way the power of the local government to define and declare
23 nuisances and to cause their removal or abatement by summary
24 proceedings or otherwise.

25 (8) Civil action. – If any occupant fails to comply with an order to vacate a
26 dwelling, the public officer may file a civil action in the name of the local
27 government to remove such occupant. The action to vacate the dwelling shall
28 be in the nature of summary ejectment and shall be commenced by filing a
29 complaint naming as defendant any person occupying such dwelling. The
30 clerk of superior court shall issue a summons requiring the defendant to appear
31 before a magistrate at a certain time, date, and place not to exceed 10 days
32 from the issuance of the summons to answer the complaint. The summons and
33 complaint shall be served as provided in G.S. 42-29. If the summons appears
34 to have been duly served and if at the hearing the public officer produces a
35 certified copy of an ordinance adopted by the governing board pursuant to
36 subdivision (5) of this section authorizing the officer to proceed to vacate the
37 occupied dwelling, the magistrate shall enter judgment ordering that the
38 premises be vacated and that all persons be removed. The judgment ordering
39 that the dwelling be vacated shall be enforced in the same manner as the
40 judgment for summary ejectment entered under G.S. 42-30. An appeal from
41 any judgment entered hereunder by the magistrate may be taken as provided
42 in G.S. 7A-228, and the execution of such judgment may be stayed as
43 provided in G.S. 7A-227. An action to remove an occupant of a dwelling who
44 is a tenant of the owner may not be in the nature of a summary ejectment
45 proceeding pursuant to this paragraph unless such occupant was served with
46 notice at least 30 days before the filing of the summary ejectment proceeding
47 that the governing board has ordered the public officer to proceed to exercise
48 his duties under subdivisions (4) and (5) of this section to vacate and close or
49 remove and demolish the dwelling.

50 (9) Additional notices to affordable housing organizations. – Whenever a
51 determination is made pursuant to subdivision (3) of this section that a

1 dwelling must be vacated and closed, or removed or demolished, under the
2 provisions of this section, notice of the order shall be given by first-class mail
3 to any organization involved in providing or restoring dwellings for affordable
4 housing that has filed a written request for such notices. A minimum period
5 of 45 days from the mailing of such notice shall be given before removal or
6 demolition by action of the public officer, to allow the opportunity for any
7 organization to negotiate with the owner to make repairs, lease, or purchase
8 the property for the purpose of providing affordable housing. The public
9 officer or clerk shall certify the mailing of the notices, and the certification
10 shall be conclusive in the absence of fraud. Only an organization that has filed
11 a written request for such notices may raise the issue of failure to mail such
12 notices, and the sole remedy shall be an order requiring the public officer to
13 wait 45 days before causing removal or demolition.

14 **"§ 160D-12-4. Heat source required.**

15 (a) A local government shall, by ordinance, require that every dwelling unit leased as
16 rental property within the city shall have, at a minimum, a central or electric heating system or
17 sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least
18 one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit
19 measured 3 feet above the floor with an outside temperature of 20 degrees Fahrenheit.

20 (b) If a dwelling unit contains a heating system or heating appliances that meet the
21 requirements of subsection (a) of this section, the owner of the dwelling unit shall not be required
22 to install a new heating system or heating appliances, but the owner shall be required to maintain
23 the existing heating system or heating appliances in a good and safe working condition.
24 Otherwise, the owner of the dwelling unit shall install a heating system or heating appliances that
25 meet the requirements of subsection (a) of this section and shall maintain the heating system or
26 heating appliances in a good and safe working condition.

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

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

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

38 **"§ 160D-12-5. Standards.**

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

48 **"§ 160D-12-6. Service of complaints and orders.**

49 (a) Complaints or orders issued by a public officer pursuant to an ordinance adopted
50 under this Article shall be served upon persons either personally or by certified mail. When
51 service is made by certified mail, a copy of the complaint or order may also be sent by regular

1 mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the
2 regular mail is not returned by the post office within 10 days after the mailing. If regular mail is
3 used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises
4 affected.

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

13 **§ 160D-12-7. Periodic inspections.**

14 (a) Except as provided in subsection (b) of this section, the inspection department may
15 make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary,
16 or otherwise hazardous or unlawful conditions may exist in a residential building or structure.
17 However, when the inspection department determines that a safety hazard exists in one of the
18 dwelling units within a multifamily building, which in the opinion of the inspector poses an
19 immediate threat to the occupant, the inspection department may inspect, in the absence of a
20 specific complaint and actual knowledge of the unsafe condition, additional dwelling units in the
21 multifamily building to determine if that same safety hazard exists. For purposes of this section,
22 the term "reasonable cause" means any of the following: (i) the landlord or owner has a history
23 of more than two verified violations of the housing ordinances or codes within a 12-month period;
24 (ii) there has been a complaint that substandard conditions exist within the building or there has
25 been a request that the building be inspected; (iii) the inspection department has actual knowledge
26 of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are
27 visible from the outside of the property. In conducting inspections authorized under this section,
28 the inspection department shall not discriminate between single-family and multifamily buildings
29 or between owner-occupied and tenant-occupied buildings. In exercising this power, members
30 of the 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. Nothing in this section shall be construed to prohibit
33 periodic inspections in accordance with State fire prevention code or as otherwise required by
34 State law.

35 (b) A local government may require periodic inspections as part of a targeted effort to
36 respond to blighted or potentially blighted conditions within a geographic area that has been
37 designated by the governing board. However, the total aggregate of targeted areas in the local
38 government jurisdiction at any one time shall not be greater than 1 square mile or five percent
39 (5%) of the area within the local government jurisdiction, whichever is greater. A targeted area
40 designated by the local government shall reflect the local government's stated neighborhood
41 revitalization strategy and shall consist of property that meets the definition of a "blighted area"
42 or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and G.S. 160A-503(2a),
43 respectively, except that for purposes of this subsection, the planning board is not required to
44 make a determination as to the property. The local government shall not discriminate in its
45 selection of areas or housing types to be targeted and shall (i) provide notice to all owners and
46 residents of properties in the affected area about the periodic inspections plan and information
47 regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and
48 (iii) establish a plan to address the ability of low-income residential property owners to comply
49 with minimum housing code standards.

50 (c) In no event may a local government do any of the following: (i) adopt or enforce any
51 ordinance that would require any owner or manager of rental property to obtain any permit or

1 permission under Article 11 or Article 12 of this Chapter from the local government to lease or
2 rent residential real property or to register rental property with the local government, except for
3 those individual properties that have more than four verified violations in a rolling 12-month
4 period or two or more verified violations in a rolling 30-day period, or upon the property being
5 identified within the top ten percent (10%) of properties with crime or disorder problems as set
6 forth in a local ordinance; (ii) require that an owner or manager of residential rental property
7 enroll or participate in any governmental program as a condition of obtaining a certificate of
8 occupancy; (iii) levy a special fee or tax on residential rental property that is not also levied
9 against other commercial and residential properties, unless expressly authorized by general law
10 or applicable only to an individual rental unit or property described in clause (i) of this subsection
11 and the fee does not exceed five hundred dollars (\$500.00) in any 12-month period in which the
12 unit or property is found to have verified violations; (iv) provide that any violation of a rental
13 registration ordinance is punishable as a criminal offense; or (v) require any owner or manager
14 of rental property to submit to an inspection before receiving any utility service provided by the
15 local government. For purposes of this section, the term "verified violation" means all of the
16 following:

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

19 (2) Any violations that have not been corrected by the owner or manager within
20 21 days of receipt of written notice from the local government of the
21 violations. Should the same violation occur more than two times in a 12-month
22 period, the owner or manager may not have the option of correcting the
23 violation. If the housing code provides that any form of prohibited tenant
24 behavior constitutes a violation by the owner or manager of the rental
25 property, it shall be deemed a correction of the tenant-related violation if the
26 owner or manager, within 30 days of receipt of written notice of the
27 tenant-related violation, brings a summary ejectment action to have the tenant
28 evicted.

29 (d) If a property is identified by the local government as being in the top ten percent
30 (10%) of properties with crime or disorder problems, the local government shall notify the
31 landlord of any crimes, disorders, or other violations that will be counted against the property to
32 allow the landlord an opportunity to attempt to correct the problems. In addition, the local
33 government and the county sheriff's office or city's police department shall assist the landlord in
34 addressing any criminal activity, which may include testifying in court in a summary ejectment
35 action or other matter to aid in evicting a tenant who has been charged with a crime. If the local
36 government or the county sheriff's office or city's police department does not cooperate in
37 evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a crime or
38 disorder problem as set forth in the local ordinance, and the property may not be included in the
39 top ten percent (10%) of properties as a result of that tenant's behavior or activity.

40 (e) If the local government takes action against an individual rental unit under this
41 section, the owner of the individual rental unit may appeal the decision to the housing appeals
42 board or the zoning board of adjustment, if operating, or the planning board if created under
43 G.S. 160D-3-1, or if neither is created, the governing board. The board shall fix a reasonable time
44 for hearing appeals, shall give due notice to the owner of the individual rental unit, and shall
45 render a decision within a reasonable time. The owner may appear in person or by agent or
46 attorney. The board may reverse or affirm the action, wholly or partly, or may modify the action
47 appealed from, and may make any decision and order that in the opinion of the board ought to be
48 made in the matter.

49 **"§ 160D-12-8. Remedies.**

50 (a) An ordinance adopted pursuant to this Article may provide for a housing appeals
51 board as provided by G.S. 160D-3-6. An appeal from any decision or order of the public officer

1 is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer,
2 board, or commission of the local government. Any appeal from the public officer shall be taken
3 within 10 days from the rendering of the decision or service of the order by filing with the public
4 officer and with the housing appeals board a notice of appeal that shall specify the grounds upon
5 which the appeal is based. Upon the filing of any notice of appeal, the public officer shall
6 forthwith transmit to the board all the papers constituting the record upon which the decision
7 appealed from was made. When an appeal is from a decision of the public officer refusing to
8 allow the person aggrieved thereby to do any act, the decision shall remain in force until modified
9 or reversed. When any appeal is from a decision of the public officer requiring the person
10 aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the
11 hearing by the board, unless the public officer certifies to the board, after the notice of appeal is
12 filed with the officer, that because of facts stated in the certificate, a copy of which shall be
13 furnished the appellant, a suspension of the requirement would cause imminent peril to life or
14 property. In that case the requirement shall not be suspended except by a restraining order, which
15 may be granted for due cause shown upon not less than one day's written notice to the public
16 officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this
17 section.

18 (b) The housing appeals board shall fix a reasonable time for hearing appeals, shall give
19 due notice to the parties, and shall render its decision within a reasonable time. Any party may
20 appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or
21 may modify the decision or order appealed from, and may make any decision and order that in
22 its opinion ought to be made in the matter, and, to that end, it shall have all the powers of the
23 public officer, but the concurring vote of four members of the board shall be necessary to reverse
24 or modify any decision or order of the public officer. The board shall have power also in passing
25 upon appeals, when unnecessary hardships would result from carrying out the strict letter of the
26 ordinance, to adapt the application of the ordinance to the necessities of the case to the end that
27 the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial
28 justice done.

29 (c) Every decision of the housing appeals board shall be subject to review by proceedings
30 in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

31 (d) Any person aggrieved by an order issued by the public officer or a decision rendered
32 by the housing appeals board may petition the superior court for an injunction restraining the
33 public officer from carrying out the order or decision and the court may, upon such petition, issue
34 a temporary injunction restraining the public officer pending a final disposition of the cause. The
35 petition shall be filed within 30 days after issuance of the order or rendering of the decision.
36 Hearings shall be had by the court on a petition within 20 days and shall be given preference over
37 other matters on the court's calendar. The court shall hear and determine the issues raised and
38 shall enter such final order or decree as law and justice may require. It shall not be necessary to
39 file bond in any amount before obtaining a temporary injunction under this subsection.

40 (e) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or
41 used in violation of this Article or of any ordinance or code adopted under authority of this Article
42 or any valid order or decision of the public officer or board made pursuant to any ordinance or
43 code adopted under authority of this Article, the public officer or board may institute any
44 appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction,
45 alteration, or use; to restrain, correct, or abate the violation; to prevent the occupancy of the
46 dwelling; or to prevent any illegal act, conduct, or use in or about the premises of the dwelling.

47 **§ 160D-12-9. Compensation to owners of condemned property.**

48 Nothing in this Article shall be construed as preventing the owner or owners of any property
49 from receiving just compensation for the taking of property by the power of eminent domain
50 under the laws of this State nor as permitting any property to be condemned or destroyed except
51 in accordance with the police power of the State.

1 **"§ 160D-12-10. Additional powers of public officer.**

2 An ordinance adopted by the governing board may authorize the public officer to exercise
3 any powers necessary or convenient to carry out and effectuate the purpose and provisions of this
4 Article, including the following powers in addition to others herein granted:

- 5 (1) To investigate the dwelling conditions in the local government's planning and
6 development regulation jurisdiction in order to determine which dwellings
7 therein are unfit for human habitation.
8 (2) To administer oaths, affirmations, examine witnesses, and receive evidence.
9 (3) To enter upon premises for the purpose of making examinations in a manner
10 that will do the least possible inconvenience to the persons in possession.
11 (4) To appoint and fix the duties of officers, agents, and employees necessary to
12 carry out the purposes of the ordinances.
13 (5) To delegate any of his or her functions and powers under the ordinance to
14 other officers and other agents.

15 **"§ 160D-12-11. Administration of ordinance.**

16 A local government adopting an ordinance under this Article shall, as soon as possible
17 thereafter, prepare an estimate of the annual expenses or costs to provide the equipment,
18 personnel, and supplies necessary for periodic examinations and investigations of the dwellings
19 for the purpose of determining the fitness of dwellings for human habitation and for the
20 enforcement and administration of its ordinances adopted under this Article. The local
21 government is authorized to make appropriations from its revenues necessary for this purpose
22 and may accept and apply grants or donations to assist it.

23 **"§ 160D-12-12. Supplemental nature of Article.**

24 Nothing in this Article shall be construed to abrogate or impair the powers of the courts or of
25 any department of any local government to enforce any provisions of its charter or its ordinances
26 or regulations nor to prevent or punish violations thereof. The powers conferred by this Article
27 shall be supplemental to the powers conferred by any other law in carrying out the provisions of
28 the ordinances.

29 "Article 13.

30 "Additional Authority.

31 "Part 1. Open Space Acquisition.

32 **"§ 160D-13-1. Legislative intent.**

33 It is the intent of the General Assembly to provide a means whereby any local government
34 may acquire by purchase, gift, grant, devise, lease, or otherwise, and through the expenditure of
35 public funds, the fee or any lesser interest or right in real property in order to preserve, through
36 limitation of their future use, open spaces and areas for public use and enjoyment.

37 **"§ 160D-13-2. Finding of necessity.**

38 The General Assembly finds that the rapid growth and spread of urban development in the
39 State is encroaching upon, or eliminating, many open areas and spaces of varied size and
40 character, including many having significant scenic or aesthetic values, which areas and spaces
41 if preserved and maintained in their present open state would constitute important physical,
42 social, aesthetic, or economic assets to existing and impending urban development. The General
43 Assembly declares that it is necessary for sound and proper urban development and in the public
44 interest of the people of this State for any local government to expend or advance public funds
45 for, or to accept by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser interest
46 or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or
47 otherwise conserve open spaces and areas within their respective jurisdictions as defined by this
48 Article.

49 The General Assembly declares that the acquisition of interests or rights in real property for
50 the preservation of open spaces and areas constitutes a public purpose for which public funds
51 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 state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural or scenic resources. The terms also include interests or rights in real property and open space land or uses.
- (2) Open space land or open space uses. – Any undeveloped or predominantly undeveloped land in an urban area that has value for or is used for one or more of the following purposes:
 - a. Park and recreational purposes.
 - b. Conservation of land and other natural resources.
 - c. Historic or scenic purposes.

"§§ 160D-13-8 through 160D-13-10: Reserved for future codification purposes.

"Part 2. Community Development and Redevelopment.

"§ 160D-13-11. Community development programs and activities.

(a) A local government is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a local government may engage in the following activities:

- (1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low- and moderate-income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans.

1 (2) Programs concerned with employment, economic development, crime
2 prevention, child care, health, drug abuse, education, and welfare needs of
3 persons of low and moderate income.

4 (b) A governing board may exercise directly those powers granted by law to local
5 government redevelopment commissions and those powers granted by law to local government
6 housing authorities and may do so whether or not a redevelopment commission or housing
7 authority is in existence in such local government. Any governing board desiring to do so may
8 delegate to any redevelopment commission, created under Article 22 of Chapter 160A of the
9 General Statutes, or to any housing authority, created under Article 1 of Chapter 157 of the
10 General Statutes, the responsibility of undertaking or carrying out any specified community
11 development activities. Any governing board may by agreement undertake or carry out for
12 another any specified community development activities. Any governing board may contract
13 with any person, association, or corporation in undertaking any specified community
14 development activities. Any county or city board of health, county board of social services, or
15 county or city board of education may by agreement undertake or carry out for any other
16 governing board any specified community development activities.

17 (c) A local government undertaking community development programs or activities may
18 create one or more advisory committees to advise it and to make recommendations concerning
19 such programs or activities.

20 (d) A governing board proposing to undertake any loan guaranty or similar program for
21 rehabilitation of private buildings is authorized to submit to its voters the question whether such
22 program shall be undertaken, such referendum to be conducted pursuant to the general and local
23 laws applicable to special elections in such local government. No State or local taxes shall be
24 appropriated or expended by a county pursuant to this section for any purpose not expressly
25 authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein
26 provided.

27 (e) A government may receive and dispense funds from the Community Development
28 Block Grant (CDBG) Section 108 Loan Guarantee program, Subpart M, 24 C.F.R. § 570.700, et
29 seq., either through application to the North Carolina Department of Commerce or directly from
30 the federal government, in accordance with State and federal laws governing these funds. Any
31 local government that receives these funds directly from the federal government may pledge
32 current and future CDBG funds for use as loan guarantees in accordance with State and federal
33 laws governing these funds. A local government may implement the receipt, dispensing, and
34 pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a
35 portion of those funds to a third party in accordance with applicable laws governing the CDBG
36 program.

37 A government that has pledged current or future CDBG funds for use as loan guarantees prior
38 to the enactment of this subsection is authorized to have taken such action. A pledge of future
39 CDBG funds under this subsection is not a debt or liability of the State or any political
40 subdivision of the State or a pledge of the faith and credit of the State or any political subdivision
41 of the State. The pledging of future CDBG funds under this subsection does not directly,
42 indirectly, or contingently obligate the State or any political subdivision of the State to levy or to
43 pledge any taxes.

44 (f) All program income from Economic Development Grants from the Small Cities
45 Community Development Block Grant Program may be retained by recipient cities and counties
46 in "economically distressed counties," as defined in G.S. 143B-437.01, for the purposes of
47 creating local economic development revolving loan funds. Such program income derived
48 through the use by cities of Small Cities Community Development Block Grant money includes,
49 but is not limited to, (i) payment of principal and interest on loans made by the county using
50 CDBG funds; (ii) proceeds from the lease or disposition of real property acquired with CDBG
51 funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The

1 local economic development revolving loan fund set up by the city shall fund only those activities
2 eligible under Title I of the federal Housing and Community Development Act of 1974, as
3 amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing
4 and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall
5 not affect this subsection as to designations of economically distressed counties made prior to its
6 expiration.

7 **"§ 160D-13-12. Acquisition and disposition of property for redevelopment.**

8 Any local government is authorized, either as a part of a community development program
9 or independently thereof, and without the necessity of compliance with the Urban
10 Redevelopment Law, to exercise the following powers:

- 11 (1) To acquire, by voluntary purchase from the owner or owners, real property
12 that meets any of the following criteria:
13 a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately
14 developed from the standpoint of sound community development and
15 growth.
16 b. Appropriate for rehabilitation or conservation activities.
17 c. Appropriate for housing construction or the economic development of
18 the community.
19 d. Appropriate for the preservation or restoration of historic sites, the
20 beautification of urban land, the conservation of open space, natural
21 resources, and scenic areas, the provision of recreational opportunities,
22 or the guidance of urban development.
23 (2) To clear, demolish, remove, or rehabilitate buildings and improvements on
24 land so acquired.
25 (3) To retain property so acquired for public purposes, or to dispose, through sale,
26 lease, or otherwise, of any property so acquired to any person, firm,
27 corporation, or governmental unit, provided the disposition of such property
28 shall be undertaken in accordance with the procedures of Article 12 of Chapter
29 160A of the General Statutes, or the procedures of G.S. 160A-514, or any
30 applicable local act or charter provision modifying such procedures, or
31 subdivision (4) of this section.
32 (4) To sell, exchange, or otherwise transfer real property or any interest therein in
33 a community development project area to any redeveloper at private sale for
34 residential, recreational, commercial, industrial, or other uses or for public use
35 in accordance with the community development plan, subject to such
36 covenants, conditions, and restrictions as may be deemed to be in the public
37 interest or to carry out the purposes of this Article, provided that such sale,
38 exchange, or other transfer, and any agreement relating thereto, may be made
39 only after approval of the governing board and after a public hearing; a notice
40 of the public hearing shall be given once a week for two successive weeks in
41 a newspaper having general circulation in the local government's planning and
42 development jurisdiction area, the notice shall be published the first time not
43 less than 10 days nor more than 25 days preceding the public hearing, and the
44 notice shall disclose the terms of the sale, exchange, or transfer. At the public
45 hearing, the appraised value of the property to be sold, exchanged, or
46 transferred shall be disclosed, and the consideration for the conveyance shall
47 not be less than the appraised value.

48 **"§ 160D-13-13. Urban Development Action Grants.**

49 Any local government is authorized, either as a part of a community development program
50 or independently thereof, to enter into contracts or agreements with any person, association, or
51 corporation to undertake and carry out specified activities in furtherance of the purposes of Urban

1 Development Action Grants authorized by the Housing and Community Development Act of
2 1977, P.L. 95-128, or any amendment thereto, that is a continuation of such grant programs by
3 whatever designation, including the authority to enter into and carry out contracts or agreements
4 to extend loans, loan subsidies, or grants to persons, associations, or corporations and to dispose
5 of real or personal property by private sale in furtherance of such contracts or agreements.

6 Any enabling legislation contained in local acts that refers to "Urban Development Action
7 Grants" or the Housing and Community Development Act of 1977, P.L. 95-128, shall be
8 construed also to refer to any continuation of such grant programs by whatever designation.

9 **"§ 160D-13-14. Urban homesteading programs.**

10 A local government may establish a program of urban homesteading, in which residential
11 property of little or no value is conveyed to persons who agree to rehabilitate the property and
12 use it, for a minimum number of years, as their principal place of residence. Residential property
13 is considered of little or no value if the cost of bringing the property into compliance with the
14 local government's housing code exceeds sixty percent (60%) of the property's appraised value
15 on the county tax records. In undertaking such a program, a local government may:

- 16 (1) Acquire by purchase, gift, or otherwise, but not eminent domain, residential
17 property specifically for the purpose of reconveyance in the urban
18 homesteading program or may transfer to the program residential property
19 acquired for other purposes, including property purchased at a tax foreclosure
20 sale.
- 21 (2) Under procedures and standards established by the local government, convey
22 residential property by private sale under G.S. 160A-267 and for nominal
23 monetary consideration to persons who qualify as grantees.
- 24 (3) Convey property subject to the following conditions:
 - 25 a. A requirement that the grantee shall use the property as the grantee's
26 principal place of residence for a minimum number of years.
 - 27 b. A requirement that the grantee rehabilitate the property so that it meets
28 or exceeds minimum housing code standards.
 - 29 c. A requirement that the grantee maintain insurance on the property.
 - 30 d. Any other specific conditions, including, but not limited to, design
31 standards, or actions that the local government may require.
 - 32 e. A provision for the termination of the grantee's interest in the property
33 and its reversion to the local government upon the grantee's failure to
34 meet any condition so established.
- 35 (4) Subordinate the local government's interest in the property to any security
36 interest granted by the grantee to a lender of funds to purchase or rehabilitate
37 the property.

38 **"§ 160D-13-15. Downtown development projects.**

39 (a) Definition. – As used in this section, "downtown development project" or "joint
40 development project" means a capital project, in a central business district, as that district is
41 defined by the governing board, comprising one or more buildings and including both public and
42 private facilities. By way of illustration but not limitation, such a project might include a single
43 building comprising a publicly owned parking structure and publicly owned convention center
44 and a privately owned hotel or office building.

45 (b) Authorization. – If the governing board finds that it is likely to have a significant
46 effect on the revitalization of the jurisdiction, the local government may acquire, construct, own,
47 and operate or participate in the acquisition, construction, ownership, and operation of a joint
48 development project or of specific facilities within such a project. The local government may
49 enter into binding contracts with one or more private developers with respect to acquiring,
50 constructing, owning, or operating such a project. Such a contract may, among other provisions,
51 specify the following:

1 (1) The property interests of both the local government and the developer or
2 developers in the project, provided that the property interests of the local
3 government shall be limited to facilities for a public purpose.

4 (2) The responsibilities of the local government and the developer or developers
5 for construction of the project.

6 (3) The responsibilities of the local government and the developer or developers
7 with respect to financing the project.

8 Such a contract may be entered into before the acquisition of any real property necessary to
9 the project.

10 (c) Eligible Property. – A joint development project may be constructed on property
11 acquired by the developer or developers, on property directly acquired by the local government,
12 or on property acquired by the local government while exercising the powers, duties, and
13 responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or G.S. 160D-13-11.

14 (d) Conveyance of Property Rights. – In connection with a joint development project, the
15 local government may convey interests in property owned by it, including air rights over public
16 facilities, as follows:

17 (1) If the property was acquired while the local government was exercising the
18 powers, duties, and responsibilities of a redevelopment commission, the local
19 government may convey property interests pursuant to the "Urban
20 Redevelopment Law" or any local modification thereof.

21 (2) If the property was acquired by the local government directly, the local
22 government may convey property interests pursuant to G.S. 160D-13-12, and
23 Article 12 of Chapter 160A of the General Statutes does not apply to such
24 dispositions.

25 (3) In lieu of conveying the fee interest in air rights, the local government may
26 convey a leasehold interest for a period not to exceed 99 years, using the
27 procedures of subdivision (1) or (2) of this subsection, as applicable.

28 (e) Construction. – The contract between the local government and the developer or
29 developers may provide that the developer or developers shall be responsible for construction of
30 the entire joint development project. If so, the contract shall include such provisions as the
31 governing board deems sufficient to assure that the public facility or facilities included in the
32 project meet the needs of the local government and are constructed at a reasonable price. A
33 project constructed pursuant to this subsection is not subject to Article 8 of Chapter 143 of the
34 General Statutes, provided that local government funds constitute no more than fifty percent
35 (50%) of the total costs of the joint development project. Federal funds available for loan to
36 private developers in connection with a joint development project shall not be considered local
37 government funds for purposes of this subsection.

38 (f) Operation. – The local government may contract for the operation of any public
39 facility or facilities included in a joint redevelopment project by a person, partnership, firm, or
40 corporation, public or private. Such a contract shall include provisions sufficient to assure that
41 any such facility or facilities are operated for the benefit of the citizens of the local government.

42 (g) Grant Funds. – To assist in the financing of its share of a joint development project,
43 the local government may apply for, accept, and expend grant funds from the federal or state
44 governments.

45 "**§ 160D-13-16. Low- and moderate-income housing programs.**"

46 Any local government is authorized to exercise the following powers:

47 (1) To engage in and to appropriate and expend funds for residential housing
48 construction, new or rehabilitated, for sale or rental to persons and families of
49 low and moderate income. Any governing board may contract with any
50 person, association, or corporation to implement the provisions of this
51 subdivision.

- 1 (2) To acquire real property by voluntary purchase from the owners to be
2 developed by the local government or to be used by the local government to
3 provide affordable housing to persons of low and moderate income.
4 (3) To convey property by private sale to any public or private entity that provides
5 affordable housing to persons of low or moderate income under procedures
6 and standards established by the local government, The local government shall
7 include as part of any such conveyance covenants or conditions that assure the
8 property will be developed by the entity for sale or lease to persons of low or
9 moderate income.
10 (4) To convey residential property by private sale to persons of low or moderate
11 income, in accordance with procedures and standards established by the local
12 government, with G.S. 160A-267, and with any terms and conditions that the
13 governing board may determine.

14 "**§§ 160D-13-17 through 160D-13-19:** Reserved for future codification purposes.

15 "Part 3. Miscellaneous.

16 "**§ 160D-13-20. Program to finance energy improvements.**

17 (a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North
18 Carolina to promote and encourage renewable energy and energy efficiency within the State in
19 order to conserve energy, promote economic competitiveness, and expand employment in the
20 State. The General Assembly also finds that a local government has an integral role in furthering
21 this purpose by promoting and encouraging renewable energy and energy efficiency within the
22 local government's territorial jurisdiction. In furtherance of this purpose, a local government may
23 establish a program to finance the purchase and installation of distributed generation renewable
24 energy sources or energy efficiency improvements that are permanently affixed to residential,
25 commercial, or other real property.

26 (b) Financing Assistance. – A local government may establish a revolving loan fund and
27 a loan loss reserve fund for the purpose of financing or assisting in the financing of the purchase
28 and installation of distributed generation renewable energy sources or energy efficiency
29 improvements that are permanently fixed to residential, commercial, or other real property. A
30 local government may establish other local government energy efficiency and distributed
31 generation renewable energy source finance programs funded through federal grants. A local
32 government may use State and federal grants and loans and its general revenue for this financing.
33 The annual interest rate charged for the use of funds from the revolving fund may not exceed
34 eight percent (8%) per annum, excluding other fees for loan application review and origination.
35 The term of any loan originated under this section may not be greater than 20 years.

36 (c) Definition. – As used in this Article, "renewable energy source" has the same meaning
37 as "renewable energy resource" in G.S. 62-133.8.

38 "Article 14.

39 "Judicial Review.

40 "**§ 160D-14-1. Declaratory judgments.**

41 Challenges of legislative decisions of governing boards, including the validity or
42 constitutionality of development regulations adopted pursuant to this Chapter, and actions
43 authorized by G.S. 160D-1-8(c) or (g) and G.S. 160D-4-5(c), may be brought pursuant to Article
44 26 of Chapter 1 of the General Statutes. The governmental unit making the challenged decision
45 shall be named a party to the action.

46 "**§ 160D-14-2. Appeals in the nature of certiorari.**

47 (a) Applicability. – This section applies to appeals of quasi-judicial decisions of
48 decision-making boards when that appeal is in the nature of certiorari as required by this Chapter.

49 (b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing a
50 petition for writ of certiorari with the superior court. The petition shall do all of the following:

- 51 (1) State the facts that demonstrate that the petitioner has standing to seek review.

- 1 (2) Set forth allegations sufficient to give the court and parties notice of the
2 grounds upon which the petitioner contends that an error was made.
- 3 (3) Set forth with particularity the allegations and facts, if any, in support of
4 allegations that, as the result of an impermissible conflict as described in
5 G.S. 160D-1-9, or locally adopted conflict rules, the decision-making body
6 was not sufficiently impartial to comply with due process principles.
- 7 (4) Set forth the relief the petitioner seeks.
- 8 (c) Standing. – A petition may be filed under this section only by a petitioner who has
9 standing to challenge the decision being appealed. The following persons shall have standing to
10 file a petition under this section:
- 11 (1) Any person possessing any of the following criteria:
- 12 a. An ownership interest in the property that is the subject of the decision
13 being appealed, a leasehold interest in the property that is the subject
14 of the decision being appealed, or an interest created by easement,
15 restriction, or covenant in the property that is the subject of the
16 decision being appealed.
- 17 b. An option or contract to purchase the property that is the subject of the
18 decision being appealed.
- 19 c. An applicant before the decision-making board whose decision is
20 being appealed.
- 21 (2) Any other person who will suffer special damages as the result of the decision
22 being appealed.
- 23 (3) An incorporated or unincorporated association to which owners or lessees of
24 property in a designated area belong by virtue of their owning or leasing
25 property in that area, or an association otherwise organized to protect and
26 foster the interest of the particular neighborhood or local area, so long as at
27 least one of the members of the association would have standing as an
28 individual to challenge the decision being appealed, and the association was
29 not created in response to the particular development or issue that is the
30 subject of the appeal.
- 31 (4) A local government whose decision-making board has made a decision that
32 the governing board believes improperly grants a variance from or is
33 otherwise inconsistent with the proper interpretation of a development
34 regulation adopted by the governing board.
- 35 (d) Respondent. – The respondent named in the petition shall be the local government
36 whose decision-making board made the decision that is being appealed, except that if the
37 petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection
38 (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not
39 the applicant before the decision-making board whose decision is being appealed, the petitioner
40 shall also name that applicant as a respondent. Any petitioner may name as a respondent any
41 person with an ownership or leasehold interest in the property that is the subject of the decision
42 being appealed who participated in the hearing, or was an applicant, before the decision-making
43 board.
- 44 (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition
45 and a proposed writ of certiorari to the clerk of superior court of the county in which the matter
46 arose. The writ shall direct the respondent local government or the respondent decision-making
47 board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4)
48 of subsection (c) of this section, to prepare and certify to the court the record of proceedings
49 below within a specified date. The writ shall also direct that the petitioner shall serve the petition
50 and the writ upon each respondent named therein in the manner provided for service of a
51 complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a

1 decision-making board, the petition and the writ shall be served upon the chair of that
2 decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the
3 chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall
4 issue the writ without notice to the respondent or respondents if the petition has been properly
5 filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

6 Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution
7 or enforcement of the decision of the quasi-judicial board pending superior court review. The
8 court may grant a stay in its discretion and on such conditions that properly provide for the
9 security of the adverse party. A stay granted in favor of a city or county shall not require a bond
10 or other security.

11 (f) Response to the Petition. – The respondent may, but need not, file a response to the
12 petition, except that, if the respondent contends for the first time that any petitioner lacks standing
13 to bring the appeal, that contention must be set forth in a response served on all petitioners at
14 least 30 days prior to the hearing on the petition. If it is not served within that time period, the
15 matter may be continued to allow the petitioners time to respond.

16 (g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to
17 intervene as a petitioner or respondent in an action initiated under this section with the following
18 exceptions:

19 (1) Any person described in subdivision (1) of subsection (c) of this section shall
20 have standing to intervene and shall be allowed to intervene as a matter of
21 right.

22 (2) Any person, other than one described in subdivision (1) of subsection (c) of
23 this section, who seeks to intervene as a petitioner must demonstrate that the
24 person would have had standing to challenge the decision being appealed in
25 accordance with subdivisions (2) through (4) of subsection (c) of this section.

26 (3) Any person, other than one described in subdivision (1) of subsection (c) of
27 this section, who seeks to intervene as a respondent must demonstrate that the
28 person would have had standing to file a petition in accordance with
29 subdivisions (2) through (4) of subsection (c) of this section if the
30 decision-making board had made a decision that is consistent with the relief
31 sought by the petitioner.

32 (h) The Record. – The record shall consist of the decision and all documents and exhibits
33 submitted to the decision-making board whose decision is being appealed, together with the
34 minutes of the meeting or meetings at which the decision being appealed was considered. Upon
35 request of any party, the record shall also contain an audio or videotape of the meeting or
36 meetings at which the decision being appealed was considered if such a recording was made.
37 Any party may also include in the record a transcript of the proceedings, which shall be prepared
38 at the cost of the party choosing to include it. The parties may agree that matters unnecessary to
39 the court's decision be deleted from the record or that matters other than those specified herein
40 be included. The record shall be bound and paginated or otherwise organized for the convenience
41 of the parties and the court. A copy of the record shall be served by the local government
42 respondent, or the respondent decision-making board, upon all petitioners within three days after
43 it is filed with the court.

44 (i) Hearing on the Record. – The court shall hear and decide all issues raised by the
45 petition by reviewing the record submitted in accordance with subsection (h) of this section. The
46 court may, in its discretion, allow the record to be supplemented with affidavits, testimony of
47 witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate
48 to allow an appropriate determination of the following issues:

49 (1) Whether a petitioner or intervenor has standing.

- 1 (2) Whether, as a result of impermissible conflict as described in G.S. 160D-1-9
2 or locally adopted conflict rules, the decision-making body was not
3 sufficiently impartial to comply with due process principles.
- 4 (3) Whether the decision-making body erred for the reasons set forth in
5 sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.
- 6 (j) Scope of Review. –
- 7 (1) When reviewing the decision under the provisions of this section, the court
8 shall ensure that the rights of petitioners have not been prejudiced because the
9 decision-making body's findings, inferences, conclusions, or decisions were:
- 10 a. In violation of constitutional provisions, including those protecting
11 procedural due process rights.
- 12 b. In excess of the statutory authority conferred upon the local
13 government or the authority conferred upon the decision-making
14 board by ordinance.
- 15 c. Inconsistent with applicable procedures specified by statute or
16 ordinance.
- 17 d. Affected by other error of law.
- 18 e. Unsupported by competent, material, and substantial evidence in view
19 of the entire record.
- 20 f. Arbitrary or capricious.
- 21 (2) When the issue before the court is whether the decision-making board erred
22 in interpreting an ordinance, the court shall review that issue de novo. The
23 court shall consider the interpretation of the decision-making board, but is not
24 bound by that interpretation, and may freely substitute its judgment as
25 appropriate.
- 26 (3) The term "competent evidence," as used in this subsection, shall not preclude
27 reliance by the decision-making board on evidence that would not be
28 admissible under the rules of evidence as applied in the trial division of the
29 General Court of Justice if (i) the evidence was admitted without objection or
30 (ii) the evidence appears to be sufficiently trustworthy and was admitted under
31 such circumstances that it was reasonable for the decision-making board to
32 rely upon it. The term "competent evidence," as used in this subsection, shall
33 not be deemed to include the opinion testimony of lay witnesses as to any of
34 the following:
- 35 a. The use of property in a particular way affects the value of other
36 property.
- 37 b. The increase in vehicular traffic resulting from a proposed
38 development poses a danger to the public safety.
- 39 c. Matters about which only expert testimony would generally be
40 admissible under the rules of evidence.
- 41 (k) Decision of the Court. – Following its review of the decision-making board in
42 accordance with subsection (j) of this section, the court may affirm the decision, reverse the
43 decision and remand the case with appropriate instructions, or remand the case for further
44 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
45 determine what relief should be granted to the petitioners:
- 46 (1) If the court concludes that the error committed by the decision-making board
47 is procedural only, the court may remand the case for further proceedings to
48 correct the procedural error.
- 49 (2) If the court concludes that the decision-making board has erred by failing to
50 make findings of fact such that the court cannot properly perform its function,
51 then the court may remand the case with appropriate instructions so long as

1 the record contains substantial competent evidence that could support the
2 decision below with appropriate findings of fact. However, findings of fact
3 are not necessary when the record sufficiently reveals the basis for the
4 decision below or when the material facts are undisputed and the case presents
5 only an issue of law.

6 (3) If the court concludes that the decision by the decision-making board is not
7 supported by competent, material, and substantial evidence in the record or is
8 based upon an error of law, then the court may remand the case with an order
9 that directs the decision-making board to take whatever action should have
10 been taken had the error not been committed or to take such other action as is
11 necessary to correct the error. Specifically:

12 a. If the court concludes that a permit was wrongfully denied because the
13 denial was not based on competent, material, and substantial evidence
14 or was otherwise based on an error of law, the court may remand with
15 instructions that the permit be issued, subject to reasonable and
16 appropriate conditions.

17 b. If the court concludes that a permit was wrongfully issued because the
18 issuance was not based on competent, material, and substantial
19 evidence or was otherwise based on an error of law, the court may
20 remand with instructions that the permit be revoked.

21 (l) Effect of Appeal and Ancillary Injunctive Relief. –

22 (1) If a development approval is appealed, the applicant shall have the right to
23 commence work while the appeal is pending. However, if the development
24 approval is reversed by a final decision of any court of competent jurisdiction,
25 the applicant shall not be deemed to have gained any vested rights on the basis
26 of actions taken prior to or during the pendency of the appeal and must proceed
27 as if no development approval had been granted.

28 (2) Upon motion of a party to a proceeding under this section, and under
29 appropriate circumstances, the court may issue an injunctive order requiring
30 any other party to that proceeding to take certain action or refrain from taking
31 action that is consistent with the court's decision on the merits of the appeal.

32 (m) Joinder. – A declaratory judgment brought under G.S. 160D-14-1 or other civil action
33 relating to the decision at issue may be joined with the petition for writ of certiorari and decided
34 in the same proceeding.

35 **"§ 160D-14-3. Appeals of decisions on subdivision plats.**

36 (a) When a subdivision regulation adopted under this Chapter provides that the decision
37 whether to approve or deny a preliminary or final subdivision plat is quasi-judicial, then that
38 decision of the board shall be subject to review by the superior court by proceedings in the nature
39 of certiorari. The provisions of G.S. 160D-4-6 and this section shall apply to those appeals.

40 (b) When a subdivision regulation adopted under this Chapter provides that the decision
41 whether to approve or deny a preliminary or final subdivision plat is administrative, then that
42 decision of the board shall be subject to review by filing an action in superior court seeking
43 appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the
44 decision, which shall be made as provided in G.S. 160D-4-3(b).

45 (c) For purposes of this section, a subdivision regulation shall be deemed to authorize a
46 quasi-judicial decision if the decision-making entity under G.S. 160D-8-3(c) is authorized to
47 decide whether to approve or deny the plat based not only upon whether the application complies
48 with the specific requirements set forth in the regulation but also on whether the application
49 complies with one or more generally stated standards requiring a discretionary decision to be
50 made.

51 **"§ 160D-14-4. Other civil actions.**

1 Except as expressly stated, this Article does not limit the availability of civil actions otherwise
 2 authorized by law or alter the times in which they may be brought.

3 **"§ 160D-14-5. Statutes of limitation.**

4 (a) Zoning Map Adoption or Amendments. – A cause of action as to the validity of any
 5 regulation adopting or amending a zoning map adopted under this Chapter or other applicable
 6 law or a development agreement adopted under Article 10 of this Chapter shall accrue upon
 7 adoption of such ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

8 (b) Text Adoption or Amendment. – Except as otherwise provided in subsection (a) of
 9 this section, an action challenging the validity of a development regulation adopted under this
 10 Chapter or other applicable law shall be brought within one year of the accrual of such action.
 11 Such an action accrues when the party bringing such action first has standing to challenge the
 12 ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process
 13 shall be brought within three years after the adoption of the ordinance.

14 (c) Enforcement Defense. – Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1
 15 shall bar a party in an action involving the enforcement of a development regulation from raising
 16 as a defense in such proceedings the invalidity of the ordinance. Nothing in this section or in
 17 G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
 18 requirement, decision, or determination made by an administrative official contending that such
 19 party is in violation of a development regulation from raising in the judicial appeal the invalidity
 20 of such ordinance as a defense to such order, requirement, decision, or determination. A party in
 21 an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an
 22 alleged defect in the adoption process unless the defense is formally raised within three years of
 23 the adoption of the challenged ordinance.

24 (d) Quasi-Judicial Decisions. – Unless specifically provided otherwise, a petition for
 25 review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of
 26 30 days after the decision is effective or after a written copy thereof is given in accordance with
 27 G.S. 160D-4-6(j). When first-class mail is used to deliver notice, three days shall be added to the
 28 time to file the petition.

29 (e) Others. – Except as provided by this section, the statutes of limitations shall be as
 30 provided in Subchapter II of Chapter 1 of the General Statutes."

31 **SECTION 4.1.** G.S. 1-54 reads as rewritten:

32 **"§ 1-54. One year.**

33 Within one year an action or proceeding –

34 ...

- 35 (10) Actions contesting the validity of any zoning or unified development
 36 ordinance or any provision thereof adopted under ~~Part 3 of Article 18 of~~
 37 ~~Chapter 153A or Part 3 of Article 19 of Chapter 160A~~ Chapter 160D of the
 38 General Statutes or other applicable law, other than an ordinance adopting or
 39 amending a zoning map or approving a special use, conditional use, or
 40 conditional zoning district rezoning request, map. Such an action accrues
 41 when the party bringing such action first has standing to challenge the
 42 ordinance; provided that, a challenge to an ordinance on the basis of an alleged
 43 defect in the adoption process shall be brought within three years after the
 44 adoption of the ordinance.

45"

46 **SECTION 4.2.** G.S. 1-54.1 reads as rewritten:

47 **"§ 1-54.1. Two months.**

48 Within two months an action contesting the validity of any ordinance adopting or amending
 49 a zoning map ~~or approving a special use, conditional use, conditional zoning district rezoning~~
 50 ~~request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article 19~~
 51 ~~of Chapter 160A of the General Statutes or other applicable law. Article 7 of Chapter 160D of~~

1 the General Statutes. Such an action accrues upon adoption of such ordinance or amendment. As
 2 used herein, the term two months shall be calculated as 60 days."

3 **SECTION 4.3.** G.S. 63-31(a) reads as rewritten:

4 "**§ 63-31. Adoption of airport zoning regulations.**

5 (a) Every political subdivision may adopt, administer, and enforce, under the police
 6 power ~~and in the manner and upon the conditions hereinafter prescribed, or as a land development~~
 7 regulation under Chapter 160D of the General Statutes, airport zoning regulations, which
 8 regulations shall divide the area surrounding any airport within the jurisdiction of said political
 9 subdivision into zones, and, within such zones, specify the land uses permitted, and regulate and
 10 restrict the height to which structures and trees may be erected or allowed to grow. In adopting
 11 or revising any such zoning regulations, the political subdivision shall consider, among other
 12 things, the character of the flying operations expected to be conducted at the airport, the nature
 13 of the terrain, the height of existing structures and trees above the level of the airport, the
 14 possibility of lowering or removing existing obstructions, and the views of the agency of the
 15 federal government charged with the fostering of civil aeronautics, as to the aerial approaches
 16 necessary to safe flying operations at the airport."

17 **SECTION 4.4.** G.S. 63-32(b) reads as rewritten:

18 "**§ 63-32. Permits, new structures, etc., and variances.**

19 ...

20 (b) Variances. – Any person desiring to erect any structures, or increase the height of any
 21 structure, or permit the growth of any tree, or otherwise use his property, in violation of airport
 22 zoning regulations adopted under this Article, may apply to the board of appeals, as provided in
 23 G.S. 63-33, subsection (c), for a variance from the zoning regulations in question. Such variances
 24 ~~shall be allowed where a literal application or enforcement of the regulations would result in~~
 25 ~~practical difficulty or unnecessary hardship and the relief granted would not be contrary to the~~
 26 ~~public interest but do substantial justice and shall be considered pursuant to G.S. 160D-7-5(d)~~
 27 and be in accordance with the spirit of the regulations and this Article."

28 **SECTION 4.5.** G.S. 63-33 reads as rewritten:

29 "**§ 63-33. Procedure.**

30 (a) Adoption of Zoning Regulations. – No airport zoning regulations shall be adopted,
 31 amended, or changed under this Article except by action of the legislative body of the political
 32 subdivision in question, or the joint board provided for in G.S. 63-31, subsection (c), ~~after a~~
 33 ~~public hearing in relation thereto, at which parties in interest and citizens shall have an~~
 34 ~~opportunity to be heard. At least 10 days' notice of the hearing shall be published in an official~~
 35 ~~paper, or a paper of general circulation, in the political subdivision or subdivisions in which the~~
 36 ~~airport is located, following the procedures set for adoption of development regulations in Article~~
 37 6 of Chapter 160D of the General Statutes.

38 ...

39 (c) Administration of Airport Zoning Regulations – Board of Appeals. – Airport zoning
 40 regulations adopted under this Article shall provide for a board of appeals to have and exercise
 41 the following powers:

- 42 (1) To hear and decide appeals from any order, requirement, decision, or
 43 determination made by the administrative agency in the enforcement of this
 44 ~~Article or of any ordinance adopted pursuant thereto;~~Article.
- 45 (2) To hear and decide special ~~exceptions to the terms of the ordinance use~~
 46 permits upon which such board may be required to pass under such
 47 ~~ordinance;~~ordinance.
- 48 (3) To hear and decide specific ~~variances under G.S. 63-32, subsection~~
 49 ~~(b);~~variances.

50 ~~Where a zoning board of appeals or adjustment already exists, it may be appointed as the~~
 51 board of appeals. Otherwise, the board of appeals shall consist of five members, each to be

1 appointed for a term of three years and to be removable for cause by the appointing authority
2 upon written charges and after public hearing. G.S. 160D-4-5 and G.S. 160D-4-6 shall be
3 applicable to appeals, special use permits, and variance petitions made pursuant to this section.

4 ~~The board shall adopt rules in accordance with the provisions of any ordinance adopted under~~
5 ~~this Article. Meetings of the board shall be held at the call of the chairman and at such other times~~
6 ~~as the board may determine. The chairman, or in his absence the acting chairman, may administer~~
7 ~~oaths and compel the attendance of witnesses. All meetings of the board shall be public. The~~
8 ~~board shall keep minutes of its proceedings, showing the vote of each member upon each~~
9 ~~question, or, if absent or failing to vote, indicating such fact, and shall keep records of its~~
10 ~~examinations and other official actions, all of which shall immediately be filed in the office of~~
11 ~~the board and shall be a public record.~~

12 ~~Appeals to the board may be taken by any person aggrieved, or by any officer, department,~~
13 ~~board, or bureau of the political subdivision affected, by any decision of the administrative~~
14 ~~agency. An appeal must be taken within a reasonable time, as provided by the rules of the board,~~
15 ~~by filing with the agency from which the appeal is taken and with the board, a notice of appeal~~
16 ~~specifying the grounds thereof. The agency from which the appeal is taken shall forthwith~~
17 ~~transmit to the board all the papers constituting the record upon which the action appealed from~~
18 ~~was taken.~~

19 ~~An appeal shall stay all proceedings in furtherance of the action appealed from, unless the~~
20 ~~agency from which the appeal is taken certifies to the board, after the notice of appeal has been~~
21 ~~filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause~~
22 ~~imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by~~
23 ~~a restraining order which may be granted by the board or by a court of record on application on~~
24 ~~notice to the agency from which the appeal is taken and on due cause shown.~~

25 ~~The board shall fix a reasonable time for the hearing of the appeal, give public notice and due~~
26 ~~notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing~~
27 ~~any party may appear in person or by agent or by attorney.~~

28 ~~The board may, in conformity with the provisions of this Article, reverse or affirm, wholly~~
29 ~~or partly, or modify, the order, requirement, decision or determination appealed from and may~~
30 ~~make such order, requirement, decision or determination as ought to be made, and to that end~~
31 ~~shall have all the powers of the administrative agency from which the appeal is taken.~~

32 ~~The concurring vote of a majority of the members of the board shall be sufficient to reverse~~
33 ~~any order, requirement, decision, or determination of the administrative agency, or to decide in~~
34 ~~favor of the applicant on any matter upon which it is required to pass under any such ordinance,~~
35 ~~or to effect any variation in such ordinance."~~

36 **SECTION 4.6.** G.S. 63-34 reads as rewritten:

37 **"§ 63-34. Judicial review.**

38 (a) ~~Any person aggrieved by any decision of the board of appeals, or any taxpayer, or~~
39 ~~any officer, department, board, or bureau of the political subdivision, may present to the superior~~
40 ~~court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying~~
41 ~~the grounds of the illegality. Such petition shall be presented to the court within 30 days after the~~
42 ~~decision is filed in the office of the board. Such petition shall comply with the provisions of G.S.~~
43 ~~160A-393.~~

44 (b) ~~The allowance of the writ shall not stay proceedings upon the decision appealed from,~~
45 ~~but the court may, on application, on notice to the board and on due cause shown, grant a~~
46 ~~restraining order.~~

47 (c) ~~The board of appeals shall not be required to return the original papers acted upon by~~
48 ~~it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof~~
49 ~~as may be called for by the writ. The return shall concisely set forth such other facts as may be~~
50 ~~pertinent and material to show the grounds of the decision appealed from and shall be verified.~~

51 (d) ~~Repealed by Session Laws 2009-421, s. 3, effective January 1, 2010.~~

1 (e) Costs shall not be allowed against the board of appeals unless it appears to the court
2 that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed
3 from.

4 G.S. 160D-14-1 shall be applicable to judicial review of administrative and quasi-judicial
5 decisions made pursuant to this Article."

6 **SECTION 4.7.** G.S. 63-35 reads as rewritten:

7 **"§ 63-35. Enforcement and remedies.**

8 ~~Each violation of this Article or of any regulations, order, or ruling promulgated or made~~
9 ~~pursuant to this Article, shall constitute a Class 3 misdemeanor, and each day a violation~~
10 ~~continues to exist shall constitute a separate offense. In addition, the political subdivision within~~
11 ~~which the property is located may institute in any court of competent jurisdiction, an action to~~
12 ~~prevent, restrain, correct or abate any violation of this Article, or of airport zoning regulations~~
13 ~~adopted under this Article, or of any order or ruling made in connection with their administration~~
14 ~~or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction~~
15 ~~(which may be mandatory) or otherwise, as may be proper under all the facts and circumstances~~
16 ~~of the case, in order fully to effectuate the purposes of this Article and of the regulations adopted~~
17 ~~and orders and rulings made pursuant thereto.~~G.S. 160D-4-4 shall be applicable to ordinances
18 adopted pursuant to this Article."

19 **SECTION 4.8.** G.S. 143-215.57 reads as rewritten:

20 **"§ 143-215.57. Procedures in issuing permits.**

21 ...

22 (b) In prescribing standards and requirements for the issuance of permits under this Part
23 and in issuing permits, local governments shall proceed as in the case of an ordinance for the
24 better government of the county or city as the case may be. ~~A city may exercise the powers~~
25 ~~granted in this Part not only within its corporate boundaries but also within the area of its~~
26 ~~extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any~~
27 ~~place within the county that is outside the zoning jurisdiction of a city in the county. If a city does~~
28 ~~not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction, the~~
29 ~~county may exercise the powers granted in this Part in the city's extraterritorial zoning~~
30 ~~jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose~~
31 ~~governing body, by resolution, agrees to the regulation. The governing body of a city may, upon~~
32 ~~one year's written notice, withdraw its approval of the county regulations, and those regulations~~
33 ~~shall have no further effect within the city's jurisdiction.~~Local government jurisdiction for these
34 ordinances shall be as specified in Article 2 of Chapter 160D of the General Statutes. Article 4
35 of Chapter 160D of the General Statutes shall apply to the administration, enforcement, and
36 appeals regarding these ordinances.

37 (c) ~~The local governing body is hereby empowered to adopt regulations it may deem~~
38 ~~necessary concerning the form, time, and manner of submission of applications for permits under~~
39 ~~this Part. These regulations may provide for the issuance of permits under this Part by the local~~
40 ~~governing body or by an agency designated by the local governing body, as prescribed by the~~
41 ~~governing body. Every final decision granting or denying a permit under this Part shall be subject~~
42 ~~to review by the superior court of the county, with the right of jury trial at the election of the~~
43 ~~party seeking review. The time and manner of election of a jury trial shall be governed by G.S.~~
44 ~~1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no~~
45 ~~action shall be taken that would be unlawful in the absence of a permit issued under this Part."~~

46 **SECTION 4.9.** G.S. 143-215.58 reads as rewritten:

47 **"§ 143-215.58. Violations and penalties.**

48 ...

49 (a1) A local government may use all of the remedies available for the enforcement of
50 ordinances under Chapters ~~153A and 160A-153A~~, 160A, and 160D of the General Statutes to
51 enforce an ordinance adopted pursuant to this Part.

1 (b) Failure to remove any artificial obstruction or enlargement or replacement thereof,
 2 that violates this Part or any ordinance adopted (or the provision of any permit issued) under the
 3 authority of this Part, shall constitute a separate violation of this Part for each day that the failure
 4 continues after written notice from the county board of commissioners or governing ~~body~~board
 5 of a city.

6 (c) In addition to or in lieu of other remedies, the county board of commissioners or
 7 governing ~~body~~board of a city may institute any appropriate action or proceeding to restrain or
 8 prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit
 9 issued) under the authority of this Part, or to require any person, firm or corporation that has
 10 committed a violation to remove a violating obstruction or restore the conditions existing before
 11 the placement of the obstruction."

12 **SECTION 4.10.** G.S. 130A-55 reads as rewritten:

13 "**§ 130A-55. Corporate powers.**

14 A sanitary district board shall be a body politic and corporate and may sue and be sued in
 15 matters relating to the sanitary district. Notwithstanding any limitation in the petition under
 16 G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may
 17 exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary
 18 district board shall have the following powers:

19 ...

20 (17) For the purpose of promoting and protecting the public health, safety and the
 21 general welfare of the State, a sanitary district board is authorized to establish
 22 as zoning units any portions of the sanitary district not under the control of the
 23 United States or this State or any agency or instrumentality of either, in
 24 accordance with the following:

25 ...

26 b. When a zoning area is established within a sanitary district, the
 27 sanitary district board as to the zoning area shall have all rights,
 28 privileges, powers and duties granted to ~~municipal corporations under~~
 29 ~~Part 3, Article 19, Chapter 160A~~ local governments under Article 7 of
 30 Chapter 160D of the General Statutes. However, the sanitary district
 31 board shall not be required to appoint any zoning commission or board
 32 of adjustment. If neither a zoning commission nor board of adjustment
 33 is appointed, the sanitary district board shall have all rights.

34"

35 **SECTION 4.11.** G.S. 143-214.5(d) reads as rewritten:

36 "(d) **Mandatory Local Programs.** – The Department shall assist local governments to
 37 develop water supply watershed protection programs that comply with this section. Local
 38 government compliance programs shall include an implementing local ordinance and shall
 39 provide for maintenance, inspection, and enforcement procedures. As part of its assistance to
 40 local governments, the Commission shall approve and make available a model local water supply
 41 watershed management and protection ordinance. The model management and protection
 42 ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling
 43 development density, (ii) providing for performance-based alternatives to development density
 44 controls that are based on sound engineering principles, and (iii) a combination of both (i) and
 45 (ii). Local governments shall administer and enforce the minimum management requirements.
 46 Every local government that has within its jurisdiction all or a portion of a water supply watershed
 47 shall submit a local water supply watershed management and protection ordinance to the
 48 Commission for approval. Local governments may adopt such ordinances pursuant to their
 49 general police power, power to regulate the subdivision of land, zoning power, or any
 50 combination of such powers. In adopting a local ordinance that imposes water supply watershed
 51 management requirements that are more stringent than those adopted by the Commission, a

1 ~~county local government~~ must comply with the notice provisions of G.S. 153A-343 and a
 2 ~~municipality must comply with the notice provisions of G.S. 160A-384. Article 6 of Chapter~~
 3 ~~160D of the General Statutes.~~ This section shall not be construed to affect the validity of any
 4 local ordinance adopted for the protection of water supply watersheds prior to completion of the
 5 review of the ordinance by the Commission or prior to the assumption by the Commission of
 6 responsibility for a local water supply watershed protection program. Local governments may
 7 create or designate agencies to administer and enforce such programs. The Commission shall
 8 approve a local program only if it determines that the requirements of the program equal or
 9 exceed the minimum statewide water supply watershed management requirements adopted
 10 pursuant to this section."

11 **SECTION 4.12.** G.S. 113A-208 reads as rewritten:

12 "**§ 113A-208. Regulation of mountain ridge construction by counties and cities.**

13 (a) Any county or city may adopt, effective not later than January 1, 1984, and may
 14 enforce an ordinance that regulates the construction of tall buildings or structures on protected
 15 mountain ridges by any person. The ordinance may provide for the issuance of permits to
 16 construct tall buildings on protected mountain ridges, the conditioning of such permits, and the
 17 denial of permits for such construction. Any ordinance adopted hereunder shall be based upon
 18 studies of the mountain ridges within the county, a statement of objectives to be sought by the
 19 ordinance, and plans for achieving these objectives. Any such county ordinance shall apply
 20 countywide except as otherwise provided in ~~G.S. 160A-360, Article 2 of Chapter 160D of the~~
 21 ~~General Statutes~~ and any such city ordinance shall apply citywide, to construction of tall
 22 buildings on protected mountain ridges within the city or county, as the case may be.

23 A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an ordinance
 24 eliminating the requirement for an elevation of 3,000 feet, as permitted by G.S. 113A-206(6).

25 (b) Under the ordinance, permits shall be denied if a permit application (and shall be
 26 revoked if a project) fails to provide for:

27 ...

28 (4) Adequate consideration to protecting the natural beauty of the mountains, as
 29 determined by the local governing ~~body~~.board.

30 ...

31 (f) Any county or city that adopts an ordinance pursuant to this section ~~must hold a public~~
 32 ~~hearing before adopting the ordinance upon the question of adopting the ordinance or of allowing~~
 33 ~~the construction of tall buildings on protected mountain ridges to be governed by G.S. 113A-209.~~
 34 ~~The public hearing required by this section shall be held upon at least 10 days' notice in a~~
 35 ~~newspaper of general circulation in the unit adopting the ordinance. Testimony at the hearing~~
 36 ~~shall be recorded and any and all exhibits shall be preserved within the custody of the governing~~
 37 ~~body. The testimony and evidence shall be made available for inspection and scrutiny by any~~
 38 ~~person.~~ shall follow the procedures of Article 6 of Chapter 160D of the General Statutes.

39 (g) ~~Any resident of a county or city that adopted an ordinance pursuant to this section, or~~
 40 ~~of an adjoining county, may bring a civil action against the ordinance-adopting unit, contesting~~
 41 ~~the ordinance as not meeting the requirements of this section. If the ordinance is found not to~~
 42 ~~meet all of the requirements of this section, the county or city shall be enjoined from enforcing~~
 43 ~~the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this Article authorizes~~
 44 ~~the State of North Carolina or any of its agencies to bring a civil action to contest an ordinance,~~
 45 ~~or for a violation of this Article or of an ordinance adopted pursuant to this Article."~~

46 **SECTION 4.13.** G.S. 113A-211(a) reads as rewritten:

47 "(a) Violations of this Article shall be subject to the same criminal sanctions, civil
 48 penalties and equitable remedies as ~~violations of county ordinances under G.S.~~
 49 ~~153A-123 provided by G.S. 160D-4-4."~~

50 **SECTION 4.14.** G.S. 160A-75 reads as rewritten:

51 "**§ 160A-75. Voting.**

1 No member shall be excused from voting except upon matters involving the consideration of
2 the member's own financial interest or official conduct or on matters on which the member is
3 prohibited from voting under ~~G.S. 14-234, 160A-381(d), or 160A-388(e)(2)~~. ~~G.S. 14-234 or~~
4 ~~G.S. 160D-1-9~~. In all other cases except votes taken under ~~G.S. 160A-385, G.S. 160D-6-1~~, a
5 failure to vote by a member who is physically present in the council chamber, or who has
6 withdrawn without being excused by a majority vote of the remaining members present, shall be
7 recorded as an affirmative vote. The question of the compensation and allowances of members
8 of the council is not a matter involving a member's own financial interest or official conduct.

9 An affirmative vote equal to a majority of all the members of the council not excused from
10 voting on the question in issue, including the mayor's vote in case of an equal division, shall be
11 required to adopt an ordinance, take any action having the effect of an ordinance, authorize or
12 commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of
13 the city. In addition, no ordinance nor any action having the effect of any ~~ordinance~~ ordinance,
14 except an ordinance on which a public hearing must be held pursuant to G.S. 160D-6-1 before
15 the ordinance may be adopted, may be finally adopted on the date on which it is introduced except
16 by an affirmative vote equal to or greater than two thirds of all the actual membership of the
17 council, excluding vacant seats and not including the mayor unless the mayor has the right to
18 vote on all questions before the council. For purposes of this section, an ordinance shall be
19 deemed to have been introduced on the date the subject matter is first voted on by the council."

20 **SECTION 5.1.** G.S. 153A-102.1 is repealed.

21 **SECTION 5.2.** G.S. 160A-4.1 is repealed.

22 **SECTION 5.3.** G.S. 160A-181.1 is repealed.

23 **SECTION 5.4.** G.S. 153A-143 is repealed.

24 **SECTION 5.5.** G.S. 160A-199 is repealed.

25 **SECTION 5.6.** G.S. 153A-144 is repealed.

26 **SECTION 5.7.** G.S. 160A-201 is repealed.

27 **SECTION 5.8.** G.S. 153A-452 is repealed.

28 **SECTION 5.9.** G.S. 153A-455 is repealed.

29 **SECTION 5.10.** Article 3 of Chapter 168 of the General Statutes is repealed.

30 **SECTION 6.** Article 23 of Chapter 153A of the General Statutes is amended by
31 adding the following new sections to read:

32 **"§ 153A-458. Submission of statement concerning improvements.**

33 A county may by ordinance require that when a property owner improves property at a cost
34 of more than two thousand five hundred dollars (\$2,500) but less than five thousand dollars
35 (\$5,000), the property owner must, within 14 days after the completion of the work, submit to
36 the county assessor a statement setting forth the nature of the improvement and the total cost
37 thereof.

38 **"§ 153A-459. Authorization to provide grants.**

39 A county may provide grants to unaffiliated qualified private providers of high-speed Internet
40 access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service
41 in unserved areas for economic development in the county. The grants shall be awarded on a
42 technology neutral basis, shall be open to qualified applicants, and may require matching funds
43 by the private provider. A county shall seek and consider requests for proposal from qualified
44 private providers within the county prior to awarding a broadband grant and shall use reasonable
45 means to ensure that potential applicants are made aware of the grant, including, at a minimum,
46 compliance with the notice procedures set forth in G.S. 160A-340.6(c). The county shall use only
47 unrestricted general fund revenue for the grants. For the purposes of this section, a qualified
48 private provider is a private provider of high-speed Internet access service in the State prior to
49 the issuance of the grant proposal. Nothing in this section authorizes a county to provide
50 high-speed Internet broadband service."

1 **SECTION 7.** If any provision of this act or its application is held invalid, the
2 invalidity does not affect other provisions or applications of this act that can be given effect
3 without the invalid provisions or application, and, to this end, the provisions of this act are
4 severable.

5 **SECTION 8.1.** Any otherwise valid permit or development approval made prior to
6 January 1, 2021, shall not be invalid based on inconsistency with the provisions of this act. The
7 validity of any plan adopted prior to January 1, 2021, is not affected by a failure to comply with
8 the procedural requirements of G.S. 160D-5-1(b).

9 **SECTION 8.2.** Any special use district or conditional use district zoning district that
10 is valid and in effect as of January 1, 2021, shall be deemed a conditional zoning district
11 consistent with the terms of this act, and the special or conditional use permits issued concurrently
12 with establishment of those districts shall be valid as specified in Section 8.1 of this act. Any
13 valid "conditional use permit" issued prior to January 1, 2021, shall be deemed a "special use
14 permit" consistent with the provisions of this act.

15 **SECTION 8.3.** Any local government that has adopted zoning regulations but that
16 has not adopted a comprehensive plan shall adopt such plan no later than July 1, 2022, in order
17 to retain the authority to adopt and apply zoning regulations.

18 **SECTION 9.** If this act becomes law in 2019, it is the intent of the General Assembly
19 that legislation in other acts enacted in the 2019 Regular Session of the 2019 General Assembly
20 that affects statutes repealed and replaced by similar provisions in Chapter 160D of the General
21 Statutes, as enacted by this act, also be incorporated into Chapter 160D of the General Statutes.
22 The North Carolina General Statutes Commission shall study the need for legislation to
23 accomplish this intent and shall report its findings and recommendations, including any
24 legislative proposals, to the 2020 Regular Session of the 2019 General Assembly.

25 **SECTION 10.** Section 10 of this act is effective when it becomes law. The remainder
26 of this act becomes effective January 1, 2021, and applies to local government development
27 regulation decisions made on or after that date. This act clarifies and restates the intent of existing
28 law and applies to ordinances adopted before, on, and after the effective date.