

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 355
Judiciary Committee Substitute Adopted 5/1/19
House Committee Substitute Favorable 6/20/19
PROPOSED HOUSE COMMITTEE SUBSTITUTE S355-PCS45314-TG-36

Short Title: Land-Use Regulatory Changes.

(Public)

Sponsors:

Referred to:

March 27, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY, CONSOLIDATE, AND REORGANIZE THE LAND-USE
3 REGULATORY LAWS OF THE STATE.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. PROVISIONS TO CLARIFY AND CHANGE THE LAND-USE REGULATORY**
7 **LAWS OF THE STATE**

8 SECTION 1.1. G.S. 143-755 reads as rewritten:

9 "**§ 143-755. Permit choice.**

10 (a) If a development permit applicant submits a permit application for any type of
11 development and a rule or ordinance ~~changes~~ is amended, including an amendment to any
12 applicable land development regulation, between the time the development permit application
13 was submitted and a development permit decision is made, the development permit applicant
14 may choose which adopted version of the rule or ordinance will apply to the ~~permit~~ permit and
15 use of the building, structure, or land indicated on the permit application. If the development
16 permit applicant chooses the version of the rule or ordinance applicable at the time of the permit
17 application, the development permit applicant shall not be required to await the outcome of the
18 amendment to the rule, map, or ordinance prior to acting on the development permit. If an
19 applicable rule or ordinance is amended after the development permit is wrongfully denied or
20 after an illegal condition is imposed, as determined in a proceeding challenging the permit denial
21 or the condition imposed, the development permit applicant may choose which adopted version
22 of the rule or ordinance will apply to the permit and use of the building, structure, or land
23 indicated on the permit application. Provided, however, any provision of the development permit
24 applicant's chosen version of the rule or ordinance that is determined to be illegal for any reason
25 shall not be enforced upon the applicant without the written consent of the applicant.

26 (b) This section applies to all development permits issued by the State and by local
27 governments.

28 (b1) If a permit application is placed on hold at the request of the applicant for a period of
29 six consecutive months or more, or the applicant fails to respond to comments or provide
30 additional information reasonably requested by the local or State government for a period of six
31 consecutive months or more, the application review shall be discontinued and the development
32 regulations in effect at the time permit processing is resumed shall be applied to the application.

33 (c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.



* S 3 5 5 - P C S 4 5 3 1 4 - T G - 3 6 *

1 (d) Any person aggrieved by the failure of a State agency or local government to comply
 2 with this section or G.S. 160A-360.1 or G.S. 153A-320.1 may apply to the appropriate division
 3 of the General Court of Justice for an order compelling compliance by the offending agency or
 4 local government, and the court shall have jurisdiction to issue that order. Actions brought
 5 pursuant to any of these sections shall be set down for immediate hearing, and subsequent
 6 proceedings in those actions shall be accorded priority by the trial and appellate courts.

7 (e) For purposes of this section, the following definitions shall apply:

8 (1) Development. – Without altering the scope of any regulatory authority granted
 9 by statute or local act, any of the following:

10 a. The construction, erection, alteration, enlargement, renovation,
 11 substantial repair, movement to another site, or demolition of any
 12 structure.

13 b. Excavation, grading, filling, clearing, or alteration of land.

14 c. The subdivision of land as defined in G.S. 153A-335 or
 15 G.S. 160A-376.

16 d. The initiation of substantial change in the use of land or the intensity
 17 of the use of land.

18 (2) Development permit. – An administrative or quasi-judicial approval that is
 19 written and that is required prior to commencing development or undertaking
 20 a specific activity, project, or development proposal, including any of the
 21 following:

22 a. Zoning permits.

23 b. Site plan approvals.

24 c. Special use permits.

25 d. Variances.

26 e. Certificates of appropriateness.

27 f. Plat approvals.

28 g. Development agreements.

29 h. Building permits.

30 i. Subdivision of land.

31 j. State agency permits for development.

32 k. Driveway permits.

33 l. Erosion and sedimentation control permits.

34 m. Sign permit.

35 (3) Land development regulation. – Any State statute, rule, or regulation, or local
 36 ordinance affecting the development or use of real property, including any of
 37 the following:

38 a. Unified development ordinance.

39 b. Zoning regulation, including zoning maps.

40 c. Subdivision regulation.

41 d. Erosion and sedimentation control regulation.

42 e. Floodplain or flood damage prevention regulation.

43 f. Mountain ridge protection regulation.

44 g. Stormwater control regulation.

45 h. Wireless telecommunication facility regulation.

46 i. Historic preservation or landmark regulation.

47 j. Housing code."

48 **SECTION 1.2.(a)** G.S. 160A-360.1 reads as rewritten:

49 "**§ 160A-360.1. Permit choice.**

50 (a) If a rule or ordinance changes ordinance is amended, including an amendment to any
 51 applicable land development regulation, between the time a development permit application is

1 submitted and a development permit decision is made, made or if a rule or ordinance is amended
2 after a development permit decision has been challenged and found to be wrongfully denied or
3 illegal, then G.S. 143-755 shall apply.

4 (b) For purposes of this section, the definitions in G.S. 143-755 shall apply."

5 **SECTION 1.2.(b)** G.S. 153A-320.1 reads as rewritten:

6 "**§ 153A-320.1. Permit choice.**

7 (a) If a rule or ~~ordinance changes~~ ordinance is amended, including an amendment to any
8 applicable land development regulation, between the time a development permit application is
9 submitted and a development permit decision is made, made or if a rule or ordinance is amended
10 after a development permit decision has been challenged and found to be wrongfully denied or
11 illegal, then G.S. 143-755 shall apply.

12 (b) For purposes of this section, the definitions in G.S. 143-755 shall apply."

13 **SECTION 1.3.(a)** G.S. 160A-385(c) is recodified as G.S. 160A-385(b)(5).

14 **SECTION 1.3.(b)** G.S. 160A-385, as amended by this section, reads as rewritten:

15 "**§ 160A-385. ~~Changes.~~Changes to land development regulations.**

16 (a) Citizen Comments. –

17 (1) ~~Zoning~~ Subject to the limitations in this Chapter, zoning ordinances may from
18 time to time be amended, supplemented, changed, modified or repealed. If any
19 resident or property owner in the city submits a written statement regarding a
20 proposed amendment, modification, or repeal to a zoning ~~ordinance~~
21 ordinance, including a zoning map or text, that has been properly initiated as
22 provided in G.S. 160A-384, to the clerk to the board at least two business days
23 prior to the proposed vote on such change, the clerk to the board shall deliver
24 such written statement to the city council. If the proposed change is the subject
25 of a quasi-judicial proceeding under G.S. 160A-388, or any other statute, the
26 clerk shall provide only the names and addresses of the individuals providing
27 written comment, and the provision of such names and addresses to all
28 members of the board shall not disqualify any member of the board from
29 voting.

30 (2), (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and
31 applicable to zoning ordinance changes initiated on or after that date.

32 (b) Amendments in ~~zoning ordinances~~ land development regulations, shall not be
33 applicable or enforceable without the written consent of the owner with regard to ~~buildings and~~
34 ~~uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to~~
35 ~~the enactment of the ordinance making the change or changes so long as the permits remain valid~~
36 ~~and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) any~~
37 of the following:

38 (1) Buildings or uses of buildings or land for which a development permit
39 application has been submitted and subsequently issued in accordance with
40 G.S. 143-755.

41 (2) Subdivisions of land for which a development permit application authorizing
42 the subdivision has been submitted and subsequently issued in accordance
43 with G.S. 143-755.

44 (3) ~~a~~ A vested right ~~has been~~ established pursuant to G.S. 160A-385.1 and such
45 vested right remains valid and unexpired pursuant to G.S. 160A-385.1.

46 (4) A vested right established by the terms of a development agreement
47 authorized by Part 3D of this Article.

48 (5) ~~Amendments in zoning ordinances, subdivision ordinances, and unified~~
49 ~~development ordinances shall not be applicable or enforceable without the~~
50 ~~written consent of the owner with regard to a~~ A multi-phased development as
51 ~~defined in G.S. 160A-385.1(b)(7).~~ provided for in this subdivision, in

1 accordance with G.S. 143-755. A multi-phased development shall be vested
2 for the entire development with the ~~zoning ordinances, subdivision~~
3 ~~ordinances, and unified development ordinances~~ land development
4 regulations then in place at the time a site plan approval is granted for the
5 initial phase of the multi-phased development. A right which has been vested
6 as provided for in this ~~subsection-subdivision~~ shall remain vested for a period
7 of seven years from the time a site plan approval is granted for the initial phase
8 of the multi-phased development.

9 (c) Recodified.

10 (d) Subject to subsection (f) of this section, upon issuance of a development permit, the
11 statutory vesting granted by this section for a development shall be effective upon filing of the
12 application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to
13 law. Unless otherwise specified by statute, local development permits expire one year after
14 issuance unless work authorized by such permit has substantially commenced. For the purposes
15 of this section, a permit is issued either in the ordinary course of business of the applicable
16 governmental agency or by the applicable governmental agency as a court directive.

17 (e) Subject to subsection (f) of this section, where multiple local development permits
18 are required to complete a development project, this section, together with G.S. 143-755,
19 authorizes the development permit applicant to choose the version of each of the local land
20 development regulations applicable to the project upon submittal of the application for the initial
21 development permit. This provision is applicable only for those subsequent development permit
22 applications filed within 18 months of the date following the approval of an initial permit. For
23 purposes of the vesting protections of this subsection, an erosion and sedimentation control
24 permit or a sign permit shall not be considered an initial development permit.

25 (f) The establishment of a vested right under any subdivision of subsection (b) of this
26 section does not preclude vesting under one or more other subdivisions of subsection (b) of this
27 section or vesting by application of common law principles. A vested right, once established as
28 provided for in this section, precludes any action by a city that would change, alter, impair,
29 prevent, diminish, or otherwise delay the development or use of the property allowed by the
30 applicable land development regulation or regulations, except where a change in State or federal
31 law mandating local government enforcement occurs after the development application is
32 submitted that has a fundamental and retroactive effect on such development or use. Except
33 where a longer vesting period is provided by statute, the statutory vesting granted by this section
34 shall expire for an uncompleted development project if development work is intentionally and
35 voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory
36 vesting period granted by this section for a nonconforming use of property shall expire if the use
37 is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.
38 The 24-month discontinuance period shall be automatically tolled during the pendency of any
39 board of adjustment proceeding or civil action in a State or federal trial or appellate court
40 regarding the validity of a development permit, the use of the property, or the existence of the
41 statutory vesting period granted by this section. The 24-month discontinuance period shall also
42 be tolled during the pendency of any litigation involving the development project or property that
43 is the subject of the vesting. The vested rights granted by this section shall run with the land
44 except for the use of land for outdoor advertising governed by G.S. 136-131.1 and
45 G.S. 136-131.2, in which case the rights granted by this section shall run with the owner of a
46 permit issued by the North Carolina Department of Transportation.

47 (g) As used in this section, the following terms mean:

48 (1) Development. – As defined in G.S. 143-755(e)(1).

49 (2) Development permit. – As defined in G.S. 143-755(e)(2).

50 (3) Land development regulation. – As defined in G.S. 143-755(e)(3).

- 1 (4) Multi-phased development. – A development containing 25 acres or more that
 2 is both of the following:
 3 a. Submitted for development permit approval to occur in more than one
 4 phase.
 5 b. Subject to a master development plan with committed elements
 6 showing the type and intensity of use of each phase."

7 **SECTION 1.3.(c)** G.S. 160A-385.1 reads as rewritten:

8 **"§ 160A-385.1. Vested rights.**

9 ...

10 (b) Definitions. –

11 ...

- 12 (7) ~~"Multi-phased development" means a development containing 100 acres or~~
 13 ~~more that (i) is submitted for site plan approval for construction to occur in~~
 14 ~~more than one phase and (ii) is subject to a master development plan with~~
 15 ~~committed elements, including a requirement to offer land for public use as a~~
 16 ~~condition of its master development plan approval.~~

17 "

18 **SECTION 1.3.(d)** G.S. 153A-344(b1) is recodified as G.S. 153A-344(b)(5).

19 **SECTION 1.3.(e)** G.S. 153A-344 reads as rewritten:

20 **"§ 153A-344. Planning board; zoning plan; certification to board of commissioners.**

21 ...

22 (b) Amendments in ~~zoning ordinances~~ land development regulations, shall not be
 23 applicable or enforceable without the written consent of the owner with regard to ~~buildings and~~
 24 ~~uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to~~
 25 ~~the enactment of the ordinance making the change or changes so long as the permits remain valid~~
 26 ~~and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) any~~
 27 ~~of the following:~~

- 28 (1) Buildings or uses of buildings or land for which a development permit
 29 application has been submitted and subsequently issued in accordance with
 30 G.S. 143-755.
 31 (2) Subdivisions of land for which a development permit authorizing the
 32 subdivision has been issued in accordance with G.S. 143-755.
 33 (3) ~~a~~ A vested right has been established pursuant to G.S. 153A-344.1 and such
 34 vested right remains valid and unexpired pursuant to G.S. 153A-385.1.
 35 (4) A vested right established by the terms of a development agreement
 36 authorized by Part 3D of this Article.
 37 (5) ~~Amendments in zoning ordinances, subdivision ordinances, and unified~~
 38 ~~development ordinances shall not be applicable or enforceable without the~~
 39 ~~written consent of the owner with regard to a~~ A multi-phased development as
 40 ~~defined in G.S. 153AA-344.1(b)(7). provided for in this subdivision, in~~
 41 accordance with G.S. 143-755. A multi-phased development shall be vested
 42 for the entire development with the ~~zoning ordinances, subdivision~~
 43 ~~ordinances, and unified development ordinances~~ land development
 44 regulations then in place at the time a site plan approval is granted for the
 45 initial phase of the multi-phased development. A right which has been vested
 46 as provided for in this ~~subsection~~ subdivision shall remain vested for a period
 47 of seven years from the time a site plan approval is granted for the initial phase
 48 of the multi-phased development.

49 (b1) Recodified.

50 (c) Subject to the exceptions set forth in subsection (e) of this section, upon issuance of
 51 a development permit, the statutory vesting granted by this section for a development shall be

1 effective upon filing of the application in accordance with G.S. 143-755 for so long as the permit
2 remains valid pursuant to law. Unless otherwise specified by statute, local development permits
3 expire one year after issuance unless work authorized by such permit has substantially
4 commenced. For the purposes of this section, a permit is issued either in the ordinary course of
5 business of the applicable governmental agency or by the applicable governmental agency as a
6 court directive.

7 (d) Subject to the exceptions set forth in subsection (e) of this section, where multiple
8 local development permits are required to complete a development project, this section, together
9 with G.S. 143-755, authorizes the development permit applicant to choose the version of each of
10 the local land development regulations applicable to the project upon submittal of the application
11 for the initial development permit. This provision is applicable only for those subsequent
12 development permit applications filed within 18 months of the date following the approval of an
13 initial permit. For purposes of the vesting protections of this subsection, an erosion and
14 sedimentation control permit or a sign permit shall not be considered an initial development
15 permit.

16 (e) The establishment of a vested right under any subdivision of subsection (b) of this
17 section does not preclude vesting under one or more other subdivisions of subsection (b) of this
18 section or vesting by application of common law principles. A vested right, once established as
19 provided for in this section, precludes any action by a county that would change, alter, impair,
20 prevent, diminish, or otherwise delay the development or use of the property allowed by the
21 applicable land development regulation or regulations, except where a change in State or federal
22 law mandating local government enforcement occurs after the development application is
23 submitted that has a fundamental and retroactive effect on such development or use. Except
24 where a longer vesting period is provided by statute, the statutory vesting granted by this section
25 shall expire for an uncompleted development project if development work is intentionally and
26 voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory
27 vesting period granted by this section for a nonconforming use of property shall expire if the use
28 is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.
29 The 24-month discontinuance period shall be automatically tolled during the pendency of any
30 board of adjustment proceeding or civil action in a State or federal trial or appellate court
31 regarding the validity of a development permit, the use of the property or the existence of the
32 statutory vesting period granted by this section. The 24-month discontinuance period shall also
33 be tolled during the pendency of any litigation involving the development project or property that
34 is the subject of the vesting. The vested rights granted by this section shall run with the land
35 except for the use of land for outdoor advertising governed by G.S.136-131.1 and
36 G.S. 136-131.2, in which case the rights granted by this section shall run with the owner of a
37 permit issued by the North Carolina Department of Transportation.

38 (f) As used in this section, the following terms mean:

39 (1) Development. – As defined in G.S. 143-755(e)(1).

40 (2) Development permit. – As defined in G.S. 143-755(e)(2).

41 (3) Land development regulation. – As defined in G.S. 143-755(e)(3).

42 (4) Multi-phased development. – A development containing 25 acres or more that
43 is both of the following:

44 a. Submitted for development permit approval to occur in more than one
45 phase.

46 b. Subject to a master development plan with committed elements
47 showing the type and intensity of use of each phase."

48 **SECTION 1.3.(f) G.S. 153A-344.1 reads as rewritten:**

49 **"§ 153A-344.1. Vesting rights.**

50 ...

51 (b) Definitions.

1 ...
 2 (7) ~~"Multi-phased development" means a development containing 100 acres or~~
 3 ~~more that (i) is submitted for site plan approval for construction to occur in~~
 4 ~~more than one phase and (ii) is subject to a master development plan with~~
 5 ~~committed elements, including a requirement to offer land for public use as a~~
 6 ~~condition of its master development plan approval.~~

7"

8 **SECTION 1.4.** G.S. 160A-384 reads as rewritten:

9 **"§ 160A-384. Method of procedure.**

10 (a) ~~The Subject to the limitations of this Chapter, the city council shall provide for the~~
 11 ~~manner in which zoning regulations and restrictions and the boundaries of zoning districts shall~~
 12 ~~be determined, established and enforced, and from time to time amended, supplemented or~~
 13 ~~changed, in accordance with the provisions of this Article. The procedures adopted pursuant to~~
 14 ~~this section shall provide that whenever there is a zoning map amendment, the owner of that~~
 15 ~~parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting~~
 16 ~~that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing~~
 17 ~~on the proposed amendment by first class mail at the last addresses listed for such owners on the~~
 18 ~~county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25~~
 19 ~~days prior to the date of the public hearing. Except for a city initiated zoning map amendment,~~
 20 ~~when an application is filed to request a zoning map amendment and that application is not made~~
 21 ~~by the owner of the parcel of land to which the amendment would apply, the applicant shall~~
 22 ~~certify to the city council that the owner of the parcel of land as shown on the county tax listing~~
 23 ~~has received actual notice of the proposed amendment and a copy of the notice of public hearing.~~
 24 ~~The person or persons required to provide notice shall certify to the city council that proper notice~~
 25 ~~has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~
 26 No amendment to zoning regulations or a zoning map that down-zones property shall be initiated
 27 nor shall it be enforceable without the written consent of all property owners whose property is
 28 the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by
 29 the city. For purposes of this section, "down-zoning" means a zoning ordinance that affects an
 30 area of land in one of the following ways:

- 31 (1) By decreasing the development density of the land to be less dense than was
 32 allowed under its previous usage.
 33 (2) By reducing the permitted uses of the land that are specified in a zoning
 34 ordinance or land development regulation to fewer uses than were allowed
 35 under its previous usage.

36 (b) The first class mail notice required under subsection (a) of this section shall not be
 37 required if the zoning map amendment directly affects more than 50 properties, owned by a total
 38 of at least 50 different property owners, and the city elects to use the expanded published notice
 39 provided for in this subsection. In this instance, a city may elect to either make the mailed notice
 40 provided for in subsection (a) of this section or may as an alternative elect to publish notice of
 41 the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less
 42 than one-half of a newspaper page in size. The advertisement shall only be effective for property
 43 owners who reside in the area of general circulation of the newspaper which publishes the notice.
 44 Property owners who reside outside of the newspaper circulation area, according to the address
 45 listed on the most recent property tax listing for the affected property, shall be notified according
 46 to the provisions of subsection (a) of this section.

47 ~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing~~
 48 ~~required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1,~~
 49 ~~Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or~~
 50 ~~certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2),~~
 51 ~~notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies~~

1 only to an application to request a zoning map amendment where the application is not made by
2 the owner of the parcel of land to which the amendment would apply. This subsection does not
3 apply to a city-initiated zoning map amendment.

4 (c) When a zoning map amendment is proposed, the city shall prominently post a notice
5 of the public hearing on the site proposed for rezoning or on an adjacent public street or highway
6 right-of-way. When multiple parcels are included within a proposed zoning map amendment, a
7 posting on each individual parcel is not required, but the city shall post sufficient notices to
8 provide reasonable notice to interested persons."

9 **SECTION 1.5.** G.S. 153A-343 reads as rewritten:

10 **"§ 153A-343. Method of procedure.**

11 (a) The board of commissioners shall, in accordance with the provisions of this Article,
12 provide for the manner in which zoning regulations and restrictions and the boundaries of zoning
13 districts shall be determined, established, and enforced, and from time to time amended,
14 supplemented, or changed. The procedures adopted pursuant to this section shall provide that
15 whenever there is a zoning map amendment, the owner of that parcel of land as shown on the
16 county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on
17 the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment
18 by first class mail at the last addresses listed for such owners on the county tax abstracts. This
19 notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the
20 public hearing. ~~Except for a county-initiated zoning map amendment, when an application is filed~~
21 ~~to request a zoning map amendment and that application is not made by the owner of the parcel~~
22 ~~of land to which the amendment would apply, the applicant shall certify to the board of~~
23 ~~commissioners that the owner of the parcel of land as shown on the county tax listing has received~~
24 ~~actual notice of the proposed amendment and a copy of the notice of public hearing. The person~~
25 ~~or persons required to provide notice shall certify to the board of commissioners that proper~~
26 ~~notice has been provided in fact, and such certificate shall be deemed conclusive in the absence~~
27 ~~of fraud.~~ No amendment to zoning regulations or a zoning map that down-zones property shall be
28 initiated nor shall it be enforceable without the written consent of all property owners whose
29 property is the subject of the down-zoning amendment, unless the down-zoning amendment is
30 initiated by the county. For purposes of this section, "down-zoning" means a zoning ordinance
31 that affects an area of land in one of the following ways:

32 (1) By decreasing the development density of the land to be less dense than was
33 allowed under its previous usage.

34 (2) By reducing the permitted uses of the land that are specified in a zoning
35 ordinance or land development regulation to fewer uses than were allowed
36 under its previous usage.

37 (b) The first class mail notice required under subsection (a) of this section shall not be
38 required if the zoning map amendment directly affects more than 50 properties, owned by a total
39 of at least 50 different property owners, and the county elects to use the expanded published
40 notice provided for in this subsection. In this instance, a county may elect to either make the
41 mailed notice provided for in subsection (a) of this section or may as an alternative elect to
42 publish notice of the hearings required by G.S. 153A-323, but provided that each of the
43 advertisements shall not be less than one-half of a newspaper page in size. The advertisement
44 shall only be effective for property owners who reside in the area of general circulation of the
45 newspaper which publishes the notice. Property owners who reside outside of the newspaper
46 circulation area, according to the address listed on the most recent property tax listing for the
47 affected property, shall be notified according to the provisions of subsection (a) of this section.

48 ~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing~~
49 ~~required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1,~~
50 ~~Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or~~
51 ~~certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2),~~

1 notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies
 2 only to an application to request a zoning map amendment where the application is not made by
 3 the owner of the parcel of land to which the amendment would apply. This subsection does not
 4 apply to a county-initiated zoning map amendment.

5 (c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

6 (d) When a zoning map amendment is proposed, the county shall prominently post a
 7 notice of the public hearing on the site proposed for rezoning or on an adjacent public street or
 8 highway right-of-way. When multiple parcels are included within a proposed zoning map
 9 amendment, a posting on each individual parcel is not required, but the county shall post
 10 sufficient notices to provide reasonable notice to interested persons."

11 **SECTION 1.6.** G.S. 160A-388 reads as rewritten:

12 **"§ 160A-388. Board of adjustment.**

13 ...

14 (b1) Appeals. – The board of adjustment shall hear and decide appeals from decisions of
 15 administrative officials charged with enforcement of the zoning or unified development
 16 ordinance and may hear appeals arising out of any other ordinance that regulates land use or
 17 development, pursuant to all of the following:

18 ...

19 (6) An appeal of a notice of violation or other enforcement order stays
 20 enforcement of the action appealed ~~from~~ from, including any accumulation of
 21 finances, during the pendency of the appeal to the board of adjustment and any
 22 subsequent appeal in accordance with G.S. 160A-393 or during the pendency
 23 of any civil proceeding authorized by law, including G.S. 160A-393.1, or
 24 appeals therefrom, unless the official who made the decision certifies to the
 25 board of adjustment after notice of appeal has been filed that because of the
 26 facts stated in an affidavit, a stay would cause imminent peril to life or
 27 property or because the violation is transitory in nature, a stay would seriously
 28 interfere with enforcement of the ordinance. In that case, enforcement
 29 proceedings shall not be stayed except by a restraining order, which may be
 30 granted by a court. If enforcement proceedings are not stayed, the appellant
 31 may file with the official a request for an expedited hearing of the appeal, and
 32 the board of adjustment shall meet to hear the appeal within 15 days after such
 33 a request is filed. Notwithstanding the foregoing, appeals of decisions granting
 34 a permit or otherwise affirming that a proposed use of property is consistent
 35 with the ordinance shall not stay the further review of an application for
 36 permits or permissions to use such property; in these situations the appellant
 37 may request and the board may grant a stay of a final decision of permit
 38 applications or building permits affected by the issue being appealed.

39"

40 **SECTION 1.7.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
 41 amended by adding a new section to read:

42 **"§ 160A-393.1 Civil action for declaratory relief, injunctive relief, other remedies; joinder**
 43 **of complaint and petition for writ of certiorari in certain cases.**

44 (a) Review of Vested Rights Claim. – A person claiming a statutory or common law
 45 vested right may submit information to substantiate that claim to the zoning administrator or
 46 other officer designated by a land development regulation, who shall make an initial
 47 determination as to the existence of the vested right. The zoning administrator's or officer's
 48 determination may be appealed under G.S. 160A-388(b1). On appeal, the question of law
 49 regarding the existence of a vested right shall be reviewed de novo. In lieu of an appeal under
 50 G.S. 160A-388(b1), a person claiming a vested right may bring an original civil action as
 51 provided by subsection (b) of this section.

1 (b) Civil Action. – Except as otherwise provided in this section for claims involving
2 questions of interpretation, in lieu of any remedies available under G.S. 160A-388(b1), a person
3 with standing, as defined in subsection (c) of this section, may bring an original civil action
4 seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or
5 equity, in superior court or federal court to challenge the enforceability, validity, or effect of a
6 local land development regulation for any of the following claims:

7 (1) The ordinance, either on its face or as applied, is unconstitutional.

8 (2) The ordinance, either on its face or as applied, is ultra vires, preempted, or
9 otherwise in excess of statutory authority.

10 (3) The ordinance, either on its face or as applied, constitutes a taking of property.

11 If the decision being challenged is from an administrative official charged with enforcement
12 of a local land development regulation, the party with standing must first bring any claim that the
13 ordinance was erroneously interpreted to the applicable board of adjustment pursuant to
14 G.S. 160A-388(b1). An adverse ruling from the board of adjustment may then be challenged in
15 an action brought pursuant to this subsection with the court hearing the matter de novo together
16 with any of the claims listed in this subsection.

17 (c) Standing. – Any of the following criteria shall provide standing to bring an action
18 under this section:

19 (1) The person has an ownership, leasehold, or easement interest in, or possesses
20 an option or contract to, purchase the property that is the subject matter of a
21 final and binding decision made by an administrative official charged with
22 applying or enforcing a land development regulation.

23 (2) The person was a development permit applicant before the decision-making
24 board whose decision is being challenged.

25 (3) The person was a development permit applicant who is aggrieved by a final
26 and binding decision of an administrative official charged with applying or
27 enforcing a land development regulation.

28 Subject to the limitations in the State and federal constitutions and State and federal case law,
29 an action filed under this section shall not be rendered moot, if during the pendency of the action,
30 the aggrieved person loses the applicable property interest as a result of the local government
31 action being challenged and exhaustion of an appeal described herein is required for purposes of
32 preserving a claim for damages under G.S. 160A-393.1.

33 (d) Time for Commencement of Action. – Any action brought pursuant to this section
34 shall be commenced within one year after the date on which written notice of the final decision
35 is delivered to the aggrieved party by personal delivery, electronic mail, or by first-class mail.

36 (e) Joinder. – An original civil action authorized by this section may, for convenience
37 and economy, be joined with a petition for writ of certiorari and decided in the same proceedings.
38 For the claims raised in the original civil action, the parties shall be governed by the Rules of
39 Civil Procedure. The record of proceedings in the appeal pursuant to G.S. 160A-393 may not be
40 supplemented by discovery from the civil action unless supplementation is otherwise allowed
41 under G.S. 160A-393(j). The standard of review in the original civil action for the cause or causes
42 of action pled as authorized by subsection (b) of this section shall be de novo. The standard of
43 review of the petition for writ of certiorari shall be as established in G.S. 160A-393(k).

44 (f) For the purposes of this section, the definitions in G.S. 143-755 shall apply."

45 **SECTION 1.8.** G.S. 160A-364.1 reads as rewritten:

46 **"§ 160A-364.1. Statute of limitations.**

47 ...

48 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action
49 involving the enforcement of a zoning or unified development ordinance or in an action
50 authorized by G.S. 160A-393.1 from raising as a claim or defense to such enforcement action in
51 such proceedings the enforceability or the invalidity of the ordinance. Nothing in this section or

1 in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
 2 requirement, decision, or determination made by an administrative official contending that such
 3 party is in violation of a zoning or unified development ordinance from raising in the appeal the
 4 invalidity of such ordinance as a defense to such order, requirement, decision, or determination.
 5 A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the
 6 basis of an alleged defect in the adoption process unless the defense is formally raised within
 7 three years of the adoption of the challenged ordinance.

8"

9 **SECTION 1.9.** G.S. 160A-393 reads as rewritten:

10 **"§ 160A-393. Appeals in the nature of certiorari.**

11 ...

12 (d) Standing. – A petition may be filed under this section only by a petitioner who has
 13 standing to challenge the decision being appealed. The following persons shall have standing to
 14 file a petition under this section:

15 (1) Any person meeting any of the following criteria:

- 16 a. Has an ownership interest in the property that is the subject of the
 17 decision being appealed, a leasehold interest in the property that is the
 18 subject of the decision being appealed, or an interest created by
 19 easement, restriction, or covenant in the property that is the subject of
 20 the decision being appealed.
 21 b. Has an option or contract to purchase the property that is the subject
 22 of the decision being appealed.
 23 c. Was an applicant before the decision-making board whose decision is
 24 being appealed.

25 (2) Any other person who will suffer special damages as the result of the decision
 26 being appealed.

27 (3) An incorporated or unincorporated association to which owners or lessees of
 28 property in a designated area belong by virtue of their owning or leasing
 29 property in that area, or an association otherwise organized to protect and
 30 foster the interest of the particular neighborhood or local area, so long as at
 31 least one of the members of the association would have standing as an
 32 individual to challenge the decision being appealed, and the association was
 33 not created in response to the particular development or issue that is the
 34 subject of the appeal.

35 (4) A city whose decision-making board has made a decision that the council
 36 believes improperly grants a variance from or is otherwise inconsistent with
 37 the proper interpretation of an ordinance adopted by that council.

38 Subject to the limitations in the State and federal constitutions and State and federal case law,
 39 an action filed under this section shall not be rendered moot, if during the pendency of the action,
 40 the aggrieved person loses the applicable property interest as a result of the local government
 41 action being challenged and exhaustion of an appeal described herein is required for purposes of
 42 preserving a claim for damages under G.S. 160A-393.1.

43 ...

44 (j) 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)~~ (i) of this section.
 46 Except that the court ~~may, in its discretion, shall~~ allow the record to be supplemented with
 47 affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the
 48 ~~record is not adequate to allow an appropriate determination~~ petition raises any of the following
 49 issues: issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil
 50 Procedure shall apply to the supplementation of the record of said issues:

51 (1) Whether a petitioner or intervenor has standing.

- 1 (2) Whether, as a result of impermissible conflict as described in
2 G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making
3 body was not 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 (k) of this section.
- 6 (k) Scope of Review. –
- 7 (1) When reviewing the decision of a decision-making board under the provisions
8 of this section, the court shall ensure that the rights of petitioners have not
9 been prejudiced because the decision-making body's findings, inferences,
10 conclusions, or decisions were:
- 11 a. In violation of constitutional provisions, including those protecting
12 procedural due process rights.
- 13 b. In excess of the statutory authority conferred upon the ~~city~~city,
14 including preemption, or the authority conferred upon the
15 decision-making board by ordinance.
- 16 c. Inconsistent with applicable procedures specified by statute or
17 ordinance.
- 18 d. Affected by other error of law.
- 19 e. Unsupported by ~~substantial competent~~competent, material, and
20 substantial evidence in view of the entire record.
- 21 f. Arbitrary or capricious.
- 22 (2) When the issue before the court is one set forth in sub-subdivisions a. through
23 d. of subdivision (1) of this subsection, including whether the decision-making
24 board erred in interpreting an ordinance, the court shall review that issue de
25 novo. The court shall consider the interpretation of the decision-making board,
26 but is not bound by that interpretation, and may freely substitute its judgment
27 as appropriate. Whether the record contains competent, material, and
28 substantial evidence is a conclusion of law, reviewable de novo.
- 29 (3) The term "competent evidence," as used in this subsection, shall not preclude
30 reliance by the decision-making board on evidence that would not be
31 admissible under the rules of evidence as applied in the trial division of the
32 General Court of Justice if (i) except for the items noted in sub-subdivisions
33 a., b., and c. of this subdivision that are conclusively incompetent, the
34 evidence was admitted without objection or (ii) the evidence appears to be
35 sufficiently trustworthy and was admitted under such circumstances that it
36 was reasonable for the decision-making board to rely upon it. The term
37 "competent evidence," as used in this subsection, ~~shall~~shall, regardless of the
38 lack of a timely objection, not be deemed to include the opinion testimony of
39 lay witnesses as to any of the following:
- 40 a. The use of property in a particular way would affect the value of other
41 property.
- 42 b. The increase in vehicular traffic resulting from a proposed
43 development would pose a danger to the public safety.
- 44 c. Matters about which only expert testimony would generally be
45 admissible under the rules of evidence.
- 46 (l) Decision of the Court. – Following its review of the decision-making board in
47 accordance with subsection (k) of this section, the court may affirm the decision, reverse the
48 decision and remand the case with appropriate instructions, or remand the case for further
49 proceedings. If the court does not affirm the decision below in its entirety, then the court shall be
50 guided by the following in determining what relief should be granted to the petitioners:

- 1 (1) If the court concludes that the error committed by the decision-making board
2 is procedural only, the court may remand the case for further proceedings to
3 correct the procedural error.
- 4 (2) If the court concludes that the decision-making board has erred by failing to
5 make findings of fact such that the court cannot properly perform its function,
6 then the court may remand the case with appropriate instructions so long as
7 the record contains substantial competent evidence that could support the
8 decision below with appropriate findings of fact. However, findings of fact
9 are not necessary when the record sufficiently reveals the basis for the
10 decision below or when the material facts are undisputed and the case presents
11 only an issue of law.
- 12 (3) If the court concludes that the decision by the decision-making board is not
13 supported by substantial competent evidence in the record or is based upon an
14 error of law, then the court may remand the case with an order that directs the
15 decision-making board to take whatever action should have been taken had
16 the error not been committed or to take such other action as is necessary to
17 correct the error. Specifically:
- 18 a. If the court concludes that a permit was wrongfully denied because the
19 denial was not based on substantial competent evidence or was
20 otherwise based on an error of law, the court ~~may~~shall remand with
21 instructions that the permit be issued, subject to ~~reasonable and~~
22 ~~appropriate conditions.~~any conditions expressly consented to by the
23 permit applicant as part of the application or during the board of
24 adjustment appeal or writ of certiorari appeal.
- 25 b. If the court concludes that a permit was wrongfully issued because the
26 issuance was not based on substantial competent evidence or was
27 otherwise based on an error of law, the court may remand with
28 instructions that the permit be revoked.
- 29 c. If the court concludes that a zoning board decision upholding a zoning
30 enforcement action was not supported by substantial competent
31 evidence or was otherwise based on an error of law, the court shall
32 reverse the decision.

33"

34 **SECTION 1.10.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
35 amended by adding a new section to read:

36 **"§ 160A-393.2. No estoppel effect when challenging development conditions.**

37 A city or county may not assert before a board of adjustment or in any civil action the defense
38 of estoppel as a result of actions by the landowner or permit applicant to proceed with
39 development authorized by a development permit as defined in G.S. 143-755 if the landowner or
40 permit applicant is challenging conditions that were imposed and not consented to in writing by
41 a landowner or permit applicant."

42 **SECTION 1.11.** G.S. 6-21.7 reads as rewritten:

43 **"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

44 In any action in which a city or county is a party, upon a finding by the court that the city or
45 county ~~acted outside the scope of its legal authority, violated a statute or case law setting forth~~
46 unambiguous limits on its authority, the court ~~may~~shall award reasonable attorneys' fees and
47 costs to the party who successfully challenged the city's or county's ~~action, provided that if the~~
48 ~~court also finds that the city's or county's action was an abuse of its discretion, the court shall~~
49 ~~award attorneys' fees and costs.~~action. In any action in which a city or county is a party, upon
50 finding by the court that the city or county took action inconsistent with, or in violation of,
51 G.S. 160A-360.1, 153A-320.1, or 143-755, the court shall award reasonable attorneys' fees and

1 costs to the party who successfully challenged the local government's failure to comply with any
2 of those provisions. In all other matters, the court may award reasonable attorneys' fees and costs
3 to the prevailing private litigant. For purposes of this section, "unambiguous" means that the
4 limits of authority are not reasonably susceptible to multiple constructions."

5 **SECTION 1.12.** G.S. 160A-381 reads as rewritten:

6 **"§ 160A-381. Grant of power.**

7 ...

8 (c) The regulations may also provide that the board of adjustment, the planning board, or
9 the city council may issue special use permits or conditional use permits in the classes of cases
10 or situations and in accordance with the principles, conditions, safeguards, and procedures
11 specified therein and may impose reasonable and appropriate conditions and safeguards upon
12 these permits. Conditions and safeguards imposed under this subsection shall not include
13 requirements for which the city does not have authority under statute to regulate nor requirements
14 for which the courts have held to be unenforceable if imposed directly by the ~~city-city~~, including,
15 without limitation, taxes, impact fees, building design elements within the scope of subsection
16 (h) of this section, driveway-related improvements in excess of those allowed in G.S. 136-18(29)
17 and G.S. 160A-307, or other unauthorized limitations on the development or use of land. When
18 deciding special use permits or conditional use permits, the city council or planning board shall
19 follow quasi-judicial procedures. Notice of hearings on special or conditional use permit
20 applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote
21 shall be required for the city council or planning board to issue such permits. For the purposes of
22 this section, vacant positions on the board and members who are disqualified from voting on a
23 quasi-judicial matter shall not be considered "members of the board" for calculation of the
24 requisite majority. Every such decision of the city council or planning board shall be subject to
25 review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

26 Where appropriate, such conditions may include requirements that street and utility
27 rights-of-way be dedicated to the public and that provision be made of recreational space and
28 facilities.

29"

30 **SECTION 1.13.** G.S. 153A-340 reads as rewritten:

31 **"§ 153A-340. Grant of power.**

32 ...

33 (c1) The regulations may also provide that the board of adjustment, the planning board, or
34 the board of commissioners may issue special use permits or conditional use permits in the
35 classes of cases or situations and in accordance with the principles, conditions, safeguards, and
36 procedures specified therein and may impose reasonable and appropriate conditions and
37 safeguards upon these permits. Conditions and safeguards imposed under this subsection shall
38 not include requirements for which the county does not have authority under statute to regulate
39 nor requirements for which the courts have held to be unenforceable if imposed directly by the
40 ~~county-county~~, including, without limitation, taxes, impact fees, building design elements within
41 the scope of subsection (l) of this section, driveway-related improvements in excess of those
42 allowed in G.S. 136-18(29), or other unauthorized limitations on the development or use of land.

43 Where appropriate, the conditions may include requirements that street and utility rights-of-way
44 be dedicated to the public and that recreational space be provided. When deciding special use
45 permits or conditional use permits, the board of county commissioners or planning board shall
46 follow quasi-judicial procedures. Notice of hearings on special or conditional use permit
47 applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote
48 shall be required for the board of county commissioners or planning board to issue such permits.
49 For the purposes of this section, vacant positions on the board and members who are disqualified
50 from voting on a quasi-judicial matter shall not be considered "members of the board" for
51 calculation of the requisite majority. Every such decision of the board of county commissioners

1 or planning board shall be subject to review of the superior court in the nature of certiorari
2 consistent with G.S. 160A-388.

3"

4 **SECTION 1.14.** G.S. 160A-382 reads as rewritten:

5 "**§ 160A-382. Districts.**

6 ...

7 (b) Property may be placed in a special use district, conditional use district, or conditional
8 district only in response to a petition by the owners of all the property to be included. Specific
9 conditions applicable to these districts may be proposed by the petitioner or the city or its
10 agencies, but only those conditions ~~mutually~~ approved by the city and consented to by the
11 petitioner in writing may be incorporated into the zoning regulations or permit requirements.
12 Unless consented to by the petitioner in writing, in the exercise of the authority granted by this
13 section, including the establishment of special or conditional use districts or conditional zoning,
14 a city may not require, enforce, or incorporate into the zoning regulations or permit requirements
15 any condition or requirement not authorized by otherwise applicable law, including, without
16 limitation, taxes, impact fees, building design elements within the scope of G.S. 160A-381(h),
17 driveway-related improvements in excess of those allowed in G.S. 136-18(29) and
18 G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions
19 and site-specific standards imposed in a conditional district shall be limited to those that address
20 the conformance of the development and use of the site to city ordinances and an officially
21 adopted comprehensive or other plan and those that address the impacts reasonably expected to
22 be generated by the development or use of the site.

23 A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each
24 petition for a rezoning to a special or conditional use district, or a conditional district, or other
25 small-scale rezoning.

26"

27 **SECTION 1.15.** G.S. 153A-342 reads as rewritten:

28 "**§ 153A-342. Districts; zoning less than entire jurisdiction.**

29 ...

30 (b) Property may be placed in a special use district, conditional use district, or conditional
31 district only in response to a petition by the owners of all the property to be included. Specific
32 conditions applicable to the districts may be proposed by the petitioner or the county or its
33 agencies, but only those conditions ~~mutually~~ approved by the county and consented to by the
34 petitioner in writing may be incorporated into the zoning regulations or permit requirements.
35 Unless consented to by the petitioner in writing, in the exercise of the authority granted by this
36 section, including the establishment of special or conditional use districts or conditional zoning,
37 a county may not require, enforce, or incorporate into the zoning regulations or permit
38 requirements any condition or requirement not authorized by otherwise applicable law, including,
39 without limitation, taxes, impact fees, building design elements within the scope of
40 G.S. 153A-340(l), driveway-related improvements in excess of those allowed in
41 G.S. 136-18(29), or other unauthorized limitations on the development or use of land. Conditions
42 and site-specific standards imposed in a conditional district shall be limited to those that address
43 the conformance of the development and use of the site to county ordinances and an officially
44 adopted comprehensive or other plan and those that address the impacts reasonably expected to
45 be generated by the development or use of the site.

46 A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each
47 petition for a rezoning to a special or conditional use district, or a conditional district, or other
48 small-scale rezoning.

49"

50 **SECTION 1.16.** G.S. 160A-307 reads as rewritten:

51 "**§ 160A-307. Curb cut regulations.**

1 (a) A city may by ordinance regulate the size, location, direction of traffic flow, and
 2 manner of construction of driveway connections into any street or alley. The ordinance may
 3 require the construction or reimbursement of the cost of construction and public dedication of
 4 medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections
 5 into any street or alley ~~if~~if all of the following apply:

6 (1) The need for such improvements is reasonably attributable to the traffic using
 7 the ~~driveway; and~~driveway.

8 (2) The improvements serve the traffic of the driveway.

9 (b) No street or alley under the control of the Department of Transportation may be
 10 improved without the consent of the Department of Transportation. ~~However, if there is a conflict~~
 11 ~~between the written driveway regulations of the Department of Transportation and the related~~
 12 ~~driveway improvements required by the city, the more stringent requirement shall apply.~~A city
 13 shall not require the applicant to acquire right-of-way from property not owned by the applicant.
 14 However, an applicant may voluntarily agree to acquire such right-of-way."

15 **SECTION 1.17.(a)** G.S. 153A-346 reads as rewritten:

16 "**§ 153A-346. Conflict with other laws.**

17 ...

18 (b) When adopting regulations under this Part, a county may not use a definition of
 19 building, dwelling, dwelling unit, bedroom, or sleeping unit that is ~~more expansive than~~
 20 inconsistent with any definition of the same in another statute or in a rule adopted by a State
 21 agency-agency, including the State Building Code Council."

22 **SECTION 1.17.(b)** G.S. 160A-390 reads as rewritten:

23 "**§ 160A-390. Conflict with other laws.**

24 ...

25 (b) When adopting regulations under this Part, a city may not use a definition of building,
 26 dwelling, dwelling unit, bedroom, or sleeping unit that is ~~more expansive than~~inconsistent with
 27 any definition of the same in another statute or in a rule adopted by a State agency-agency,
 28 including the State Building Code Council."

30 **PART II. PROVISIONS TO REORGANIZE, CONSOLIDATE, MODERNIZE, AND** 31 **CLARIFY STATUTES REGARDING LOCAL PLANNING AND DEVELOPMENT** 32 **REGULATION**

33 **SECTION 2.1.(a)** The General Assembly finds that a coherent organization of the
 34 statutes that authorize local government planning and development regulation is needed to make
 35 the statutes simpler to find, easier to follow, and more uniform for all local governments.

36 **SECTION 2.1.(b)** The General Assembly finds that the parallel system of separate
 37 city and county statutes regarding planning and development regulation has led to redundancy
 38 and unintended differences in the wording of planning and development regulation statutes on
 39 the same subject.

40 **SECTION 2.1.(c)** The General Assembly finds that numerous specialized statutes
 41 affecting local planning and development regulation have been added in disparate Chapters of
 42 the General Statutes over past decades, and that antiquated and confusing language exists in the
 43 planning and development regulation statutes.

44 **SECTION 2.1.(d)** The General Assembly finds that, other than collecting some of
 45 these statutes into Article 19 of Chapter 160A of the General Statutes in 1971 and Article 18 of
 46 Chapter 153A of the General Statutes in 1973, no comprehensive reorganization of North
 47 Carolina's planning and development regulation statutes has been undertaken.

48 **SECTION 2.1.(e)** The intent of the General Assembly by enactment of Part II of this
 49 act is to collect and organize existing statutes regarding local planning and development into a
 50 single Chapter of the General Statutes and to consolidate the statutes affecting cities and counties.

1 SECTION 2.1.(f) The intent of the General Assembly by enactment of Part II of this
2 act is to neither eliminate, diminish, enlarge, nor expand the authority of local governments to
3 exact land, construction, or money as part of the development approval process or otherwise
4 materially alter the scope of local authority to regulate development and any modifications from
5 earlier versions of Part II of this bill should not be interpreted to affect the scope of local
6 government authority.

7 SECTION 2.2. Article 18 of Chapter 153A of the General Statutes is repealed.

8 SECTION 2.3. Article 19 of Chapter 160A of the General Statutes is repealed.

9 SECTION 2.4. The General Statutes are amended by adding a new Chapter to read:

10 **"Chapter 160D.**

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

12 "Article 1.

13 "General Provisions.

14 **"§ 160D-1-1. Application.**

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

20 (b) The provisions of this Article are supplemental to specific provisions included in
21 other Articles of this Chapter. To the extent there are conflicts between the provisions of this
22 Article and the provisions of other Articles of this Chapter, the more specific provisions shall
23 control.

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

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

32 **"§ 160D-1-2. Definitions.**

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

36 (1) Administrative decision. – Decisions made in the implementation,
37 administration, or enforcement of development regulations that involve the
38 determination of facts and the application of objective standards set forth in
39 this Chapter or local government development regulations. These are
40 sometimes referred to as ministerial decisions or administrative
41 determinations.

42 (2) Administrative hearing. – A proceeding to gather facts needed to make an
43 administrative decision.

44 (3) Bona fide farm purposes. – Agricultural activities as set forth in
45 G.S. 160D-9-3.

46 (4) Charter. – As defined in G.S. 160A-1(2).

47 (5) City. – As defined in G.S. 160A-1(2).

48 (6) Comprehensive plan. – The comprehensive plan, land-use plan, small area
49 plans, neighborhood plans, transportation plan, capital improvement plan, and
50 any other plans regarding land use and development that have been officially
51 adopted by the governing board.

- 1 (7) Conditional zoning. – A legislative zoning map amendment with site-specific
2 conditions incorporated into the zoning map amendment.
- 3 (8) County. – Any one of the counties listed in G.S. 153A-10.
- 4 (9) Decision-making board. – A governing board, planning board, board of
5 adjustment, historic district board, or other board assigned to make
6 quasi-judicial decisions under this Chapter.
- 7 (10) Determination. – A written, final, and binding order, requirement, or
8 determination regarding an administrative decision.
- 9 (11) Developer. – A person, including a governmental agency or redevelopment
10 authority, who undertakes any development and who is the landowner of the
11 property to be developed or who has been authorized by the landowner to
12 undertake development on that property.
- 13 (12) Development. – Unless the context clearly indicates otherwise, the term
14 means any of the following:
- 15 a. The construction, erection, alteration, enlargement, renovation,
16 substantial repair, movement to another site, or demolition of any
17 structure.
- 18 b. The excavation, grading, filling, clearing, or alteration of land.
- 19 c. The subdivision of land as defined in G.S. 160D-8-2.
- 20 d. The initiation or substantial change in the use of land or the intensity
21 of use of land.
- 22 This definition does not alter the scope of regulatory authority granted by this
23 Chapter.
- 24 (13) Development approval. – An administrative or quasi-judicial approval made
25 pursuant to this Chapter that is written and that is required prior to
26 commencing development or undertaking a specific activity, project, or
27 development proposal. Development approvals include, but are not limited to,
28 zoning permits, site plan approvals, special use permits, variances, and
29 certificates of appropriateness. The term also includes all other regulatory
30 approvals required by regulations adopted pursuant to this Chapter, including
31 plat approvals, permits issued, development agreements entered into, and
32 building permits issued.
- 33 (14) Development regulation. – A unified development ordinance, zoning
34 regulation, subdivision regulation, erosion and sedimentation control
35 regulation, floodplain or flood damage prevention regulation, mountain ridge
36 protection regulation, stormwater control regulation, wireless
37 telecommunication facility regulation, historic preservation or landmark
38 regulation, housing code, State Building Code enforcement, or any other
39 regulation adopted pursuant to this Chapter, or a local act or charter that
40 regulates land use or development.
- 41 (15) Dwelling. – Any building, structure, manufactured home, or mobile home, or
42 part thereof, used and occupied for human habitation or intended to be so used,
43 and includes any outhouses and appurtenances belonging thereto or usually
44 enjoyed therewith. For the purposes of Article 12 of this Chapter, the term
45 does not include any manufactured home, mobile home, or recreational
46 vehicle, if used solely for a seasonal vacation purpose.
- 47 (16) Evidentiary hearing. – A hearing to gather competent, material, and
48 substantial evidence in order to make findings for a quasi-judicial decision
49 required by a development regulation adopted under this Chapter.
- 50 (17) Governing board. – The city council or board of county commissioners. The
51 term is interchangeable with the terms "board of aldermen" and "boards of

- 1 commissioners" and shall mean any governing board without regard to the
2 terminology employed in charters, local acts, other portions of the General
3 Statutes, or local customary usage.
- 4 (18) Landowner or owner. – The holder of the title in fee simple. Absent evidence
5 to the contrary, a local government may rely on the county tax records to
6 determine who is a landowner. The landowner may authorize a person holding
7 a valid option, lease, or contract to purchase to act as his or her agent or
8 representative for the purpose of making applications for development
9 approvals.
- 10 (19) Legislative decision. – The adoption, amendment, or repeal of a regulation
11 under this Chapter or an applicable local act. The term also includes the
12 decision to approve, amend, or rescind a development agreement consistent
13 with the provisions of Article 10 of this Chapter.
- 14 (20) Legislative hearing. – A hearing to solicit public comment on a proposed
15 legislative decision.
- 16 (21) Local act. – As defined in G.S. 160A-1(2).
- 17 (22) Local government. – A city or county.
- 18 (23) Manufactured home or mobile home. – A structure as defined in
19 G.S. 143-145(7).
- 20 (24) Person. – An individual, partnership, firm, association, joint venture, public
21 or private corporation, trust, estate, commission, board, public or private
22 institution, utility, cooperative, interstate body, the State of North Carolina
23 and its agencies and political subdivisions, or other legal entity.
- 24 (25) Planning and development regulation jurisdiction. – The geographic area
25 defined in Part 2 of this Chapter within which a city or county may undertake
26 planning and apply the development regulations authorized by this Chapter.
- 27 (26) Planning board. – Any board or commission established pursuant to
28 G.S. 160D-3-1.
- 29 (27) Property. – All real property subject to land-use regulation by a local
30 government. The term includes any improvements or structures customarily
31 regarded as a part of real property.
- 32 (28) Quasi-judicial decision. – A decision involving the finding of facts regarding
33 a specific application of a development regulation and that requires the
34 exercise of discretion when applying the standards of the regulation. The term
35 includes, but is not limited to, decisions involving variances, special use
36 permits, certificates of appropriateness, and appeals of administrative
37 determinations. Decisions on the approval of subdivision plats and site plans
38 are quasi-judicial in nature if the regulation authorizes a decision-making
39 board to approve or deny the application based not only upon whether the
40 application complies with the specific requirements set forth in the regulation,
41 but also on whether the application complies with one or more generally stated
42 standards requiring a discretionary decision on the findings to be made by the
43 decision-making board.
- 44 (29) Site plan. – A scaled drawing and supporting text showing the relationship
45 between lot lines and the existing or proposed uses, buildings, or structures on
46 the lot. The site plan may include site-specific details such as building areas,
47 building height and floor area, setbacks from lot lines and street rights-of-way,
48 intensities, densities, utility lines and locations, parking, access points, roads,
49 and stormwater control facilities that are depicted to show compliance with
50 all legally required development regulations that are applicable to the project
51 and the site plan review. A site plan approval based solely upon application of

1 objective standards is an administrative decision and a site plan approval
2 based in whole or in part upon the application of standards involving judgment
3 and discretion is a quasi-judicial decision. A site plan may also be approved
4 as part of a conditional zoning decision.

5 (30) Special use permit. – A permit issued to authorize development or land uses
6 in a particular zoning district upon presentation of competent, material, and
7 substantial evidence establishing compliance with one or more general
8 standards requiring that judgment and discretion be exercised as well as
9 compliance with specific standards. The term includes permits previously
10 referred to as conditional use permits or special exceptions.

11 (31) Subdivision. – The division of land for the purpose of sale or development as
12 specified in G.S. 160D-8-2.

13 (32) Subdivision regulation. – A subdivision regulation authorized by Article 8 of
14 this Chapter.

15 (33) Vested right. – The right to undertake and complete the development and use
16 of property under the terms and conditions of an approval secured as specified
17 in G.S. 160D-1-8 or under common law.

18 (34) Zoning map amendment or rezoning. – An amendment to a zoning regulation
19 for the purpose of changing the zoning district that is applied to a specified
20 property or properties. The term also includes (i) the initial application of
21 zoning when land is added to the territorial jurisdiction of a local government
22 that has previously adopted zoning regulations and (ii) the application of an
23 overlay zoning district or a conditional zoning district. The term does not
24 include (i) the initial adoption of a zoning map by a local government, (ii) the
25 repeal of a zoning map and readoption of a new zoning map for the entire
26 planning and development regulation jurisdiction, or (iii) updating the zoning
27 map to incorporate amendments to the names of zoning districts made by
28 zoning text amendments where there are no changes in the boundaries of the
29 zoning district or land uses permitted in the district.

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

32 **§ 160D-1-3. Unified development ordinance.**

33 A local government may elect to combine any of the regulations authorized by this Chapter
34 into a unified ordinance. Unless expressly provided otherwise, a local government may apply
35 any of the definitions and procedures authorized by law to any or all aspects of the unified
36 ordinance and may employ any organizational structure, board, commission, or staffing
37 arrangement authorized by law to any or all aspects of the ordinance. Inclusion of a regulation
38 authorized by this Chapter or local act in a unified development ordinance does not expand,
39 diminish, or alter the scope of authority for those regulations.

40 **§ 160D-1-4. Development approvals run with the land.**

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

43 **§ 160D-1-5. Maps.**

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

49 (b) Incorporation by Reference. – Development regulations adopted pursuant to this
50 Chapter may reference or incorporate by reference flood insurance rate maps, watershed
51 boundary maps, or other maps officially adopted or promulgated by State and federal agencies.

1 For these maps a regulation text or zoning map may reference a specific officially adopted map
2 or may incorporate by reference the most recent officially adopted version of such maps. When
3 zoning district boundaries are based on these maps, the regulation may provide that the zoning
4 district boundaries are automatically amended to remain consistent with changes in the officially
5 promulgated State or federal maps, provided a copy of the currently effective version of any
6 incorporated map shall be maintained for public inspection as provided in subsection (a) of this
7 section.

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

12 **§ 160D-1-6. Refund of illegal fees.**

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

18 **§ 160D-1-7. Moratoria.**

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

25 (b) Hearing Required. – Except in cases of imminent and substantial threat to public
26 health or safety, before adopting a development regulation imposing a development moratorium
27 with a duration of 60 days or any shorter period, the governing board shall hold a legislative
28 hearing and shall publish a notice of the hearing in a newspaper having general circulation in the
29 area not less than seven days before the date set for the hearing. A development moratorium with
30 a duration of 61 days or longer, and any extension of a moratorium so that the total duration is
31 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-6-1.

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

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

- 47 (1) A statement of the problems or conditions necessitating the moratorium and
48 what courses of action, alternative to a moratorium, were considered by the
49 local government and why those alternative courses of action were not deemed
50 adequate.

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

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

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

10 (e) Limit on Renewal or Extension. – No moratorium may be subsequently renewed or
11 extended for any additional period unless the local government shall have taken all reasonable
12 and feasible steps proposed to be taken in its ordinance establishing the moratorium to address
13 the problems or conditions leading to imposition of the moratorium and unless new facts and
14 conditions warrant an extension. Any ordinance renewing or extending a development
15 moratorium must include, at the time of adoption, the findings set forth in subdivisions (1)
16 through (4) of subsection (d) of this section, including what new facts or conditions warrant the
17 extension.

18 (f) Expedited Judicial Review. – Any person aggrieved by the imposition of a
19 moratorium on development approvals required by law may apply to the General Court of Justice
20 for an order enjoining the enforcement of the moratorium. Actions brought pursuant to this
21 section shall be scheduled for expedited hearing, and subsequent proceedings in those actions
22 shall be accorded priority by the trial and appellate courts. In such actions, the local government
23 shall have the burden of showing compliance with the procedural requirements of this subsection.
24 **§ 160D-1-8. Vested rights and permit choice.**

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

33 (b) Permit Choice. – If an application made in accordance with local regulation is
34 submitted for a development approval required pursuant to this Chapter and a development
35 regulation changes between the time the application was submitted and a decision is made, the
36 applicant may choose which version of the development regulation will apply to the application.
37 If the development permit applicant chooses the version of the rule or ordinance applicable at the
38 time of the permit application, the development permit applicant shall not be required to await
39 the outcome of the amendment to the rule, map, or ordinance prior to acting on the development
40 permit. This section applies to all development approvals issued by the State and by local
41 governments. The duration of vested rights created by development approvals is as set forth in
42 subsection (d) of this section.

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

50 (d) Types and Duration of Statutory Vested Rights. – Except as provided by this section
51 and subject to subsection (b) of this section, amendments in local development regulations shall

1 not be applicable or enforceable with regard to development that has been permitted or approved
2 pursuant to this Chapter so long as one of the types of approvals listed in this subsection remains
3 valid and unexpired. Each type of vested right listed in this subsection is defined by and is subject
4 to the limitations provided in this section. Vested rights established under this section are not
5 mutually exclusive. The establishment of a vested right under this section does not preclude the
6 establishment of one or more other vested rights or vesting by common law principles. Vested
7 rights established by local government approvals are as follows:

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

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

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

19 a. Duration. – A vested right for a site-specific vesting plan shall remain
20 vested for a period of two years. This vesting shall not be extended by
21 any amendments or modifications to a site-specific vesting plan unless
22 expressly provided by the local government. A local government may
23 provide that rights regarding a site-specific vesting plan shall be vested
24 for a period exceeding two years, but not exceeding five years, if
25 warranted by the size and phasing of development, the level of
26 investment, the need for the development, economic cycles, and
27 market conditions, or other considerations. This determination shall be
28 in the discretion of the local government and shall be made following
29 the process specified for the particular form of a site-specific vesting
30 plan involved in accordance with sub-subdivision c. of this
31 subdivision.

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

39 c. Requirements for site-specific vesting plans. – For the purposes of this
40 section, a "site-specific vesting plan" means a plan submitted to a local
41 government pursuant to this section describing with reasonable
42 certainty the type and intensity of use for a specific parcel or parcels
43 of property. The plan may be in the form of, but not be limited to, any
44 of the following plans or approvals: a planned unit development plan,
45 a subdivision plat, a site plan, a preliminary or general development
46 plan, a special use permit, a conditional zoning, or any other
47 development approval as may be used by a local government. Unless
48 otherwise expressly provided by the local government, the plan shall
49 include the approximate boundaries of the site; significant
50 topographical and other natural features affecting development of the
51 site; the approximate location on the site of the proposed buildings,

1 structures, and other improvements; the approximate dimensions,
2 including height, of the proposed buildings and other structures; and
3 the approximate location of all existing and proposed infrastructure on
4 the site, including water, sewer, roads, and pedestrian walkways. What
5 constitutes a site-specific vesting plan shall be defined by the relevant
6 development regulation, and the development approval that triggers
7 vesting shall be so identified at the time of its approval. At a minimum,
8 the regulation shall designate a vesting point earlier than the issuance
9 of a building permit. In the event a local government fails to adopt a
10 regulation setting forth what constitutes a site-specific vesting plan,
11 any development approval shall be considered to be a site-specific
12 vesting plan. A variance shall not constitute a site-specific vesting plan
13 and approval of a site-specific vesting plan with the condition that a
14 variance be obtained shall not confer a vested right unless and until the
15 necessary variance is obtained. If a sketch plan or other document fails
16 to describe with reasonable certainty the type and intensity of use for
17 a specified parcel or parcels of property, it may not constitute a
18 site-specific vesting plan.

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

43 (4) Seven years – Multiphase developments. – A multiphase development shall
44 be vested for the entire development with the zoning regulations, subdivision
45 regulations, and unified development ordinances in place at the time a site
46 plan approval is granted for the initial phase of the multiphase development.
47 This right shall remain vested for a period of seven years from the time a site
48 plan approval is granted for the initial phase of the multiphase development.
49 For purposes of this subsection, "multiphase development" means a
50 development containing 100 acres or more that (i) is submitted for site plan
51 approval for construction to occur in more than one phase and (ii) is subject

1 to a master development plan with committed elements, including a
2 requirement to offer land for public use as a condition of its master
3 development plan approval.

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

7 (e) Continuing Review. – Following approval or conditional approval of a statutory
8 vested right, a local government may make subsequent reviews and require subsequent approvals
9 by the local government to ensure compliance with the terms and conditions of the original
10 approval, provided that such reviews and approvals are not inconsistent with the original
11 approval. The local government may revoke the original approval for failure to comply with
12 applicable terms and conditions of the original approval or the applicable local development
13 regulations.

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

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

20 a. The written consent of the affected landowner.

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

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

34 d. Findings made, after notice and an evidentiary hearing, that the
35 landowner or the landowner's representative intentionally supplied
36 inaccurate information or made material misrepresentations that made
37 a difference in the approval by the local government of the vested
38 right.

39 e. The enactment or promulgation of a State or federal law or regulation
40 that precludes development as contemplated in the approved vested
41 right, in which case the local government may modify the affected
42 provisions, upon a finding that the change in State or federal law has
43 a fundamental effect on the plan, after notice and an evidentiary
44 hearing.

45 (2) The establishment of a vested right under subdivision (3) or (4) of subsection
46 (d) of this section shall not preclude the application of overlay zoning or other
47 development regulation that imposes additional requirements but does not
48 affect the allowable type or intensity of use, or ordinances or regulations that
49 are general in nature and are applicable to all property subject to development
50 regulation by a local government, including, but not limited to, building, fire,
51 plumbing, electrical, and mechanical codes. Otherwise applicable new

1 regulations shall become effective with respect to property that is subject to a
2 vested right established under this section upon the expiration or termination
3 of the vested rights period provided for in this section.

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

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

15 **"§ 160D-1-9. Conflicts of interest.**

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

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

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

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

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

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

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

7 **"§ 160D-1-10. Chapter construction.**

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

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

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

14 **"§ 160D-1-11. Effect on prior laws.**

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

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

26 (c) Whenever a reference is made in another section of the General Statutes or any local
27 act, or any local government ordinance, resolution, or order, to a portion of Article 19 of Chapter
28 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes that is
29 repealed or superseded by this Chapter, the reference shall be deemed amended to refer to that
30 portion of this Chapter that most nearly corresponds to the repealed or superseded portion of
31 Article 19 of Chapter 160A or Article 18 of Chapter 153A of the General Statutes.

32 "Article 2.

33 "Planning and Development Regulation Jurisdiction.

34 **"§ 160D-2-1. Planning and development regulation jurisdiction.**

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

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

41 **"§ 160D-2-2. Municipal extraterritorial jurisdiction.**

42 (a) Geographic Scope. – Any city may exercise the powers granted to cities under this
43 Chapter within a defined area extending not more than one mile beyond its contiguous corporate
44 limits. In addition, a city of 10,000 or more population but less than 25,000 may exercise these
45 powers over an area extending not more than two miles beyond its limits and a city of 25,000 or
46 more population may exercise these powers over an area extending not more than three miles
47 beyond its limits. In determining the population of a city for the purposes of this Chapter, the city
48 council and the board of county commissioners may use the most recent annual estimate of
49 population as certified by the Secretary of the North Carolina Department of Administration.
50 Pursuant to G.S. 160A-58.4, extraterritorial municipal planning and development regulation may

1 be extended only from the primary corporate boundary of a city and not from the boundary of
2 satellite areas of the city.

3 (b) Authority in the Extraterritorial Area. – A city may not exercise any power conferred
4 by this Chapter in its extraterritorial jurisdiction that it is not exercising within its corporate limits.
5 A city may exercise in its extraterritorial area all powers conferred by this Chapter that it is
6 exercising within its corporate limits. If a city fails to extend a particular type of development
7 regulation to the extraterritorial area, the county may elect to exercise that particular type of
8 regulation in the extraterritorial area.

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

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

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

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

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

49 (g) Transfer of Jurisdiction. – When a city annexes, or a new city is incorporated in, or a
50 city extends its jurisdiction to include, an area that is currently being regulated by the county, the
51 county development regulations and powers of enforcement shall remain in effect until (i) the

1 city has adopted such development regulations or (ii) a period of 60 days has elapsed following
2 the annexation, extension, or incorporation, whichever is sooner. Prior to the transfer of
3 jurisdiction, the city may hold hearings and take any other measures consistent with
4 G.S. 160D-2-4 that may be required in order to adopt and apply its development regulations for
5 the area at the same time it assumes jurisdiction.

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

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

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

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

33 **"§ 160D-2-3. Split jurisdiction.**

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

43 **"§ 160D-2-4. Pending jurisdiction.**

44 After consideration of a change in local government jurisdiction has been formally proposed,
45 the local government that is potentially receiving jurisdiction may receive and process proposals
46 to adopt development regulations and any application for development approvals that would be
47 required in that local government if the jurisdiction is changed. No final decisions shall be made
48 on any development approval prior to the actual transfer of jurisdiction. Acceptance of
49 jurisdiction, adoption of development regulations, and decisions on development approvals may
50 be made concurrently and may have a common effective date.

51 "Article 3.

"Boards and Organizational Arrangements.

"§ 160D-3-1. Planning boards.

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

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

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

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

(1) To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.

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

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

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

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

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

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

"§ 160D-3-2. Boards of adjustment.

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

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

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

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

13 (b) Alternative Forms. – In lieu of establishing a historic preservation commission, a local
14 government may designate as its historic preservation commission (i) a separate historic districts
15 commission or a separate historic landmarks commission established pursuant to this Chapter to
16 deal only with historic districts or landmarks respectively, (ii) a planning board established
17 pursuant to this Chapter, or (iii) a community appearance commission established pursuant to
18 this Chapter. In order for a commission or board other than the historic preservation commission
19 to be designated, at least three of its members shall have demonstrated special interest,
20 experience, or education in history, architecture, or related fields. At the discretion of a local
21 government, the ordinance may also provide that the preservation commission may exercise
22 within a historic district any or all of the powers of a planning board or a community appearance
23 commission.

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

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

30 **"§ 160D-3-4. Appearance commission.**

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

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

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

50 **"§ 160D-3-5. Housing appeals board.**

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

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

7 **"§ 160D-3-6. Other advisory boards.**

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

11 **"§ 160D-3-7. Extraterritorial representation on boards.**

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

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

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

39 **"§ 160D-3-8. Rules of procedure.**

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

47 **"§ 160D-3-9. Oath of office.**

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

50 **"§ 160D-3-10. Appointments to boards.**

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

4 "Article 4.

5 "Administration, Enforcement, and Appeals.

6 **"§ 160D-4-1. Application.**

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

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

19 **"§ 160D-4-2. Administrative staff.**

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

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

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

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

1 A local government may contract with an individual, company, council of governments,
2 regional planning agency, metropolitan planning organization, or rural planning agency to
3 designate an individual who is not a city or county employee to work under the supervision of
4 the local government to exercise the functions authorized by this section. The local government
5 shall have the same potential liability, if any, for inspections conducted by an individual who is
6 not an employee of the local government as it does for an individual who is an employee of the
7 local government. The company or individual with whom the local government contracts shall
8 have errors and omissions and other insurance coverage acceptable to the local government.

9 (d) Financial Support. – The local government may appropriate for the support of the
10 staff any funds that it deems necessary. It shall have power to fix reasonable fees for support,
11 administration, and implementation of programs authorized by this Chapter, and all such fees
12 shall be used for no other purposes. When an inspection, for which the permit holder has paid a
13 fee to the local government, is performed by a marketplace pool Code-enforcement official upon
14 request of the Insurance Commissioner under G.S. 143-151.12(9)a., the local government shall
15 promptly return to the permit holder the fee collected by the local government for such inspection.
16 This subsection applies to the following types of inspection: plumbing, electrical systems,
17 general building restrictions and regulations, heating and air-conditioning, and the general
18 construction of buildings.

19 **"§ 160D-4-3. Administrative development approvals and determinations.**

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

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

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

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

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

15 (d) Changes. – After a development approval has been issued, no deviations from the
16 terms of the application or the development approval shall be made until written approval of
17 proposed changes or deviations has been obtained. A local government may define by ordinance
18 minor modifications to development approvals that can be exempted or administratively
19 approved. The local government shall follow the same development review and approval process
20 required for issuance of the development approval in the review and approval of any major
21 modification of that approval.

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

29 (f) Revocation of Development Approvals. – In addition to initiation of enforcement
30 actions under G.S. 160D-4-4, development approvals may be revoked by the local government
31 issuing the development approval by notifying the holder in writing stating the reason for the
32 revocation. The local government shall follow the same development review and approval
33 process required for issuance of the development approval, including any required notice or
34 hearing, in the review and approval of any revocation of that approval. Development approvals
35 shall be revoked for any substantial departure from the approved application, plans, or
36 specifications; for refusal or failure to comply with the requirements of any applicable local
37 development regulation or any State law delegated to the local government for enforcement
38 purposes in lieu of the State; or for false statements or misrepresentations made in securing the
39 approval. Any development approval mistakenly issued in violation of an applicable State or
40 local law may also be revoked. The revocation of a development approval by a staff member may
41 be appealed pursuant to G.S. 160D-4-5. If an appeal is filed regarding a development regulation
42 adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-4-5(e)
43 regarding stays shall be applicable.

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

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

4 **"§ 160D-4-4. Enforcement.**

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

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

34 (c) Remedies. –

35 (1) Subject to the provisions of the development regulation, any development
36 regulation adopted pursuant to authority conferred by this Chapter may be
37 enforced by any remedy provided by G.S. 160A-175 or G.S. 153A-123. If a
38 building or structure is erected, constructed, reconstructed, altered, repaired,
39 converted, or maintained, or any building, structure, or land is used or
40 developed in violation of this Chapter or of any development regulation or
41 other regulation made under authority of this Chapter, the local government,
42 in addition to other remedies, may institute any appropriate action or
43 proceedings to prevent the unlawful erection, construction, reconstruction,
44 alteration, repair, conversion, maintenance, use, or development; to restrain,
45 correct or abate the violation; to prevent occupancy of the building, structure,
46 or land; or to prevent any illegal act, conduct, business, or use in or about the
47 premises.

48 (2) When a development regulation adopted pursuant to authority conferred by
49 this Chapter is to be applied or enforced in any area outside the planning and
50 development regulation jurisdiction of a city as set forth in Article 2 of this
51 Chapter, the city and the property owner shall certify that the application or

1 enforcement of the city development regulation is not under coercion or
2 otherwise based on representation by the city that the city's development
3 approval would be withheld without the application or enforcement of the city
4 development regulation outside the jurisdiction of the city. The certification
5 may be evidenced by a signed statement of the parties on any development
6 approval.

7 (3) In case any building, structure, site, area, or object designated as a historic
8 landmark or located within a historic district designated pursuant to this
9 Chapter is about to be demolished whether as the result of deliberate neglect
10 or otherwise, materially altered, remodeled, removed, or destroyed, except in
11 compliance with the development regulation or other provisions of this
12 Chapter, the local government, the historic preservation commission, or other
13 party aggrieved by such action may institute any appropriate action or
14 proceedings to prevent such unlawful demolition, destruction, material
15 alteration, remodeling, or removal, to restrain, correct, or abate such violation,
16 or to prevent any illegal act or conduct with respect to such building, structure,
17 site, area, or object. Such remedies shall be in addition to any others authorized
18 by this Chapter for violation of an ordinance.

19 **"§ 160D-4-5. Appeals of administrative decisions.**

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

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

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

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

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

47 (f) Stays. – An appeal of a notice of violation or other enforcement order stays
48 enforcement of the action appealed from and accrual of any fines assessed unless the official who
49 made the decision certifies to the board after notice of appeal has been filed that, because of the
50 facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the
51 violation is transitory in nature, a stay would seriously interfere with enforcement of the

1 development regulation. In that case, enforcement proceedings shall not be stayed except by a
2 restraining order, which may be granted by a court. If enforcement proceedings are not stayed,
3 the appellant may file with the official a request for an expedited hearing of the appeal, and the
4 board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding
5 the foregoing, appeals of decisions granting a development approval or otherwise affirming that
6 a proposed use of property is consistent with the development regulation shall not stay the further
7 review of an application for development approvals to use such property; in these situations, the
8 appellant or local government may request and the board may grant a stay of a final decision of
9 development approval applications, including building permits affected by the issue being
10 appealed.

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

15 **"§ 160D-4-6. Quasi-judicial procedure.**

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

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

33 (c) Administrative Materials. – The administrator or staff to the board shall transmit to
34 the board all applications, reports, and written materials relevant to the matter being considered.
35 The administrative materials may be distributed to the members of the board prior to the hearing
36 if at the same time they are distributed to the board a copy is also provided to the appellant or
37 applicant and to the landowner if that person is not the appellant or applicant. The administrative
38 materials shall become a part of the hearing record. The administrative materials may be provided
39 in written or electronic form. Objections to inclusion or exclusion of administrative materials
40 may be made before or during the hearing. Rulings on unresolved objections shall be made by
41 the board at the hearing.

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

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

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

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

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

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

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

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

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

51 "Article 5.

"Planning.

"§ 160D-5-1. Plans.

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

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

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

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

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

1 considering proposed amendments to zoning regulations as required by G.S. 160D-6-4 and
2 G.S. 160D-6-5.

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

7 **"§ 160D-5-2. Grants, contracts, and technical assistance.**

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

15 (b) Contracts. – Any local government may enter into and carry out contracts with any
16 other city, county, or regional council, planning agency, or private consultant under which it
17 agrees to furnish technical planning assistance to the other local government or planning agency.
18 Any local government may enter into and carry out contracts with any other city, county, or
19 regional council or planning agency under which it agrees to pay the other local government for
20 technical planning assistance.

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

25 **"§ 160D-5-3. Coordination of planning.**

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

30 "Article 6.

31 "Development Regulation.

32 **"§ 160D-6-1. Procedure for adopting, amending, or repealing development regulations.**

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

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

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

51 **"§ 160D-6-2. Notice of hearing on proposed zoning map amendments.**

1 (a) Mailed Notice. – An ordinance shall provide for the manner in which zoning
2 regulations and the boundaries of zoning districts shall be determined, established, and enforced,
3 and from time to time amended, supplemented, or changed, in accordance with the provisions of
4 this Chapter. The owners of affected parcels of land and the owners of all parcels of land abutting
5 that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment
6 by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the
7 purpose of this section, properties are "abutting" even if separated by a street, railroad, or other
8 transportation corridor. This notice must be deposited in the mail at least 10 but not more than
9 25 days prior to the date of the hearing. If the zoning map amendment is being proposed in
10 conjunction with an expansion of municipal extraterritorial planning and development regulation
11 jurisdiction under G.S. 160D-2-2, a single hearing on the zoning map amendment and the
12 boundary amendment may be held. In this instance, the initial notice of the zoning map
13 amendment hearing may be combined with the boundary hearing notice and the combined
14 hearing notice mailed at least 30 days prior to the hearing.

15 (b) Optional Notice for Large-Scale Zoning Map Amendments. – The first-class mail
16 notice required under subsection (a) of this section shall not be required if the zoning map
17 amendment proposes to change the zoning designation of more than 50 properties, owned by at
18 least 50 different property owners, and the local government elects to use the expanded published
19 notice provided for in this subsection. In this instance, a local government may elect to make the
20 mailed notice provided for in subsection (a) of this section or, as an alternative, elect to publish
21 notice of the hearing as required by G.S. 160D-6-1, provided that each advertisement shall not
22 be less than one-half of a newspaper page in size. The advertisement shall only be effective for
23 property owners who reside in the area of general circulation of the newspaper that publishes the
24 notice. Property owners who reside outside of the newspaper circulation area, according to the
25 address listed on the most recent property tax listing for the affected property, shall be notified
26 according to the provisions of subsection (a) of this section.

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

33 (d) Actual Notice. – Except for a government-initiated zoning map amendment, when an
34 application is filed to request a zoning map amendment and that application is not made by the
35 landowner or authorized agent, the applicant shall certify to the local government that the owner
36 of the parcel of land as shown on the county tax listing has received actual notice of the proposed
37 amendment and a copy of the notice of the hearing. Actual notice shall be provided in any manner
38 permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal
39 delivery, certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §
40 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). The person
41 or persons required to provide notice shall certify to the local government that actual notice has
42 been provided, and such certificate shall be deemed conclusive in the absence of fraud.

43 (e) Optional Communication Requirements. – When a zoning map amendment is
44 proposed, a zoning regulation may require communication by the person proposing the map
45 amendment to neighboring property owners and residents and may require the person proposing
46 the zoning map amendment to report on any communication with neighboring property owners
47 and residents.

48 **"§ 160D-6-3. Citizen comments.**

49 Subject to the limitations of this Chapter, zoning regulations may from time to time be
50 amended, supplemented, changed, modified, or repealed. If any resident or property owner in the
51 local government submits a written statement regarding a proposed amendment, modification, or

1 repeal to a zoning regulation, including a text or map amendment, to the clerk to the board at
2 least two business days prior to the proposed vote on such change, the clerk to the board shall
3 deliver such written statement to the governing board. If the proposed change is the subject of a
4 quasi-judicial proceeding under G.S. 160D-7-5 or any other statute, the clerk shall provide only
5 the names and addresses of the individuals providing written comment, and the provision of such
6 names and addresses to all members of the board shall not disqualify any member of the board
7 from voting.

8 **"§ 160D-6-4. Planning board review and comment.**

9 (a) Initial Zoning. – In order to exercise zoning powers conferred by this Chapter for the
10 first time, a local government shall create or designate a planning board under the provisions of
11 this Article or of a special act of the General Assembly. The planning board shall prepare or shall
12 review and comment upon a proposed zoning regulation, including the full text of such regulation
13 and maps showing proposed district boundaries. The planning board may hold public meetings
14 and legislative hearings in the course of preparing the regulation. Upon completion, the planning
15 board shall make a written recommendation regarding adoption of the regulation to the governing
16 board. The governing board shall not hold its required hearing or take action until it has received
17 a recommendation regarding the regulation from the planning board. Following its required
18 hearing, the governing board may refer the regulation back to the planning board for any further
19 recommendations that the board may wish to make prior to final action by the governing board
20 in adopting, modifying and adopting, or rejecting the regulation.

21 (b) Zoning Amendments. – Subsequent to initial adoption of a zoning regulation, all
22 proposed amendments to the zoning regulation or zoning map shall be submitted to the planning
23 board for review and comment. If no written report is received from the planning board within
24 30 days of referral of the amendment to that board, the governing board may act on the
25 amendment without the planning board report. The governing board is not bound by the
26 recommendations, if any, of the planning board.

27 (c) Review of Other Ordinances and Actions. – Any development regulation other than
28 a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to the
29 planning board for review and comment. Any development regulation other than a zoning
30 regulation may provide that future proposed amendments of that ordinance be submitted to the
31 planning board for review and comment. Any other action proposed to be taken pursuant to this
32 Chapter may be referred to the planning board for review and comment.

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

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

48 **"§ 160D-6-5. Governing board statement.**

49 (a) Plan Consistency. – When adopting or rejecting any zoning text or map amendment,
50 the governing board shall approve a brief statement describing whether its action is consistent or
51 inconsistent with an adopted comprehensive plan. The requirement for a plan consistency

1 statement may also be met by a clear indication in the minutes of the governing board that at the
2 time of action on the amendment the governing board was aware of and considered the planning
3 board's recommendations and any relevant portions of an adopted comprehensive plan. If a
4 zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan,
5 the zoning amendment shall have the effect of also amending any future land-use map in the
6 approved plan, and no additional request or application for a plan amendment shall be required.
7 A plan amendment and a zoning amendment may be considered concurrently. The plan
8 consistency statement is not subject to judicial review. If a zoning map amendment qualifies as
9 a "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement describing plan
10 consistency may address the overall rezoning and describe how the analysis and policies in the
11 relevant adopted plans were considered in the action taken.

12 (b) Additional Reasonableness Statement for Rezoning. – When adopting or rejecting
13 any petition for a zoning map amendment, a statement analyzing the reasonableness of the
14 proposed rezoning shall be approved by the governing board. This statement of reasonableness
15 may consider, among other factors, (i) the size, physical conditions, and other attributes of the
16 area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors,
17 and the surrounding community, (iii) the relationship between the current actual and permissible
18 development on the tract and adjoining areas and the development that would be permissible
19 under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any
20 changed conditions warranting the amendment. If a zoning map amendment qualifies as a
21 "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement on reasonableness
22 may address the overall rezoning.

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

25 "Article 7.

26 "Zoning Regulation.

27 **"§ 160D-7-1. Purposes.**

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

41 **"§ 160D-7-2. Grant of power.**

42 (a) A Local Government May Adopt Zoning Regulations. – A zoning regulation may
43 regulate and restrict the height, number of stories, and size of buildings and other structures; the
44 percentage of lots that may be occupied; the size of yards, courts, and other open spaces; the
45 density of population; the location and use of buildings, structures, and land. A local government
46 may regulate development, including floating homes, over estuarine waters and over lands
47 covered by navigable waters owned by the State pursuant to G.S. 146-12. A zoning regulation
48 shall provide density credits or severable development rights for dedicated rights-of-way
49 pursuant to G.S. 136-66.10 or G.S. 136-66.11. Where appropriate, a zoning regulation may
50 include requirements that street and utility rights-of-way be dedicated to the public, that provision

1 be made of recreational space and facilities, and that performance guarantees be provided, all to
2 the same extent and with the same limitations as provided for in G.S. 160D-8-4.

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

6 (1) The structures are located in an area designated as a local historic district
7 pursuant to Part 4 of Article 9 of this Chapter.

8 (2) The structures are located in an area designated as a historic district on the
9 National Register of Historic Places.

10 (3) The structures are individually designated as local, State, or national historic
11 landmarks.

12 (4) The regulations are directly and substantially related to the requirements of
13 applicable safety codes adopted under G.S. 143-138.

14 (5) Where the regulations are applied to manufactured housing in a manner
15 consistent with G.S. 160D-9-7 and federal law.

16 (6) Where the regulations are adopted as a condition of participation in the
17 National Flood Insurance Program.

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

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

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

37 **"§ 160D-7-3. Zoning districts.**

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

43 (1) Conventional districts, in which a variety of uses are allowed as permitted uses
44 or uses by right and that may also include uses permitted only with a special
45 use permit.

46 (2) Conditional districts, in which site plans or individualized development
47 conditions are imposed.

48 (3) Form-based districts, or development form controls, that address the physical
49 form, mass, and density of structures, public spaces, and streetscapes.

1 (4) Overlay districts, in which different requirements are imposed on certain
2 properties within one or more underlying conventional, conditional, or
3 form-based districts.

4 (5) Districts allowed by charter.

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

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

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

27 **"§ 160D-7-4. Incentives.**

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

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

41 (1) Leadership in Energy and Environmental Design (LEED) certification or
42 higher rating under certification standards adopted by the U.S. Green Building
43 Council.

44 (2) A One Globe or higher rating under the Green Globes program standards
45 adopted by the Green Building Initiative.

46 (3) A certification or rating by another nationally recognized certification or
47 rating system that is equivalent or greater than those listed in subdivisions (1)
48 and (2) of this subsection.

49 **"§ 160D-7-5. Quasi-judicial zoning decisions.**

50 (a) Provisions of Ordinance. – The zoning or unified development ordinance may provide
51 that the board of adjustment, planning board, or governing board hear and decide quasi-judicial

1 zoning decisions. The board shall follow quasi-judicial procedures as specified in G.S. 160D-4-6
2 when making any quasi-judicial decision.

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

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

17 The regulation may provide that defined minor modifications to special use permits that do
18 not involve a change in uses permitted or the density of overall development permitted may be
19 reviewed and approved administratively. Any other modification or revocation of a special use
20 permit shall follow the same process for approval as is applicable to the approval of a special use
21 permit. If multiple parcels of land are subject to a special use permit, the owners of individual
22 parcels may apply for permit modification so long as the modification would not result in other
23 properties failing to meet the terms of the special use permit or regulations. Any modifications
24 approved shall only be applicable to those properties whose owners apply for the modification.
25 The regulation may require that special use permits be recorded with the register of deeds.

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

- 29 (1) Unnecessary hardship would result from the strict application of the
30 regulation. It shall not be necessary to demonstrate that, in the absence of the
31 variance, no reasonable use can be made of the property.
- 32 (2) The hardship results from conditions that are peculiar to the property, such as
33 location, size, or topography. Hardships resulting from personal
34 circumstances, as well as hardships resulting from conditions that are common
35 to the neighborhood or the general public, may not be the basis for granting a
36 variance. A variance may be granted when necessary and appropriate to make
37 a reasonable accommodation under the Federal Fair Housing Act for a person
38 with a disability.
- 39 (3) The hardship did not result from actions taken by the applicant or the property
40 owner. The act of purchasing property with knowledge that circumstances
41 exist that may justify the granting of a variance shall not be regarded as a
42 self-created hardship.
- 43 (4) The requested variance is consistent with the spirit, purpose, and intent of the
44 regulation, such that public safety is secured and substantial justice is
45 achieved.

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

50 **§ 160D-7-6. Zoning conflicts with other development standards.**

1 (a) When regulations made under authority of this Article require a greater width or size
2 of yards or courts, or require a lower height of a building or fewer number of stories, or require
3 a greater percentage of a lot to be left unoccupied, or impose other higher standards than are
4 required in any other statute or local ordinance or regulation, the regulations made under
5 authority of this Article shall govern. When the provisions of any other statute or local ordinance
6 or regulation require a greater width or size of yards or courts, or require a lower height of a
7 building or a fewer number of stories, or require a greater percentage of a lot to be left
8 unoccupied, or impose other higher standards than are required by the regulations made under
9 authority of this Article, the provisions of that statute or local ordinance or regulation shall
10 govern.

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

14 "Article 8.

15 "Subdivision Regulation.

16 **"§ 160D-8-1. Authority.**

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

23 **"§ 160D-8-2. Applicability.**

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

30 (1) The combination or recombination of portions of previously subdivided and
31 recorded lots where the total number of lots is not increased and the resultant
32 lots are equal to or exceed the standards of the local government as shown in
33 its subdivision regulations.

34 (2) The division of land into parcels greater than 10 acres where no street
35 right-of-way dedication is involved.

36 (3) The public acquisition by purchase of strips of land for the widening or
37 opening of streets or for public transportation system corridors.

38 (4) The division of a tract in single ownership whose entire area is no greater than
39 2 acres into not more than three lots, where no street right-of-way dedication
40 is involved and where the resultant lots are equal to or exceed the standards of
41 the local government, as shown in its subdivision regulations.

42 (5) The division of a tract into parcels in accordance with the terms of a probated
43 will or in accordance with intestate succession under Chapter 29 of the
44 General Statutes.

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

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

49 (1) The tract or parcel to be divided is not exempted under subdivision (2) of
50 subsection (a) of this section.

- 1 (2) No part of the tract or parcel to be divided has been divided under this
2 subsection in the 10 years prior to division.
- 3 (3) The entire area of the tract or parcel to be divided is greater than 5 acres.
- 4 (4) After division, no more than three lots result from the division.
- 5 (5) After division, all resultant lots comply with all of the following:
- 6 a. All lot dimension size requirements of the applicable land-use
7 regulations, if any.
- 8 b. The use of the lots is in conformity with the applicable zoning
9 requirements, if any.
- 10 c. A permanent means of ingress and egress is recorded for each lot.

11 **"§ 160D-8-3. Review process, filing, and recording of subdivision plats.**

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

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

- 18 (1) The district highway engineer as to proposed State streets, State highways,
19 and related drainage systems.
- 20 (2) The county health director or local public utility, as appropriate, as to
21 proposed water or sewerage systems.
- 22 (3) Any other agency or official designated by the governing board.

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

- 25 (1) The governing board.
- 26 (2) The governing board on recommendation of a designated body.
- 27 (3) A designated planning board, technical review committee of local government
28 staff members, or other designated body or staff person.

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

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

43 **"§ 160D-8-4. Contents and requirements of regulation.**

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

50 (b) Plats. – The regulation may require a plat be prepared, approved, and recorded
51 pursuant to the provisions of the regulation whenever any subdivision of land takes place. The

1 regulation may include requirements that plats show sufficient data to determine readily and
2 reproduce accurately on the ground the location, bearing, and length of every street and alley
3 line, lot line, easement boundary line, and other property boundaries, including the radius and
4 other data for curved property lines, to an appropriate accuracy and in conformance with good
5 surveying practice.

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

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

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

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

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

50 (g) Performance Guarantees. – To assure compliance with these and other development
51 regulation requirements, the regulation may provide for performance guarantees to assure

1 successful completion of required improvements at the time the plat is recorded as provided in
2 subsection (b) of this section. For any specific development, the type of performance guarantee
3 shall be at the election of the person required to give the performance guarantee.

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

- 6 (1) The term "performance guarantee" shall mean any of the following forms of
7 guarantee:
8 a. Surety bond issued by any company authorized to do business in this
9 State.
10 b. Letter of credit issued by any financial institution licensed to do
11 business in this State.
12 c. Other form of guarantee that provides equivalent security to a surety
13 bond or letter of credit.
- 14 (2) The performance guarantee shall be returned or released, as appropriate, in a
15 timely manner upon the acknowledgement by the local government that the
16 improvements for which the performance guarantee is being required are
17 complete. If the improvements are not complete and the current performance
18 guarantee is expiring, the performance guarantee shall be extended, or a new
19 performance guarantee issued, for an additional period until such required
20 improvements are complete. A developer shall demonstrate reasonable,
21 good-faith progress toward completion of the required improvements that are
22 the subject of the performance guarantee or any extension. The form of any
23 extension shall remain at the election of the developer.
- 24 (3) The amount of the performance guarantee shall not exceed one hundred
25 twenty-five percent (125%) of the reasonably estimated cost of completion at
26 the time the performance guarantee is issued. Any extension of the
27 performance guarantee necessary to complete required improvements shall
28 not exceed one hundred twenty-five percent (125%) of the reasonably
29 estimated cost of completion of the remaining incomplete improvements still
30 outstanding at the time the extension is obtained.
- 31 (4) The performance guarantee shall only be used for completion of the required
32 improvements and not for repairs or maintenance after completion.
- 33 (5) No person shall have or may claim any rights under or to any performance
34 guarantee provided pursuant to this subsection or in the proceeds of any such
35 performance guarantee other than the following:
36 a. The local government to whom such performance guarantee is
37 provided.
38 b. The developer at whose request or for whose benefit such performance
39 guarantee is given.
40 c. The person or entity issuing or providing such performance guarantee
41 at the request of or for the benefit of the developer.

42 **"§ 160D-8-5. Notice of new subdivision fees and fee increases; public comment period.**

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

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

- 1 (2) Notice of the meeting in a prominent physical location, including, but not
2 limited to, any government building, library, or courthouse within the
3 planning and development regulation jurisdiction of the local government.
4 (3) Notice of the meeting by electronic mail or other reasonable means to a list of
5 interested parties that is created by the local government for the purpose of
6 notification as required by this section.

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

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

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

18 **§ 160D-8-6. Effect of plat approval on dedications.**

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

34 **§ 160D-8-7. Penalties for transferring lots in unapproved subdivisions.**

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

50 (b) The provisions of this section shall not prohibit any owner or its agent from entering
51 into contracts to sell or lease by reference to an approved preliminary plat for which a final plat

1 has not yet been properly approved under the subdivision regulation or recorded with the register
2 of deeds, provided the contract does all of the following:

- 3 (1) Incorporates as an attachment a copy of the preliminary plat referenced in the
4 contract and obligates the owner to deliver to the buyer a copy of the recorded
5 plat prior to closing and conveyance.
6 (2) Plainly and conspicuously notifies the prospective buyer or lessee that a final
7 subdivision plat has not been approved or recorded at the time of the contract,
8 that no governmental body will incur any obligation to the prospective buyer
9 or lessee with respect to the approval of the final subdivision plat, that changes
10 between the preliminary and final plats are possible, and that the contract or
11 lease may be terminated without breach by the buyer or lessee if the final
12 recorded plat differs in any material respect from the preliminary plat.
13 (3) Provides that if the approved and recorded final plat does not differ in any
14 material respect from the plat referred to in the contract, the buyer or lessee
15 may not be required by the seller or lessor to close any earlier than five days
16 after the delivery of a copy of the final recorded plat.
17 (4) Provides that if the approved and recorded final plat differs in any material
18 respect from the preliminary plat referred to in the contract, the buyer or lessee
19 may not be required by the seller or lessor to close any earlier than 15 days
20 after the delivery of the final recorded plat, during which 15-day period the
21 buyer or lessee may terminate the contract without breach or any further
22 obligation and may receive a refund of all earnest money or prepaid purchase
23 price.

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

33 **"§ 160D-8-8. Appeals of decisions on subdivision plats.**

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

35 "Article 9.

36 "Regulation of Particular Uses and Areas.

37 "Part 1. Particular Land Uses.

38 **"§ 160D-9-1. Regulation of particular uses and areas.**

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

46 **"§ 160D-9-2. Adult businesses.**

47 (a) The General Assembly finds and determines that sexually oriented businesses can and
48 do cause adverse secondary impacts on neighboring properties. Numerous studies relevant to
49 North Carolina have found increases in crime rates and decreases in neighboring property values
50 as a result of the location of sexually oriented businesses in inappropriate locations or from the
51 operation of such businesses in an inappropriate manner. Reasonable local government

1 regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary
2 impacts is consistent with the federal constitutional protection afforded to nonobscene but
3 sexually explicit speech.

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

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

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

15 (2) Regulations on operation of sexually oriented businesses, such as limits on
16 hours of operation, open booth requirements, limitations on exterior
17 advertising and noise, age of patrons and employees, required separation of
18 patrons and performers, clothing restrictions for masseuses, and clothing
19 restrictions for servers of alcoholic beverages.

20 (3) Clothing restrictions for entertainers.

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

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

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

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

40 **"§ 160D-9-3. Agricultural uses.**

41 (a) Bona Fide Farming Exempt From County Zoning. – County zoning regulations may
42 not affect property used for bona fide farm purposes; provided, however, that this section does
43 not limit zoning regulation with respect to the use of farm property for nonfarm purposes. Except
44 as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under
45 G.S. 106-743.2, bona fide farm purposes include the production and activities relating or
46 incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants,
47 dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1.
48 Activities incident to the farm include existing or new residences constructed to the applicable
49 residential building code situated on the farm occupied by the owner, lessee, or operator of the
50 farm and other buildings or structures sheltering or supporting the farm use and operation. For
51 purposes of this section, "when performed on the farm" in G.S. 106-581.1(6) shall include the

1 farm within the jurisdiction of the county and any other farm owned or leased to or from others
2 by the bona fide farm operator, no matter where located. For purposes of this section, the
3 production of a nonfarm product that the Department of Agriculture and Consumer Services
4 recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject
5 to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of
6 determining whether a property is being used for bona fide farm purposes, any of the following
7 shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- 8 (1) A farm sales tax exemption certificate issued by the Department of Revenue.
- 9 (2) A copy of the property tax listing showing that the property is eligible for
10 participation in the present-use value program pursuant to G.S. 105-277.3.
- 11 (3) A copy of the farm owner's or operator's Schedule F from the owner's or
12 operator's most recent federal income tax return.
- 13 (4) A forest management plan.

14 A building or structure that is used for agritourism is a bona fide farm purpose if the building
15 or structure is located on a property that (i) is owned by a person who holds a qualifying farm
16 sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a)
17 or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to
18 maintain the requirements of this subsection for a period of three years after the date the building
19 or structure was originally classified as a bona fide farm purpose pursuant to this subsection shall
20 subject the building or structure to applicable zoning and development regulation ordinances
21 adopted by a county pursuant to subsection (a) of this section in effect on the date the property
22 no longer meets the requirements of this subsection. For purposes of this section, "agritourism"
23 means any activity carried out on a farm or ranch that allows members of the general public, for
24 recreational, entertainment, or educational purposes, to view or enjoy rural activities, including
25 farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and
26 attractions. A building or structure used for agritourism includes any building or structure used
27 for public or private events, including, but not limited to, weddings, receptions, meetings,
28 demonstrations of farm activities, meals, and other events that are taking place on the farm
29 because of its farm or rural setting.

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

39 (c) Agricultural Areas in Municipal Extraterritorial Jurisdiction. – Property that is located
40 in a municipality's extraterritorial planning and development regulation jurisdiction and that is
41 used for bona fide farm purposes is exempt from the municipality's zoning regulation to the same
42 extent bona fide farming activities are exempt from county zoning pursuant to this section. As
43 used in this subsection, "property" means a single tract of property or an identifiable portion of a
44 single tract. Property that ceases to be used for bona fide farm purposes shall become subject to
45 exercise of the municipality's extraterritorial planning and development regulation jurisdiction
46 under this Chapter. For purposes of complying with State or federal law, property that is exempt
47 from the exercise of municipal extraterritorial planning and development regulation jurisdiction
48 pursuant to this subsection shall be subject to the county's floodplain regulation or all floodplain
49 regulation provisions of the county's unified development ordinance.

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

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

11 **"§ 160D-9-4. Airport zoning.**

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

16 **"§ 160D-9-5. Amateur radio antennas.**

17 A local government ordinance based on health, safety, or aesthetic considerations that
18 regulates the placement, screening, or height of the antennas or support structures of amateur
19 radio operators must reasonably accommodate amateur radio communications and must
20 represent the minimum practicable regulation necessary to accomplish the purpose of the local
21 government. A local government may not restrict antennas or antenna support structures of
22 amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to achieve
23 a clearly defined health, safety, or aesthetic objective of the local government.

24 **"§ 160D-9-6. Family care homes.**

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

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

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

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

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

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

47 **"§ 160D-9-7. Fence wraps.**

48 Fence wraps displaying signage when affixed to perimeter fencing at a construction site are
49 exempt from zoning regulation pertaining to signage under this Article until the certificate of
50 occupancy is issued for the final portion of any construction at that site or 24 months from the
51 time the fence wrap was installed, whichever is shorter. If construction is not completed at the

1 end of 24 months from the time the fence wrap was installed, the local government may regulate
2 the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter
3 fencing. No fence wrap affixed pursuant to this section may display any advertising other than
4 advertising sponsored by a person directly involved in the construction project and for which
5 monetary compensation for the advertisement is not paid or required.

6 **"§ 160D-9-8. Fraternities and sororities.**

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

10 **"§ 160D-9-9. Manufactured homes.**

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

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

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

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

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

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

37 **"§ 160D-9-10. Modular homes.**

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

40 **"§ 160D-9-11. Outdoor advertising.**

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

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

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

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

- 6 (1) The local government and the owner of the nonconforming off-premises
7 outdoor advertising enter into a relocation agreement pursuant to subsection
8 (g) of this section.
- 9 (2) The local government and the owner of the nonconforming off-premises
10 outdoor advertising enter into an agreement pursuant to subsection (k) of this
11 section.
- 12 (3) The off-premises outdoor advertising is determined to be a public nuisance or
13 detrimental to the health or safety of the populace.
- 14 (4) The removal is required for opening, widening, extending, or improving
15 streets or sidewalks, or for establishing, extending, enlarging, or improving
16 any of the public enterprises listed in G.S. 160A-311, and the local
17 government allows the off-premises outdoor advertising to be relocated to a
18 comparable location.
- 19 (5) The off-premises outdoor advertising is subject to removal pursuant to
20 statutes, ordinances, or regulations generally applicable to the demolition or
21 removal of damaged structures.

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

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

- 29 (1) The factors listed in G.S. 105-317.1(a).
- 30 (2) The listed property tax value of the property and any documents regarding
31 value submitted to the taxing authority.

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

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

- 42 (1) Provision for relocation of the sign to a site reasonably comparable to or better
43 than the existing location. In determining whether a location is comparable or
44 better, the following factors shall be taken into consideration:
- 45 a. The size and format of the sign.
- 46 b. The characteristics of the proposed relocation site, including visibility,
47 traffic count, area demographics, zoning, and any uncompensated
48 differential in the sign owner's cost to lease the replacement site.
- 49 c. The timing of the relocation.
- 50 (2) Provision for payment by the local government of the reasonable costs of
51 relocating and reconstructing the sign, including the following:

- a. The actual cost of removing the sign.
- b. The actual cost of any necessary repairs to the real property for damages caused in the removal of the sign.
- c. The actual cost of installing the sign at the new location.
- d. An amount of money equivalent to the income received from the lease of the sign for a period of up to 30 days if income is lost during the relocation of the sign.

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

(i) If a local government has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section and within 120 days after the initial notice by the local government the parties have not been able to agree that the site or sites offered by the local government for relocation of the sign are reasonably comparable to or better than the existing site, the parties shall enter into binding arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall select one arbitrator, and the two arbitrators chosen by the parties shall select the third member of the panel. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise.

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

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

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

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

1 (n) The provisions of this section shall not be used to interpret, construe, alter, or
2 otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter
3 40A or Chapter 136 of the General Statutes.

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

6 **"§ 160D-9-12. Public buildings.**

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

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

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

14 (a) Except as provided in subsection (c) of this section, no local government development
15 regulation shall prohibit, or have the effect of prohibiting, the installation of a solar collector that
16 gathers solar radiation as a substitute for traditional energy for water heating, active space heating
17 and cooling, passive heating, or generating electricity for a residential property, and no person
18 shall be denied permission by a local government to install a solar collector that gathers solar
19 radiation as a substitute for traditional energy for water heating, active space heating and cooling,
20 passive heating, or generating electricity for a residential property. As used in this section, the
21 term "residential property" means property where the predominant use is for residential purposes.

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

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

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

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

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

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

37 **"§ 160D-9-14. Temporary health care structures.**

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

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

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

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

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

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

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

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

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

26 (e) Any person proposing to install a temporary family health care structure shall first
27 obtain a permit from the local government. The local government may charge a fee of up to one
28 hundred dollars (\$100.00) for the initial permit and an annual renewal fee of up to fifty dollars
29 (\$50.00). The local government may not withhold a permit if the applicant provides sufficient
30 proof of compliance with this section. The local government may require that the applicant
31 provide evidence of compliance with this section on an annual basis as long as the temporary
32 family health care structure remains on the property. The evidence may involve the inspection
33 by the local government of the temporary family health care structure at reasonable times
34 convenient to the caregiver, not limited to any annual compliance confirmation and annual
35 renewal of the doctor's certification.

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

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

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

50 (i) The local government may revoke the permit granted pursuant to subsection (e) of
51 this section if the permit holder violates any provision of this section or G.S. 160A-202. The local

1 government may seek injunctive relief or other appropriate actions or proceedings to ensure
2 compliance with this section or G.S. 160A-202.

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

5 **"§ 160D-9-15. Streets and transportation.**

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

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

13 **"§ 160D-9-16. Bee hives.**

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

16 **"§§ 160D-9-17 through 160D-9-19: Reserved for future codification purposes.**

17 "Part 2. Environmental Regulation.

18 **"§ 160D-9-20. Local environmental regulations.**

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

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

27 **"§ 160D-9-21. Forestry activities.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (5) Regulate and protect streets.

23 **"§ 160D-9-22. Erosion and sedimentation control.**

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

28 **"§ 160D-9-23. Floodplain regulations.**

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

33 **"§ 160D-9-24. Mountain ridge protection.**

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

39 **"§ 160D-9-25. Stormwater control.**

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

44 (b) A federal, State, or local government project shall comply with the requirements of a
45 local government stormwater control regulation unless the federal, State, or local government
46 agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that
47 applies to the project. A local government may take enforcement action to compel a State or local
48 government agency to comply with a stormwater control regulation that implements the NPDES
49 stormwater permit issued to the local government. To the extent permitted by federal law,
50 including Chapter 26 of Title 33 of the United States Code, a local government may take

1 enforcement action to compel a federal government agency to comply with a stormwater control
2 regulation.

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

6 (d) A local government that holds an NPDES permit issued pursuant to G.S. 143-214.7
7 may adopt a regulation, applicable within its planning and development regulation jurisdiction,
8 to establish the stormwater control program necessary for the local government to comply with
9 the permit. A local government may adopt a regulation that bans illicit discharges within its
10 planning and development regulation jurisdiction. A local government may adopt a regulation,
11 applicable within its planning and development regulation jurisdiction, that requires (i) deed
12 restrictions and protective covenants to ensure that each project, including the stormwater
13 management system, will be maintained so as to protect water quality and control water quantity
14 and (ii) financial arrangements to ensure that adequate funds are available for the maintenance
15 and replacement costs of the project.

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

21 **"§ 160D-9-26. Water supply watershed management.**

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

25 **"§§ 160D-9-27 through 160D-9-29: Reserved for future codification purposes.**

26 "Part 3. Wireless Telecommunication Facilities.

27 **"§ 160D-9-30. Purpose and compliance with federal law.**

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

33 (b) The deployment of wireless infrastructure is critical to ensuring first responders can
34 provide for the health and safety of all residents of North Carolina and, consistent with section
35 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), create
36 a national wireless emergency communications network for use by first responders that in large
37 measure will be dependent on facilities placed on existing wireless communications support
38 structures. Therefore, it is the policy of this State to facilitate the placement of wireless
39 communications support structures in all areas of North Carolina. The following standards shall
40 apply to a local government's actions, as a regulatory body, in the regulation of the placement,
41 construction, or modification of a wireless communications facility.

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

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

48 **"§ 160D-9-31. Definitions.**

49 The following definitions apply in this Part:

- 1 (1) Antenna. – Communications equipment that transmits, receives, or transmits
2 and receives electromagnetic radio signals used in the provision of all types
3 of wireless communications services.
- 4 (2) Applicable codes. – The North Carolina State Building Code and any other
5 uniform building, fire, electrical, plumbing, or mechanical codes adopted by
6 a recognized national code organization together with State or local
7 amendments to those codes enacted solely to address imminent threats of
8 destruction of property or injury to persons.
- 9 (3) Application. – A request submitted by an applicant to the local government
10 for a permit to collocate wireless facilities or to approve the installation,
11 modification, or replacement of a utility pole, city utility pole, or a wireless
12 support structure.
- 13 (4) Base station. – A station at a specific site authorized to communicate with
14 mobile stations, generally consisting of radio receivers, antennas, coaxial
15 cables, power supplies, and other associated electronics.
- 16 (5) Building permit. – An official administrative authorization issued by the local
17 government prior to beginning construction consistent with the provisions of
18 G.S. 160D-11-10.
- 19 (6) City right-of-way. – A right-of-way owned, leased, or operated by a city,
20 including any public street or alley that is not a part of the State highway
21 system.
- 22 (7) City utility pole. – A pole owned by a city in the city right-of-way that
23 provides lighting, traffic control, or a similar function.
- 24 (8) Collocation. – The placement, installation, maintenance, modification,
25 operation, or replacement of wireless facilities on, under, within, or on the
26 surface of the earth adjacent to existing structures, including utility poles, city
27 utility poles, water towers, buildings, and other structures capable of
28 structurally supporting the attachment of wireless facilities in compliance with
29 applicable codes. The term does not include the installation of new utility
30 poles, city utility poles, or wireless support structures.
- 31 (9) Communications facility. – The set of equipment and network components,
32 including wires and cables and associated facilities used by a communications
33 service provider to provide communications service.
- 34 (10) Communications service. – Cable service as defined in 47 U.S.C. § 522(6),
35 information service as defined in 47 U.S.C. § 153(24), telecommunications
36 service as defined in 47 U.S.C. § 153(53), or wireless services.
- 37 (11) Communications service provider. – A cable operator as defined in 47 U.S.C.
38 § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24);
39 a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless
40 provider.
- 41 (12) Eligible facilities request. – A request for modification of an existing wireless
42 tower or base station that involves collocation of new transmission equipment
43 or replacement of transmission equipment but does not include a substantial
44 modification.
- 45 (13) Equipment compound. – An area surrounding or near the base of a wireless
46 support structure within which a wireless facility is located.
- 47 (14) Fall zone. – The area in which a wireless support structure may be expected
48 to fall in the event of a structural failure, as measured by engineering
49 standards.
- 50 (15) Land development regulation. – Any ordinance enacted pursuant to this
51 Chapter.

- 1 (16) Micro wireless facility. – A small wireless facility that is no larger in
2 dimension than 24 inches in length, 15 inches in width, and 12 inches in height
3 and that has an exterior antenna, if any, no longer than 11 inches.
- 4 (17) Search ring. – The area within which a wireless support facility or wireless
5 facility must be located in order to meet service objectives of the wireless
6 service provider using the wireless facility or wireless support structure.
- 7 (18) Small wireless facility. – A wireless facility that meets the following
8 qualifications:
- 9 a. Each antenna is located inside an enclosure of no more than 6 cubic
10 feet in volume or, in the case of an antenna that has exposed elements,
11 the antenna and all of its exposed elements, if enclosed, could fit
12 within an enclosure of no more than 6 cubic feet.
- 13 b. All other wireless equipment associated with the facility has a
14 cumulative volume of no more than 28 cubic feet. For the purposes of
15 this sub-subdivision, the following types of ancillary equipment are
16 not included in the calculation of equipment volume: electric meters,
17 concealment elements, telecommunications demarcation boxes,
18 ground-based enclosures, grounding equipment, power transfer
19 switches, cut-off switches, vertical cable runs for the connection of
20 power and other services, or other support structures.
- 21 (19) Substantial modification. – The mounting of a proposed wireless facility on a
22 wireless support structure that substantially changes the physical dimensions
23 of the support structure. The burden is on the local government to demonstrate
24 that a mounting that does not meet the listed criteria constitutes a substantial
25 change to the physical dimensions of the wireless support structure. A
26 mounting is presumed to be a substantial modification if it meets any one or
27 more of the following criteria:
- 28 a. Increasing the existing vertical height of the structure by the greater of
29 (i) more than ten percent (10%) or (ii) the height of one additional
30 antenna array with separation from the nearest existing antenna not to
31 exceed 20 feet.
- 32 b. Except where necessary to shelter the antenna from inclement weather
33 or to connect the antenna to the tower via cable, adding an
34 appurtenance to the body of a wireless support structure that protrudes
35 horizontally from the edge of the wireless support structure the greater
36 of (i) more than 20 feet or (ii) more than the width of the wireless
37 support structure at the level of the appurtenance.
- 38 c. Increasing the square footage of the existing equipment compound by
39 more than 2,500 square feet.
- 40 (20) Utility pole. – A structure that is designed for and used to carry lines, cables,
41 wires, lighting facilities, or small wireless facilities for telephone, cable
42 television, electricity, lighting, or wireless services.
- 43 (21) Water tower. – A water storage tank, a standpipe, or an elevated tank situated
44 on a support structure originally constructed for use as a reservoir or facility
45 to store or deliver water.
- 46 (22) Wireless facility. – Equipment at a fixed location that enables wireless
47 communications between user equipment and a communications network,
48 including (i) equipment associated with wireless communications and (ii)
49 radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and
50 backup power supplies, and comparable equipment, regardless of

1 technological configuration. The term includes small wireless facilities. The
2 term does not include any of the following:

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

5 b. Wireline backhaul facilities.

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

9 (23) Wireless infrastructure provider. – Any person with a certificate to provide
10 telecommunications service in the State who builds or installs wireless
11 communication transmission equipment, wireless facilities, or wireless
12 support structures for small wireless facilities but that does not provide
13 wireless services.

14 (24) Wireless provider. – A wireless infrastructure provider or a wireless services
15 provider.

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

19 (25a) Wireless services provider. – A person who provides wireless services.

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

24 **"§ 160D-9-32. Local authority.**

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

36 **"§ 160D-9-33. Construction of new wireless support structures or substantial modifications**
37 **of wireless support structures.**

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

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

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

45 (b) A local government's review of an application for the placement or construction of a
46 new wireless support structure or substantial modification of a wireless support structure shall
47 only address public safety, land development, or zoning issues. In reviewing an application, the
48 local government may not require information on or evaluate an applicant's business decisions
49 about its designed service, customer demand for its service, or quality of its service to or from a
50 particular area or site. A local government may not require information that concerns the specific
51 need for the wireless support structure, including if the service to be provided from the wireless

1 support structure is to add additional wireless coverage or additional wireless capacity. A local
2 government may not require proprietary, confidential, or other business information to justify the
3 need for the new wireless support structure, including propagation maps and telecommunication
4 traffic studies. In reviewing an application, the local government may review the following:

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

8 (2) Information or materials directly related to an identified public safety, land
9 development, or zoning issue including evidence that no existing or previously
10 approved wireless support structure can reasonably be used for the wireless
11 facility placement instead of the construction of a new wireless support
12 structure that residential, historic, and designated scenic areas cannot be
13 served from outside the area or that the proposed height of a new wireless
14 support structure or initial wireless facility placement or a proposed height
15 increase of a substantially modified wireless support structure or replacement
16 wireless support structure is necessary to provide the applicant's designed
17 service.

18 (3) A local government may require applicants for new wireless facilities to
19 evaluate the reasonable feasibility of collocating new antennas and equipment
20 on an existing wireless support structure or structures within the applicant's
21 search ring. Collocation on an existing wireless support structure is not
22 reasonably feasible if collocation is technically or commercially impractical
23 or the owner of the existing wireless support structure is unwilling to enter
24 into a contract for such use at fair market value. Local governments may
25 require information necessary to determine whether collocation on existing
26 wireless support structures is reasonably feasible.

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

31 (d) A local government may fix and charge an application fee, consulting fee, or other
32 fee associated with the submission, review, processing, and approval of an application to site
33 new wireless support structures or to substantially modify wireless support structures or wireless
34 facilities that is based on the costs of the services provided and does not exceed what is usual and
35 customary for such services. Any charges or fees assessed by a local government on account of
36 an outside consultant shall be fixed in advance and incorporated into a permit or application fee
37 and shall be based on the reasonable costs to be incurred by the local government in connection
38 with the regulatory review authorized under this section. The foregoing does not prohibit a local
39 government from imposing additional reasonable and cost-based fees for costs incurred should
40 an applicant amend its application. On request, the amount of the consultant charges incorporated
41 into the permit or application fee shall be separately identified and disclosed to the applicant. The
42 fee imposed by a local government for review of the application may not be used for either of
43 the following:

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

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

48 (e) The local government may condition approval of an application for a new wireless
49 support structure on the provision of documentation prior to the issuance of a building permit
50 establishing the existence of one or more parties, including the owner of the wireless support
51 structure, who intend to locate wireless facilities on the wireless support structure. A local

1 government shall not deny an initial development approval based on such documentation. A local
2 government may condition a development approval on a requirement to construct facilities within
3 a reasonable period of time, which shall be no less than 24 months.

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

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

10 **"§ 160D-9-34. Collocation and eligible facilities requests of wireless support structures.**

11 (a) Pursuant to section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012,
12 47 U.S.C. § 1455(a), a local government may not deny and shall approve any eligible facilities
13 request as provided in this section. Nothing in this Part requires an application and approval for
14 routine maintenance or limits the performance of routine maintenance on wireless support
15 structures and facilities, including in-kind replacement of wireless facilities. Routine
16 maintenance includes activities associated with regular and general upkeep of transmission
17 equipment, including the replacement of existing wireless facilities with facilities of the same
18 size. A local government may require an application for collocation or an eligible facilities
19 request.

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

30 (c) The local government shall issue a written decision approving an eligible facilities
31 request application within 45 days of such application being deemed complete. For a collocation
32 application that is not an eligible facilities request, the local government shall issue its written
33 decision to approve or deny the application within 45 days of the application being deemed
34 complete.

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

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

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

45 **"§ 160D-9-35. Collocation of small wireless facilities.**

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

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

1 (c) Small wireless facilities that meet the height requirements of G.S. 160D-9-36(b)(2)
2 shall only be subject to administrative review and approval under subsection (d) of this section
3 if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of city
4 rights-of-way on property other than single-family residential property.

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

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

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

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

23 (4) The permit application shall be processed on a nondiscriminatory basis and
24 shall be deemed approved if the city fails to approve or deny the application
25 within 45 days from the time the application is deemed complete or a mutually
26 agreed upon time frame between the city and the applicant.

27 (5) A city may deny an application only on the basis that it does not meet any of
28 the following: (i) the city's applicable codes, (ii) local code provisions or
29 regulations that concern public safety, objective design standards for
30 decorative utility poles, city utility poles, or reasonable and nondiscriminatory
31 stealth and concealment requirements, including screening or landscaping for
32 ground-mounted equipment, (iii) public safety and reasonable spacing
33 requirements concerning the location of ground-mounted equipment in a
34 right-of-way, or (iv) the historic preservation requirements in
35 G.S. 160D-9-36(i). The city must (i) document the basis for a denial, including
36 the specific code provisions on which the denial was based and (ii) send the
37 documentation to the applicant on or before the day the city denies an
38 application. The applicant may cure the deficiencies identified by the city and
39 resubmit the application within 30 days of the denial without paying an
40 additional application fee. The city shall approve or deny the revised
41 application within 30 days of the date on which the application was
42 resubmitted. Any subsequent review shall be limited to the deficiencies cited
43 in the prior denial.

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

50 (7) An applicant seeking to collocate small wireless facilities at multiple locations
51 within the jurisdiction of a city shall be allowed, at the applicant's discretion,

1 to file a consolidated application for no more than 25 separate facilities and
2 receive a permit for the collocation of all the small wireless facilities meeting
3 the requirements of this section. A city may remove small wireless facility
4 collocations from a consolidated application and treat separately small
5 wireless facility collocations (i) for which incomplete information has been
6 provided or (ii) that are denied. The city may issue a separate permit for each
7 collocation that is approved.

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

13 (e) Subject to the limitations provided in G.S. 160A-296(a)(6), a city may charge an
14 application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to
15 process and review applications for collocated small wireless facilities, (ii) the amount charged
16 by the city for permitting of any similar activity, or (iii) one hundred dollars (\$100.00) per facility
17 for the first five small wireless facilities addressed in an application, plus fifty dollars (\$50.00)
18 for each additional small wireless facility addressed in the application. In any dispute concerning
19 the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements
20 of this subsection.

21 (f) Subject to the limitations provided in G.S. 160A-296(a)(6), a city may impose a
22 technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to
23 offset the cost of reviewing and processing applications required by this section. The fee must be
24 based on the actual, direct, and reasonable administrative costs incurred for the review,
25 processing, and approval of an application. A city may engage an outside consultant for technical
26 consultation and the review of an application. The fee imposed by a city for the review of the
27 application shall not be used for either of the following:

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

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

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

34 (g) A city may require a wireless services provider to remove an abandoned wireless
35 facility within 180 days of abandonment. Should the wireless services provider fail to timely
36 remove the abandoned wireless facility, the city may cause such wireless facility to be removed
37 and may recover the actual cost of such removal, including legal fees, if any, from the wireless
38 services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned
39 at the earlier of the date that the wireless services provider indicates that it is abandoning such
40 facility or the date that is 180 days after the date that such wireless facility ceases to transmit a
41 signal, unless the wireless services provider gives the city reasonable evidence that it is diligently
42 working to place such wireless facility back in service.

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

50 (i) Nothing in this section shall prevent a city from requiring a work permit for work that
51 involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.

1 **"§ 160D-9-36. Use of public right-of-way.**

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

5 (b) Subject to the requirements of G.S. 160D-9-35, a wireless provider may collocate
6 small wireless facilities along, across, upon, or under any city right-of-way. Subject to the
7 requirements of this section, a wireless provider may place, maintain, modify, operate, or replace
8 associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities
9 along, across, upon, and under any city right-of-way. The placement, maintenance, modification,
10 operation, or replacement of utility poles and city utility poles associated with the collocation of
11 small wireless facilities, along, across, upon, or under any city right-of-way shall be subject only
12 to review or approval under G.S. 160D-9-35(d) if the wireless provider meets all of the following
13 requirements:

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

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

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

23 (d) Applicants for use of a city right-of-way shall comply with a city's undergrounding
24 requirements prohibiting the installation of above-ground structures in the city rights-of-way
25 without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to
26 type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption
27 of the requirements, and (iii) have a waiver process.

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

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

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

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

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

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

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

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

8 (i) This section shall not be construed to limit local government authority to enforce
9 historic preservation zoning regulations consistent with Part 4 of Article 9 of this Chapter, the
10 preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility
11 modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, 54
12 U.S.C. § 300101, et seq., as amended, and the regulations, local acts, and city charter provisions
13 adopted to implement those laws.

14 (j) A wireless provider may apply to a city to place utility poles in the city rights-of-way,
15 or to replace or modify utility poles or city utility poles in the public rights-of-way, to support
16 the collocation of small wireless facilities. A city shall accept and process the application in
17 accordance with the provisions of G.S. 160D-9-35(d), applicable codes, and other local codes
18 governing the placement of utility poles or city utility poles in the city rights-of-way, including
19 provisions or regulations that concern public safety, objective design standards for decorative
20 utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment
21 requirements, including those relating to screening or landscaping, or public safety and
22 reasonable spacing requirements. The application may be submitted in conjunction with the
23 associated small wireless facility application.

24 **"§ 160D-9-37. Access to city utility poles to install small wireless facilities.**

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

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

38 (c) If a city that operates a public enterprise as permitted by Article 16 of Chapter 160A
39 of the General Statutes has an existing city utility pole attachment rate, fee, or other term with an
40 entity, then, subject to termination provisions, that attachment rate, fee, or other term shall apply
41 to collocations by that entity or its related entities on city utility poles.

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

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

50 (f) The city shall provide a good-faith estimate for any make-ready work necessary to
51 enable the city utility pole to support the requested collocation, including pole replacement, if

1 necessary, within 60 days after receipt of a complete application. Make-ready work, including
2 any pole replacement, shall be completed within 60 days of written acceptance of the good-faith
3 estimate by the applicant. For purposes of this section, the term "make-ready work" means any
4 modification or replacement of a city utility pole necessary for the city utility pole to support a
5 small wireless facility in compliance with applicable safety requirements, including the National
6 Electrical Safety Code, that is performed in preparation for a collocation installation.

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

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

15 (i) This section shall not apply to an excluded entity. Nothing in this section shall be
16 construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the
17 rates, fees, terms, and conditions for the use of or attachment to its utility poles, city utility poles,
18 or wireless support structures by a wireless provider. This section shall not be construed to alter
19 or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles,
20 ducts, or conduits by communications service providers, as defined in G.S. 62-350, are governed
21 solely by G.S. 62-350. For purposes of this section, "excluded entity" means (i) a city that owns
22 or operates a public enterprise pursuant to Article 16 of Chapter 160A of the General Statutes
23 consisting of an electric power generation, transmission, or distribution system or (ii) an electric
24 membership corporation organized under Chapter 117 of the General Statutes that owns or
25 controls poles, ducts, or conduits, but which is exempt from regulation under section 224 of the
26 Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended.

27 **§ 160D-9-38. Applicability.**

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

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

36 (c) Except as provided in this Part or otherwise specifically authorized by the General
37 Statutes, a city may not adopt or enforce any regulation on the placement or operation of
38 communications facilities in the rights-of-way of State-maintained highways or city
39 rights-of-way by a provider authorized by State law to operate in the rights-of-way of
40 State-maintained highways or city rights-of-way and may not regulate any communications
41 services.

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

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

49 **§ 160D-9-39:** Reserved for future codification purposes.

50 "Part 4. Historic Preservation.

51 **§ 160D-9-40. Legislative findings.**

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

- 6 (1) To safeguard the heritage of the city or county by preserving any district or
7 landmark therein that embodies important elements of its culture, history,
8 architectural history, or prehistory.
9 (2) To promote the use and conservation of such district or landmark for the
10 education, pleasure, and enrichment of the residents of the city or county and
11 the State as a whole.

12 **"§ 160D-9-41. Historic preservation commission.**

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

15 **"§ 160D-9-42. Powers of the historic preservation commission.**

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

- 18 (1) Undertake an inventory of properties of historical, prehistorical, architectural,
19 and/or cultural significance.
20 (2) Recommend to the governing board areas to be designated by ordinance as
21 "Historic Districts" and individual structures, buildings, sites, areas, or objects
22 to be designated by ordinance as "Landmarks."
23 (3) Acquire by any lawful means the fee or any lesser included interest, including
24 options to purchase, to properties within established districts or to any such
25 properties designated as landmarks to hold, manage, preserve, restore, and
26 improve such properties, and to exchange or dispose of the property by public
27 or private sale, lease or otherwise, subject to covenants or other legally
28 binding restrictions that will secure appropriate rights of public access and
29 promote the preservation of the property.
30 (4) Restore, preserve, and operate historic properties.
31 (5) Recommend to the governing board that designation of any area as a historic
32 district or part thereof, or designation of any building, structure, site, area, or
33 object as a landmark, be revoked or removed for cause.
34 (6) Conduct an educational program regarding historic properties and districts
35 within its jurisdiction.
36 (7) Cooperate with the State, federal, and local governments in pursuance of the
37 purposes of this Part. The governing board or the commission, when
38 authorized by the governing board, may contract with the State, or the United
39 States of America, or any agency of either, or with any other organization
40 provided the terms are not inconsistent with State or federal law.
41 (8) Enter, solely in performance of its official duties and only at reasonable times,
42 upon private lands for examination or survey thereof. However, no member,
43 employee, or agent of the commission may enter any private building or
44 structure without the express consent of the owner or occupant thereof.
45 (9) Prepare and recommend the official adoption of a preservation element as part
46 of the local government's comprehensive plan.
47 (10) Review and act upon proposals for alterations, demolitions, or new
48 construction within historic districts, or for the alteration or demolition of
49 designated landmarks, pursuant to this Part.

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

4 **"§ 160D-9-43. Appropriations.**

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

12 **"§ 160D-9-44. Designation of historic districts.**

13 (a) Any local government may, as part of a zoning regulation adopted pursuant to Article
14 7 of this Chapter or as a development regulation enacted or amended pursuant to Article 6 of this
15 Chapter, designate and from time to time amend one or more historic districts within the area
16 subject to the regulation. Historic districts established pursuant to this Part shall consist of areas
17 that are deemed to be of special significance in terms of their history, prehistory, architecture, or
18 culture and to possess integrity of design, setting, materials, feeling, and association.

19 Such development regulation may treat historic districts either as a separate use district
20 classification or as districts that overlay other zoning districts. Where historic districts are
21 designated as separate use districts, the zoning regulation may include as uses by right or as
22 special uses those uses found by the preservation commission to have existed during the period
23 sought to be restored or preserved or to be compatible with the restoration or preservation of the
24 district.

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

27 (1) An investigation and report describing the significance of the buildings,
28 structures, features, sites, or surroundings included in any such proposed
29 district and a description of the boundaries of such district has been prepared.

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

39 (c) The governing board may also, in its discretion, refer the report and proposed
40 boundaries under subsection (b) of this section to any local preservation commission or other
41 interested body for its recommendations prior to taking action to amend the zoning regulation.
42 With respect to any changes in the boundaries of such district, subsequent to its initial
43 establishment, or the creation of additional districts within the jurisdiction, the investigative
44 studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared
45 by the preservation commission and shall be referred to the planning board for its review and
46 comment according to procedures set forth in the zoning regulation. Changes in the boundaries
47 of an initial district or proposal for additional districts shall also be submitted to the Department
48 of Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of
49 this section.

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

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

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

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

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

25 **"§ 160D-9-46. Required landmark designation procedures.**

26 As a guide for the identification and evaluation of landmarks, the preservation commission
27 shall undertake, at the earliest possible time and consistent with the resources available to it, an
28 inventory of properties of historical, architectural, prehistorical, and cultural significance within
29 its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as
30 expeditiously as possible to the Office of Archives and History. No regulation designating a
31 historic building, structure, site, area, or object as a landmark nor any amendment thereto may
32 be adopted, nor may any property be accepted or acquired by a preservation commission or the
33 governing board, until all of the following procedural steps have been taken:

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

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

44 (3) The Department of Cultural Resources, acting through the State Historic
45 Preservation Officer, shall, upon request of the department or at the initiative
46 of the preservation commission, be given an opportunity to review and
47 comment upon the substance and effect of the designation of any landmark
48 pursuant to this Part. Any comments shall be provided in writing. If the
49 Department does not submit its comments or recommendation in connection
50 with any designation within 30 days following receipt by the Department of
51 the investigation and report of the preservation commission, the commission

1 and any governing board shall be relieved of any responsibility to consider
2 such comments.

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

6 (5) Following the hearings, the governing board may adopt the regulation as
7 proposed, adopt the regulation with any amendments it deems necessary, or
8 reject the proposed regulation.

9 (6) Upon adoption of the regulation, the owners and occupants of each designated
10 landmark shall be given written notice of such designation within a reasonable
11 time. One copy of the regulation and all amendments thereto shall be filed by
12 the preservation commission in the office of the register of deeds of the county
13 in which the landmark or landmarks are located. In the case of any landmark
14 property lying within the planning and development regulation jurisdiction of
15 a city, a second copy of the regulation and all amendments thereto shall be
16 kept on file in the office of the city or town clerk and be made available for
17 public inspection at any reasonable time. A third copy of the regulation and
18 any amendments shall be given to the local government building inspector.
19 The fact that a building, structure, site, area, or object has been designated a
20 landmark shall be clearly indicated on all tax maps maintained by the local
21 government for such period as the designation remains in effect.

22 (7) Upon the adoption of the landmark regulation or any amendment thereto, it
23 shall be the duty of the preservation commission to give notice thereof to the
24 tax supervisor of the county in which the property is located. The designation
25 and any recorded restrictions upon the property limiting its use for
26 preservation purposes shall be considered by the tax supervisor in appraising
27 it for tax purposes.

28 **"§ 160D-9-47. Certificate of appropriateness required.**

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

40 For purposes of this Part, "exterior features" shall include the architectural style, general
41 design, and general arrangement of the exterior of a building or other structure, including the
42 kind and texture of the building material, the size and scale of the building, and the type and style
43 of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor
44 advertising signs, "exterior features" shall be construed to mean the style, material, size, and
45 location of all such signs. Such "exterior features" may, in the discretion of the local governing
46 board, include historic signs, color, and significant landscape, archaeological, and natural
47 features of the area.

48 Except as provided in subsection (b) of this section, the commission shall have no jurisdiction
49 over interior arrangement. The commission shall take no action under this section except to
50 prevent the construction, reconstruction, alteration, restoration, moving, or demolition of
51 buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features

1 in the district that would be incongruous with the special character of the landmark or district. In
2 making decisions on certificates of appropriateness, the commission shall apply the rules and
3 standards adopted pursuant to subsection (c) of this section.

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

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

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

31 (e) Appeals. –

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

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

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

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

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

49 (f) Public Buildings. – All of the provisions of this Part are hereby made applicable to
50 construction, alteration, moving, and demolition by the State of North Carolina, its political
51 subdivisions, agencies, and instrumentalities, provided, however, they shall not apply to interiors

1 of buildings or structures owned by the State of North Carolina. The State and its agencies shall
2 have a right of appeal to the North Carolina Historical Commission or any successor agency
3 assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation
4 commission. The North Carolina Historical Commission shall render its decision within 30 days
5 from the date that the notice of appeal by the State is received by it. The current edition of the
6 Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic
7 Buildings shall be the sole principles and guidelines used in reviewing applications of the State
8 for certificates of appropriateness. The decision of the North Carolina Historical Commission
9 shall be final and binding upon both the State and the preservation commission.

10 **"§ 160D-9-48. Certain changes not prohibited.**

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

20 **"§ 160D-9-49. Delay in demolition of landmarks and buildings within historic district.**

21 (a) An application for a certificate of appropriateness authorizing the relocation,
22 demolition, or destruction of a designated landmark or a building, structure, or site within the
23 district may not be denied, except as provided in subsection (c) of this section. However, the
24 effective date of such a certificate may be delayed for a period of up to 365 days from the date
25 of approval. The maximum period of delay authorized by this section shall be reduced by the
26 preservation commission where it finds that the owner would suffer extreme hardship or be
27 permanently deprived of all beneficial use of or return from such property by virtue of the delay.
28 During such period, the preservation commission shall negotiate with the owner and with any
29 other parties in an effort to find a means of preserving the building or site. If the preservation
30 commission finds that a building or site within a district has no special significance or value
31 toward maintaining the character of the district, it shall waive all or part of such period and
32 authorize earlier demolition or removal.

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

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

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

49 **"§ 160D-9-50. Demolition by neglect to contributing structures outside local historic**
50 **districts.**

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

12 **"§ 160D-9-51. Conflict with other laws.**

13 Whenever any regulation adopted pursuant to this Part requires a longer waiting period or
14 imposes other higher standards with respect to a designated historic landmark or district than are
15 established under any other statute, charter provision, or regulation, this Part shall govern.
16 Whenever the provisions of any other statute, charter provision, ordinance, or regulation require
17 a longer waiting period or impose other higher standards than are established under this Part,
18 such other statute, charter provision, ordinance, or regulation shall govern.

19 **"§§ 160D-9-52 through 160D-9-59:** Reserved for future codification purposes.

20 "Part 5. Community Appearance Commissions.

21 **"§ 160D-9-60. Powers and duties of commission.**

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

- 28 (1) To initiate, promote, and assist in the implementation of programs of general
29 community beautification in the local government.
- 30 (2) To coordinate the activities of individuals, agencies, and organizations, public
31 and private, whose plans, activities, and programs bear upon the appearance
32 of the local government.
- 33 (3) To provide leadership and guidance in matters of area or community design
34 and appearance to individuals, to public and private organizations, and to
35 agencies.
- 36 (4) To make studies of the visual characteristics and problems of the local
37 government, including surveys and inventories of an appropriate nature, and
38 to recommend standards and policies of design for the entire area, any portion
39 or neighborhood thereof, or any project to be undertaken.
- 40 (5) To prepare both general and specific plans for the improved appearance of the
41 local government. These plans may include the entire area or any part thereof
42 and may include private as well as public property. The plans shall set forth
43 desirable standards and goals for the aesthetic enhancement of the local
44 government or any part thereof within its area of planning and development
45 regulation jurisdiction, including public ways and areas, open spaces, and
46 public and private buildings and projects.
- 47 (6) To participate, in any way deemed appropriate by the governing board of the
48 local government and specified in the ordinance establishing the commission,
49 in the implementation of its plans. To this end, the governing board may
50 include in the ordinance the following powers:

- 1 a. To request from the proper officials of any public agency or body,
 2 including agencies of the State and its political subdivisions, its plans
 3 for public buildings, facilities, or projects to be located within the local
 4 government's planning and development regulation jurisdiction.
 5 b. To review these plans and to make recommendations regarding their
 6 aesthetic suitability to the appropriate agency or to the planning or
 7 governing board. All plans shall be reviewed by the commission in a
 8 prompt and expeditious manner, and all recommendations of the
 9 commission with regard to any public project shall be made in writing.
 10 Copies of the recommendations shall be transmitted promptly to the
 11 planning or governing board and to the appropriate agency.
 12 c. To formulate and recommend to the appropriate planning or governing
 13 board the adoption or amendment of ordinances, including zoning
 14 regulations, subdivision regulations, and other local development
 15 regulations, that will, in the opinion of the commission, serve to
 16 enhance the appearance of the city or county and surrounding areas.
 17 d. To direct the attention of local government officials to needed
 18 enforcement of any ordinance that may in any way affect the
 19 appearance of the city or county.
 20 e. To seek voluntary adherence to the standards and policies of its plans.
 21 f. To enter, in the performance of its official duties and at reasonable
 22 times, upon private lands and make examinations or surveys.
 23 g. To promote public interest in and an understanding of its
 24 recommendations, studies, and plans, and, to that end, prepare,
 25 publish, and distribute to the public such studies and reports that will,
 26 in the opinion of the commission, advance the cause of improved
 27 appearance.
 28 h. To conduct public meetings and hearings, giving reasonable notice to
 29 the public thereof.

30 **"§ 160D-9-61. Staff services; advisory council.**

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

35 **"§ 160D-9-62. Annual report.**

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

41 **"§ 160D-9-63. Receipt and expenditure of funds.**

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

48 **"§§ 160D-9-64 through 160D-9-69:** Reserved for future codification purposes.

49 "Article 10.

50 "Development Agreements.

51 **"§ 160D-10-1. Authorization.**

1 (a) The General Assembly finds the following:

2 (1) Development projects often occur in multiple phases over several years,
3 requiring a long-term commitment of both public and private resources.

4 (2) Such developments often create community impacts and opportunities that are
5 difficult to accommodate within traditional zoning processes.

6 (3) Because of their scale and duration, such projects often require careful
7 coordination of public capital facilities planning, financing, and construction
8 schedules and phasing of the private development.

9 (4) Such projects involve substantial commitments of private capital, which
10 developers are usually unwilling to risk without sufficient assurances that
11 development standards will remain stable through the extended period of the
12 development.

13 (5) Such developments often permit communities and developers to experiment
14 with different or nontraditional types of development concepts and standards,
15 while still managing impacts on the surrounding areas.

16 (6) To better structure and manage development approvals for such developments
17 and ensure their proper integration into local capital facilities programs, local
18 governments need flexibility to negotiate such developments.

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

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

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

35 **"§ 160D-10-2. Definitions.**

36 The following definitions apply in this Article:

37 (1) Development. – The planning for or carrying out of a building activity, the
38 making of a material change in the use or appearance of any structure or
39 property, or the dividing of land into two or more parcels. When appropriate
40 to the context, "development" refers to the planning for or the act of
41 developing or to the result of development. Reference to a specific operation
42 is not intended to mean that the operation or activity, when part of other
43 operations or activities, is not development. Reference to particular operations
44 is not intended to limit the generality of this item.

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

48 **"§ 160D-10-3. Approval of governing board required.**

49 (a) A local government may establish procedures and requirements, as provided in this
50 Article, to consider and enter into development agreements with developers. A development

1 agreement must be approved by the governing board of a local government following the
2 procedures specified in G.S. 160D-10-5.

3 (b) The development agreement may, by ordinance, be incorporated, in whole or in part,
4 into any development regulation adopted by the local government. A development agreement
5 may be considered concurrently with a zoning map or text amendment affecting the property and
6 development subject to the development agreement. A development agreement may be
7 concurrently considered with and incorporated by reference with a sketch plan or preliminary
8 plat required under a subdivision regulation or a site plan or other development approval required
9 under a zoning regulation. If incorporated into a conditional district, the provisions of the
10 development agreement shall be treated as a development regulation in the event of the
11 developer's bankruptcy.

12 **"§ 160D-10-4. Size and duration.**

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

16 **"§ 160D-10-5. Public hearing.**

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

23 **"§ 160D-10-6. Content and modification.**

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

- 25 (1) A description of the property subject to the agreement and the names of its
26 legal and equitable property owners.
- 27 (2) The duration of the agreement. However, the parties are not precluded from
28 entering into subsequent development agreements that may extend the
29 original duration period.
- 30 (3) The development uses permitted on the property, including population
31 densities and building types, intensities, placement on the site, and design.
- 32 (4) A description of public facilities that will serve the development, including
33 who provides the facilities, the date any new public facilities, if needed, will
34 be constructed, and a schedule to assure public facilities are available
35 concurrent with the impacts of the development. In the event that the
36 development agreement provides that the local government shall provide
37 certain public facilities, the development agreement shall provide that the
38 delivery date of such public facilities will be tied to successful performance
39 by the developer in implementing the proposed development, such as meeting
40 defined completion percentages or other performance standards.
- 41 (5) A description, where appropriate, of any reservation or dedication of land for
42 public purposes and any provisions agreed to by the developer that exceed
43 existing laws related to protection of environmentally sensitive property.
- 44 (6) A description, where appropriate, of any conditions, terms, restrictions, or
45 other requirements for the protection of public health, safety, or welfare.
- 46 (7) A description, where appropriate, of any provisions for the preservation and
47 restoration of historic structures.

48 (b) A development agreement may also provide that the entire development or any phase
49 of it be commenced or completed within a specified period of time. If required by ordinance or
50 in the agreement, the development agreement shall provide a development schedule, including
51 commencement dates and interim completion dates at no greater than five-year intervals;

1 provided, however, the failure to meet a commencement or completion date shall not, in and of
2 itself, constitute a material breach of the development agreement pursuant to G.S. 160D-10-8 but
3 must be judged based upon the totality of the circumstances. The developer may request a
4 modification in the dates as set forth in the agreement.

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

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

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

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

22 **"§ 160D-10-7. Vesting.**

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

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

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

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

35 **"§ 160D-10-8. Breach and cure.**

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

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

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

49 (d) An ordinance adopted pursuant to G.S. 160D-10-3 or the development agreement
50 may specify other penalties for breach in lieu of termination, including, but not limited to,

1 penalties allowed for violation of a development regulation. Nothing in this Article shall be
2 construed to abrogate or impair the power of the local government to enforce applicable law.

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

7 **"§ 160D-10-9. Amendment or termination.**

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

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

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

18 (b) A local government assuming jurisdiction may modify or suspend the provisions of
19 the development agreement if the local government determines that the failure of the local
20 government to do so would place the residents of the territory subject to the development
21 agreement or the residents of the local government, or both, in a condition dangerous to their
22 health or safety, or both.

23 **"§ 160D-10-11. Recordation.**

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

30 **"§ 160D-10-12. Applicability of procedures to approve debt.**

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

35 "Article 11.

36 "Building Code Enforcement.

37 **"§ 160D-11-1. Definitions.**

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

40 (1) Building or buildings. – Includes other structures.

41 (2) Governing board or board of commissioners. – Includes the Tribal Council of
42 a federally recognized Indian tribe.

43 (3) Local government. – Includes a federally recognized Indian tribe, and, as to
44 such tribe, includes lands held in trust for the tribe.

45 (4) Public officer. – Includes the officer or officers who are authorized by
46 regulations adopted hereunder to exercise the powers prescribed by the
47 regulations and by this Article.

48 **"§ 160D-11-2. Building code administration.**

49 A local government may create an inspection department and may appoint inspectors who
50 may be given appropriate titles, such as building inspector, electrical inspector, plumbing
51 inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire

1 prevention inspector, or deputy or assistant inspector, or such other titles as may be generally
2 descriptive of the duties assigned. Every local government shall perform the duties and
3 responsibilities set forth in G.S. 160D-11-5 either by (i) creating its own inspection department,
4 (ii) creating a joint inspection department in cooperation with one or more other units of local
5 government, pursuant to G.S. 160D-11-5 or Part 1 of Article 20 of Chapter 160A of the General
6 Statutes, (iii) contracting with another unit of local government for the provision of inspection
7 services pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, or (iv) arranging
8 for the county in which a city is located to perform inspection services within the city's
9 jurisdiction as authorized by G.S. 160D-11-5 and G.S. 160D-2-2.

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

22 **"§ 160D-11-3. Qualifications of inspectors.**

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

33 **"§ 160D-11-4. Duties and responsibilities.**

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

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

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

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

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

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

50 (c) In performing the specific inspections required by the North Carolina Building Code,
51 the inspector shall conduct all inspections requested by the permit holder for each scheduled

1 inspection visit. For each requested inspection, the inspector shall inform the permit holder of
2 instances in which the work inspected fails to meet the requirements of the North Carolina
3 Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code.

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

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

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

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

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

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

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

33 **"§ 160D-11-5. Other arrangements for inspections.**

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

38 **"§ 160D-11-6. Alternate inspection method for component or element.**

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

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

46 (2) Field inspection of the installation or completion of a component or element
47 of the building is performed by a licensed architect or licensed professional
48 engineer or a person under the direct supervisory control of the licensed
49 architect or licensed professional engineer.

50 (3) The licensed architect or licensed professional engineer under subdivision (2)
51 of this subsection provides the city with a signed written document stating the

1 component or element of the building inspected under subdivision (2) of this
2 subsection is in compliance with the North Carolina State Building Code or
3 the North Carolina Residential Code for One- and Two-Family Dwellings.
4 The inspection certification required under this subdivision shall be provided
5 by electronic or physical delivery and its receipt shall be promptly
6 acknowledged by the city through reciprocal means.

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

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

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

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

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

26 **§ 160D-11-7. Mutual aid contracts.**

27 (a) Any two or more cities or counties may enter into contracts with each other to provide
28 mutual aid and assistance in the administration and enforcement of State and local laws pertaining
29 to the North Carolina State Building Code. Mutual aid contracts may include provisions
30 addressing the scope of aid provided, for reimbursement or indemnification of the aiding party
31 for loss or damage incurred by giving aid, for delegating authority to a designated official or
32 employee to request aid or to send aid upon request, and any other provisions not inconsistent
33 with law.

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

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

44 **§ 160D-11-8. Conflicts of interest.**

45 Staff members, agents, or contractors responsible for building inspections shall comply with
46 G.S. 160D-1-9(c). No member of an inspection department shall be financially interested or
47 employed by a business that is financially interested in the furnishing of labor, material, or
48 appliances for the construction, alteration, or maintenance of any building within the local
49 government's planning and development regulation jurisdiction or any part or system thereof, or
50 in the making of plans or specifications therefor, unless he is the owner of the building. No
51 member of an inspection department or other individual or an employee of a company contracting

1 with a local government to conduct building inspections shall engage in any work that is
2 inconsistent with his or her duties or with the interest of the local government, as determined by
3 the local government. The local government must find a conflict of interest if any of the following
4 is the case:

- 5 (1) If the individual, company, or employee of a company contracting to perform
6 building inspections for the local government has worked for the owner,
7 developer, contractor, or project manager of the project to be inspected within
8 the last two years.
- 9 (2) If the individual, company, or employee of a company contracting to perform
10 building inspections for the local government is closely related to the owner,
11 developer, contractor, or project manager of the project to be inspected.
- 12 (3) If the individual, company, or employee of a company contracting to perform
13 building inspections for the local government has a financial or business
14 interest in the project to be inspected.

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

20 **"§ 160D-11-9. Failure to perform duties.**

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

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

30 **"§ 160D-11-10. Building permits.**

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

- 34 (1) The construction, reconstruction, alteration, repair, movement to another site,
35 removal, or demolition of any building or structure.
- 36 (2) The installation, extension, or general repair of any plumbing system except
37 that in any one- or two-family dwelling unit a permit shall not be required for
38 the connection of a water heater that is being replaced, provided that the work
39 is performed by a person licensed under G.S. 87-21 who personally examines
40 the work at completion and ensures that a leak test has been performed on the
41 gas piping, and provided the energy use rate or thermal input is not greater
42 than that of the water heater that is being replaced, there is no change in fuel,
43 energy source, location, capacity, or routing or sizing of venting and piping,
44 and the replacement is installed in accordance with the current edition of the
45 State Building Code.
- 46 (3) The installation, extension, alteration, or general repair of any heating or
47 cooling equipment system.
- 48 (4) The installation, extension, alteration, or general repair of any electrical
49 wiring, devices, appliances, or equipment, except that in any one- or
50 two-family dwelling unit a permit shall not be required for repair or
51 replacement of electrical lighting fixtures or devices, such as receptacles and

1 lighting switches, or for the connection of an existing branch circuit to an
2 electric water heater that is being replaced, provided that all of the following
3 requirements are met:

- 4 a. With respect to electric water heaters, the replacement water heater is
5 placed in the same location and is of the same or less capacity and
6 electrical rating as the original.
7 b. With respect to electrical lighting fixtures and devices, the
8 replacement is with a fixture or device having the same voltage and
9 the same or less amperage.
10 c. The work is performed by a person licensed under G.S. 87-43.
11 d. The repair or replacement installation meets the current edition of the
12 State Building Code, including the State Electrical Code.

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

23 (b) A building permit shall be in writing and shall contain a provision that the work done
24 shall comply with the State Building Code and all other applicable State and local laws. Nothing
25 in this section shall require a local government to review and approve residential building plans
26 submitted to the local government pursuant to the North Carolina Residential Code, provided
27 that the local government may review and approve such residential building plans as it deems
28 necessary. No building permits shall be issued unless the plans and specifications are identified
29 by the name and address of the author thereof, and, if the General Statutes of North Carolina
30 require that plans for certain types of work be prepared only by a licensed architect or licensed
31 engineer, no building permit shall be issued unless the plans and specifications bear the North
32 Carolina seal of a licensed architect or of a licensed engineer. When any provision of the General
33 Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty
34 contractor of any kind, no building permit for the work shall be issued unless the work is to be
35 performed by such a duly licensed contractor.

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

- 41 (1) The addition, repair, or replacement of load-bearing structures. However, no
42 permit is required for replacement of windows, doors, exterior siding, or the
43 pickets, railings, stair treads, and decking of porches and exterior decks.
44 (2) The addition or change in the design of plumbing. However, no permit is
45 required for replacements otherwise meeting the requirements of this
46 subsection that do not change size or capacity.
47 (3) The addition, replacement, or change in the design of heating,
48 air-conditioning, or electrical wiring, devices, appliances, or equipment, other
49 than like-kind replacement of electrical devices and lighting fixtures.
50 (4) The use of materials not permitted by the North Carolina Residential Code for
51 One- and Two-Family Dwellings.

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

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

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

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

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

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

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

38 **"§ 160D-11-11. Expiration of building permits.**

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

45 **"§ 160D-11-12. Changes in work.**

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

50 **"§ 160D-11-13. Inspections of work in progress.**

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

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

12 (a) The owner or builder may appeal from a stop order involving alleged violation of
13 the State Building Code or any approved local modification thereof to the North Carolina
14 Commissioner of Insurance or his designee within a period of five days after the order is
15 issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his
16 designee, with a copy to the local inspector. The Commissioner of Insurance or his or her
17 designee shall promptly conduct an investigation, and the appellant and the inspector shall be
18 permitted to submit relevant evidence. The Commissioner of Insurance or his or her designee
19 shall as expeditiously as possible provide a written statement of the decision setting forth the
20 facts found, the decision reached, and the reasons for the decision. Pending the ruling by the
21 Commissioner of Insurance or his or her designee on an appeal, no further work shall take
22 place in violation of a stop order. In the event of dissatisfaction with the decision, the person
23 affected shall have the following options:

24 (1) Appealing to the Building Code Council.

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

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

28 **"§ 160D-11-15. Revocation of building permits.**

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

35 **"§ 160D-11-16. Certificates of compliance.**

36 At the conclusion of all work done under a building permit, the appropriate inspector shall
37 make a final inspection, and, if the inspector finds that the completed work complies with all
38 applicable State and local laws and with the terms of the permit, the inspector shall issue a
39 certificate of compliance. No new building or part thereof may be occupied, no addition or
40 enlargement of an existing building may be occupied, and no existing building that has been
41 altered or moved may be occupied, until the inspection department has issued a certificate of
42 compliance. A temporary certificate of occupancy or compliance may be issued permitting
43 occupancy for a stated period of time of either the entire building or property or of specified
44 portions of the building if the inspector finds that such building or property may safely be
45 occupied prior to its final completion. Violation of this section shall constitute a Class 1
46 misdemeanor. A local government may require the applicant for a temporary certificate of
47 occupancy to post suitable security to ensure code compliance.

48 **"§ 160D-11-17. Periodic inspections.**

49 The inspection department may make periodic inspections, subject to the governing board's
50 directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings
51 or structures within its planning and development regulation jurisdiction. In exercising this

1 power, members of the department shall have a right to enter on any premises within the
2 jurisdiction of the department at all reasonable hours for the purposes of inspection or other
3 enforcement action, upon presentation of proper credentials. Inspections of dwellings shall
4 follow the provisions of G.S. 160D-12-7. Nothing in this section shall be construed to prohibit
5 periodic inspections in accordance with State fire prevention code or as otherwise required by
6 State law.

7 **"§ 160D-11-18. Defects in buildings to be corrected.**

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

14 **"§ 160D-11-19. Unsafe buildings condemned.**

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

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

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

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

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

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

42 **"§ 160D-11-20. Removing notice from condemned building.**

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

46 **"§ 160D-11-21. Action in event of failure to take corrective action.**

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

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

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

20 **"§ 160D-11-22. Order to take corrective action.**

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

29 **"§ 160D-11-23. Appeal; finality of order if not appealed.**

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

36 **"§ 160D-11-24. Failure to comply with order.**

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

40 **"§ 160D-11-25. Enforcement.**

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

45 (b) Removal of Building. – In the case of a building or structure declared unsafe under
46 G.S. 160D-11-17 or an ordinance adopted pursuant to G.S. 160D-11-17, a local government may,
47 in lieu of taking action under subsection (a) of this section, cause the building or structure to be
48 removed or demolished. The amounts incurred by the local government in connection with the
49 removal or demolition shall be a lien against the real property upon which the cost was incurred.
50 The lien shall be filed, have the same priority, and be collected in the same manner as liens for
51 special assessments provided in Article 10 of Chapter 160A of the General Statutes. If the

1 building or structure is removed or demolished by the local government, the local government
2 shall sell the usable materials of the building and any personal property, fixtures, or
3 appurtenances found in or attached to the building. The local government shall credit the
4 proceeds of the sale against the cost of the removal or demolition. Any balance remaining from
5 the sale shall be deposited with the clerk of superior court of the county where the property is
6 located and shall be disbursed by the court to the person found to be entitled thereto by final order
7 or decree of the court.

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

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

18 **"§ 160D-11-26. Records and reports.**

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

26 **"§ 160D-11-27. Appeals.**

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

34 **"§ 160D-11-28. Fire limits.**

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

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

47 (c) Restrictions Within Municipal Primary Fire Limits. – Within the primary fire limits
48 of any city, as established and defined by ordinance, no frame or wooden building or structure or
49 addition thereto shall hereafter be erected, altered, repaired, or moved, either into the limits or
50 from one place to another within the limits, except upon the permit of the local inspection
51 department approved by the governing board and by the Commissioner of Insurance or the

1 Commissioner's designee. The governing board may make additional regulations for the
2 prevention, extinguishment, or mitigation of fires within the primary fire limits.

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

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

12 **"§ 160D-11-29. Regulation authorized as to repair, closing, and demolition of**
13 **nonresidential buildings or structures; order of public officer.**

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

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

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

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

49 (e) Limitations on Orders. –

50 (1) An order may require the owner to repair, alter, or improve the nonresidential
51 building or structure in order to bring it into compliance with the minimum

- 1 standards established by the governing board or to vacate and close the
2 nonresidential building or structure for any use.
- 3 (2) An order may require the owner to remove or demolish the nonresidential
4 building or structure if the cost of repair, alteration, or improvement of the
5 building or structure would exceed fifty percent (50%) of its then current
6 value. Notwithstanding any other provision of law, if the nonresidential
7 building or structure is designated as a local historic landmark, listed in the
8 National Register of Historic Places, or located in a locally designated historic
9 district or in a historic district listed in the National Register of Historic Places
10 and the governing board determines, after a public hearing as provided by
11 ordinance, that the nonresidential building or structure is of individual
12 significance or contributes to maintaining the character of the district, and the
13 nonresidential building or structure has not been condemned as unsafe, the
14 order may require that the nonresidential building or structure be vacated and
15 closed until it is brought into compliance with the minimum standards
16 established by the governing board.
- 17 (3) An order may not require repairs, alterations, or improvements to be made to
18 vacant manufacturing facilities or vacant industrial warehouse facilities to
19 preserve the original use. The order may require such building or structure to
20 be vacated and closed, but repairs may be required only when necessary to
21 maintain structural integrity or to abate a health or safety hazard that cannot
22 be remedied by ordering the building or structure closed for any use.
- 23 (f) Action by Governing Board Upon Failure to Comply With Order. –
- 24 (1) If the owner fails to comply with an order to repair, alter, or improve or to
25 vacate and close the nonresidential building or structure, the governing board
26 may adopt an ordinance ordering the public officer to proceed to effectuate
27 the purpose of this section with respect to the particular property or properties
28 that the public officer found to be jeopardizing the health or safety of its
29 occupants or members of the general public. The property or properties shall
30 be described in the ordinance. The ordinance shall be recorded in the office of
31 the register of deeds and shall be indexed in the name of the property owner
32 or owners in the grantor index. Following adoption of an ordinance, the public
33 officer may cause the building or structure to be repaired, altered, or improved
34 or to be vacated and closed. The public officer may cause to be posted on the
35 main entrance of any nonresidential building or structure so closed a placard
36 with the following words: "This building is unfit for any use; the use or
37 occupation of this building for any purpose is prohibited and unlawful." Any
38 person who occupies or knowingly allows the occupancy of a building or
39 structure so posted shall be guilty of a Class 3 misdemeanor.
- 40 (2) If the owner fails to comply with an order to remove or demolish the
41 nonresidential building or structure, the governing board may adopt an
42 ordinance ordering the public officer to proceed to effectuate the purpose of
43 this section with respect to the particular property or properties that the public
44 officer found to be jeopardizing the health or safety of its occupants or
45 members of the general public. No ordinance shall be adopted to require
46 demolition of a nonresidential building or structure until the owner has first
47 been given a reasonable opportunity to bring it into conformity with the
48 minimum standards established by the governing board. The property or
49 properties shall be described in the ordinance. The ordinance shall be recorded
50 in the office of the register of deeds and shall be indexed in the name of the
51 property owner or owners in the grantor index. Following adoption of an

1 ordinance, the public officer may cause the building or structure to be removed
2 or demolished.

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

- 15 (1) If the cost to repair the nonresidential building or structure to bring it into
16 compliance with the minimum standards is less than or equal to fifty percent
17 (50%) of its then current value, the ordinance shall require that the owner
18 either repair or demolish and remove the building or structure within 90 days.
19 (2) If the cost to repair the nonresidential building or structure to bring it into
20 compliance with the minimum standards exceeds fifty percent (50%) of its
21 then current value, the ordinance shall require the owner to demolish and
22 remove the building or structure within 90 days.

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

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

44 (i) Liens. –

- 45 (1) The amount of the cost of repairs, alterations, or improvements, or vacating
46 and closing, or removal or demolition by the public officer shall be a lien
47 against the real property upon which the cost was incurred, which lien shall
48 be filed, have the same priority, and be collected as the lien for special
49 assessment provided in Article 10 of Chapter 160A of the General Statutes.
50 (2) If the real property upon which the cost was incurred is located in an
51 incorporated city, the amount of the costs is also a lien on any other real

1 property of the owner located within the city limits except for the owner's
2 primary residence. The additional lien provided in this subdivision is inferior
3 to all prior liens and shall be collected as a money judgment.

4 (3) If the nonresidential building or structure is removed or demolished by the
5 public officer, he or she shall offer for sale the recoverable materials of the
6 building or structure and any personal property, fixtures, or appurtenances
7 found in or attached to the building or structure and shall credit the proceeds
8 of the sale, if any, against the cost of the removal or demolition, and any
9 balance remaining shall be deposited in the superior court by the public
10 officer, shall be secured in a manner directed by the court, and shall be
11 disbursed by the court to the persons found to be entitled thereto by final order
12 or decree of the court. Nothing in this section shall be construed to impair or
13 limit in any way the power of the governing board to define and declare
14 nuisances and to cause their removal or abatement by summary proceedings
15 or otherwise.

16 (j) Ejectment. – If any occupant fails to comply with an order to vacate a nonresidential
17 building or structure, the public officer may file a civil action in the name of the local government
18 to remove the occupant. The action to vacate shall be in the nature of summary ejectment and
19 shall be commenced by filing a complaint naming as parties-defendant any person occupying the
20 nonresidential building or structure. The clerk of superior court shall issue a summons requiring
21 the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10
22 days from the issuance of the summons to answer the complaint. The summons and complaint
23 shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor,
24 and if on its return it appears to have been duly served and if at the hearing the public officer
25 produces a certified copy of an ordinance adopted by the governing board pursuant to subsection
26 (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall
27 enter judgment ordering that the premises be vacated and all persons be removed. The judgment
28 ordering that the nonresidential building or structure be vacated shall be enforced in the same
29 manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any
30 judgment entered under this subsection by the magistrate may be taken as provided in
31 G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An
32 action to remove an occupant of a nonresidential building or structure who is a tenant of the
33 owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection
34 unless the occupant was served with notice, at least 30 days before the filing of the summary
35 ejectment proceeding, that the governing board has ordered the public officer to proceed to
36 exercise his or her duties under subsection (f) of this section to vacate and close or remove and
37 demolish the nonresidential building or structure.

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

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

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

1 (2) To administer oaths, affirmations, examine witnesses, and receive evidence.
2 (3) To enter upon premises pursuant to subsection (b) of this section for the
3 purpose of making examinations in a manner that will do the least possible
4 inconvenience to the persons in possession.

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

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

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

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

17 (o) No Effect on Just Compensation for Taking by Eminent Domain. – Nothing in this
18 section shall be construed as preventing the owner or owners of any property from receiving just
19 compensation for the taking of property by the power of eminent domain under the laws of this
20 State nor as permitting any property to be condemned or destroyed except in accordance with the
21 police power of the State.

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

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

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

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

33 "Article 12.

34 "Minimum Housing Codes.

35 **"§ 160D-12-1. Authorization.**

36 (a) Occupied Dwellings. – The existence and occupation of dwellings that are unfit for
37 human habitation are inimical to the welfare and dangerous and injurious to the health and safety
38 of the people of this State. A public necessity exists for the repair, closing, or demolition of such
39 dwellings. Whenever any local government finds that there exists in the planning and
40 development regulation jurisdiction dwellings that are unfit for human habitation due to
41 dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of
42 ventilation, light, or sanitary facilities; or other conditions rendering the dwellings unsafe or
43 unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the
44 welfare of the residents of the local government, power is conferred upon the local government
45 to exercise its police powers to repair, close, or demolish the dwellings consistent with the
46 provisions of this Article.

47 (b) Abandoned Structures. – Any local government may by ordinance provide for the
48 repair, closing, or demolition of any abandoned structure that the governing board finds to be a
49 health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire
50 hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as
51 living quarters in the absence of sanitary facilities. The ordinance may provide for the repair,

1 closing, or demolition of such structure pursuant to the same provisions and procedures as are
2 prescribed by this Article for the repair, closing, or demolition of dwellings found to be unfit for
3 human habitation.

4 **"§ 160D-12-2. Definitions.**

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

- 7 (1) Owner. – The holder of the title in fee simple and every mortgagee of record.
- 8 (2) Parties in interest. – All individuals, associations, and corporations who have
9 interests of record in a dwelling and any who are in possession thereof.
- 10 (3) Public authority. – Any housing authority or any officer who is in charge of
11 any department or branch of the government of the city, county, or State
12 relating to health, fire, building regulations, or other activities concerning
13 dwellings in the local government.
- 14 (4) Public officer. – The officer or officers who are authorized by ordinances
15 adopted hereunder to exercise the powers prescribed by the ordinances and by
16 this Article.

17 **"§ 160D-12-3. Ordinance authorized as to repair, closing, and demolition; order of public
18 officer.**

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

- 23 (1) Designation of enforcement officer. – One or more public officers shall be
24 designated to exercise the powers prescribed by the ordinance.
- 25 (2) Investigation, complaint, hearing. – Whenever a petition is filed with the
26 public officer by a public authority or by at least five residents of the
27 jurisdiction charging that any dwelling is unfit for human habitation or when
28 it appears to the public officer that any dwelling is unfit for human habitation,
29 the public officer shall, if a preliminary investigation discloses a basis for such
30 charges, issue and cause to be served upon the owner of and parties in interest
31 in such dwellings a complaint stating the charges in that respect and
32 containing a notice that an administrative hearing will be held before the
33 public officer, or the officer's designated agent, at a place within the county in
34 which the property is located. The hearing shall be not less than 10 days nor
35 more than 30 days after the serving of the complaint. The owner and parties
36 in interest shall be given the right to file an answer to the complaint and to
37 appear in person, or otherwise, and give testimony at the place and time fixed
38 in the complaint. The rules of evidence prevailing in courts of law shall not be
39 controlling in administrative hearings before the public officer.
- 40 (3) Orders. – If, after notice and hearing, the public officer determines that the
41 dwelling under consideration is unfit for human habitation, the officer shall
42 state in writing findings of fact in support of that determination and shall issue
43 and cause to be served upon the owner one of the following orders, as
44 appropriate:
 - 45 a. If the repair, alteration, or improvement of the dwelling can be made
46 at a reasonable cost in relation to the value of the dwelling, requiring
47 the owner, within the time specified, to repair, alter, or improve the
48 dwelling in order to render it fit for human habitation. The ordinance
49 may fix a certain percentage of this value as being reasonable. The
50 order may require that the property be vacated and closed only if
51 continued occupancy during the time allowed for repair will present a

1 significant threat of bodily harm, taking into account the nature of the
2 necessary repairs, alterations, or improvements; the current state of the
3 property; and any additional risks due to the presence and capacity of
4 minors under the age of 18 or occupants with physical or mental
5 disabilities. The order shall state that the failure to make timely repairs
6 as directed in the order shall make the dwelling subject to the issuance
7 of an unfit order under subdivision (4) of this section.

8 b. If the repair, alteration, or improvement of the dwelling cannot be
9 made at a reasonable cost in relation to the value of the dwelling,
10 requiring the owner, within the time specified in the order, to remove
11 or demolish such dwelling. The ordinance may fix a certain percentage
12 of this value as being reasonable. However, notwithstanding any other
13 provision of law, if the dwelling is located in a historic district and the
14 Historic District Commission determines, after a public hearing as
15 provided by ordinance, that the dwelling is of particular significance
16 or value toward maintaining the character of the district, and the
17 dwelling has not been condemned as unsafe, the order may require that
18 the dwelling be vacated and closed consistent with G.S. 160D-9-49.

19 (4) Repair, closing, and posting. – If the owner fails to comply with an order to
20 repair, alter, or improve or to vacate and close the dwelling, the public officer
21 may cause the dwelling to be repaired, altered, or improved or to be vacated
22 and closed, and the public officer may cause to be posted on the main entrance
23 of any dwelling so closed a placard with the following words: "This building
24 is unfit for human habitation; the use or occupation of this building for human
25 habitation is prohibited and unlawful." Occupation of a building so posted
26 shall constitute a Class 1 misdemeanor. The duties of the public officer set
27 forth in this subdivision shall not be exercised until the governing board shall
28 have by ordinance ordered the public officer to proceed to effectuate the
29 purpose of this Article with respect to the particular property or properties that
30 the public officer shall have found to be unfit for human habitation and which
31 property or properties shall be described in the ordinance. This ordinance shall
32 be recorded in the office of the register of deeds in the county where the
33 property or properties are located and shall be indexed in the name of the
34 property owner in the grantor index.

35 (5) Demolition. – If the owner fails to comply with an order to remove or
36 demolish the dwelling, the public officer may cause such dwelling to be
37 removed or demolished. The duties of the public officer set forth in this
38 subdivision shall not be exercised until the governing board shall have by
39 ordinance ordered the public officer to proceed to effectuate the purpose of
40 this Article with respect to the particular property or properties that the public
41 officer shall have found to be unfit for human habitation and which property
42 or properties shall be described in the ordinance. No such ordinance shall be
43 adopted to require demolition of a dwelling until the owner has first been
44 given a reasonable opportunity to bring it into conformity with the housing
45 code. This ordinance shall be recorded in the office of the register of deeds in
46 the county where the property or properties are located and shall be indexed
47 in the name of the property owner in the grantor index.

48 (6) Abandonment of Intent to Repair. – If the dwelling has been vacated and
49 closed for a period of one year pursuant to an ordinance adopted pursuant to
50 subdivision (4) of this section or after a public officer issues an order or
51 proceedings have commenced under the substandard housing regulations

1 regarding a dwelling to be repaired or vacated and closed as provided in this
2 subdivision, then the governing board may find that the owner has abandoned
3 the intent and purpose to repair, alter, or improve the dwelling in order to
4 render it fit for human habitation and that the continuation of the dwelling in
5 its vacated and closed status would be inimical to the health, safety, and
6 welfare of the local government in that the dwelling would continue to
7 deteriorate, would create a fire and safety hazard, would be a threat to children
8 and vagrants, would attract persons intent on criminal activities, would cause
9 or contribute to blight and the deterioration of property values in the area, and
10 would render unavailable property and a dwelling that might otherwise have
11 been made available to ease the persistent shortage of decent and affordable
12 housing in this State, then in such circumstances, the governing board may,
13 after the expiration of such one-year period, enact an ordinance and serve such
14 ordinance on the owner, setting forth the following:

15 a. If it is determined that the repair of the dwelling to render it fit for
16 human habitation can be made at a cost not exceeding fifty percent
17 (50%) of the then current value of the dwelling, the ordinance shall
18 require that the owner either repair or demolish and remove the
19 dwelling within 90 days.

20 b. If it is determined that the repair of the dwelling to render it fit for
21 human habitation cannot be made at a cost not exceeding fifty percent
22 (50%) of the then current value of the dwelling, the ordinance shall
23 require the owner to demolish and remove the dwelling within 90 days.

24 This ordinance shall be recorded in the office of the register of deeds in
25 the county wherein the property or properties are located and shall be indexed
26 in the name of the property owner in the grantor index. If the owner fails to
27 comply with this ordinance, the public officer shall effectuate the purpose of
28 the ordinance.

29 (7) Liens. –

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

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

42 c. If the dwelling is removed or demolished by the public officer, the
43 local government shall sell the materials of the dwelling, and any
44 personal property, fixtures, or appurtenances found in or attached to
45 the dwelling, and shall credit the proceeds of the sale against the cost
46 of the removal or demolition, and any balance remaining shall be
47 deposited in the superior court by the public officer, shall be secured
48 in a manner directed by the court, and shall be disbursed by the court
49 to the persons found to be entitled thereto by final order or decree of
50 the court. Nothing in this section shall be construed to impair or limit
51 in any way the power of the local government to define and declare

1 nuisances and to cause their removal or abatement by summary
2 proceedings or otherwise.

3 (8) Civil action. – If any occupant fails to comply with an order to vacate a
4 dwelling, the public officer may file a civil action in the name of the local
5 government to remove such occupant. The action to vacate the dwelling shall
6 be in the nature of summary ejectment and shall be commenced by filing a
7 complaint naming as defendant any person occupying such dwelling. The
8 clerk of superior court shall issue a summons requiring the defendant to appear
9 before a magistrate at a certain time, date, and place not to exceed 10 days
10 from the issuance of the summons to answer the complaint. The summons and
11 complaint shall be served as provided in G.S. 42-29. If the summons appears
12 to have been duly served and if at the hearing the public officer produces a
13 certified copy of an ordinance adopted by the governing board pursuant to
14 subdivision (5) of this section authorizing the officer to proceed to vacate the
15 occupied dwelling, the magistrate shall enter judgment ordering that the
16 premises be vacated and that all persons be removed. The judgment ordering
17 that the dwelling be vacated shall be enforced in the same manner as the
18 judgment for summary ejectment entered under G.S. 42-30. An appeal from
19 any judgment entered hereunder by the magistrate may be taken as provided
20 in G.S. 7A-228, and the execution of such judgment may be stayed as
21 provided in G.S. 7A-227. An action to remove an occupant of a dwelling who
22 is a tenant of the owner may not be in the nature of a summary ejectment
23 proceeding pursuant to this paragraph unless such occupant was served with
24 notice at least 30 days before the filing of the summary ejectment proceeding
25 that the governing board has ordered the public officer to proceed to exercise
26 his duties under subdivisions (4) and (5) of this section to vacate and close or
27 remove and demolish the dwelling.

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

43 **"§ 160D-12-4. Heat source required.**

44 (a) A local government shall, by ordinance, require that every dwelling unit leased as
45 rental property within the city shall have, at a minimum, a central or electric heating system or
46 sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least
47 one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit
48 measured 3 feet above the floor with an outside temperature of 20 degrees Fahrenheit.

49 (b) If a dwelling unit contains a heating system or heating appliances that meet the
50 requirements of subsection (a) of this section, the owner of the dwelling unit shall not be required
51 to install a new heating system or heating appliances, but the owner shall be required to maintain

1 the existing heating system or heating appliances in a good and safe working condition.
2 Otherwise, the owner of the dwelling unit shall install a heating system or heating appliances that
3 meet the requirements of subsection (a) of this section and shall maintain the heating system or
4 heating appliances in a good and safe working condition.

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

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

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

16 **"§ 160D-12-5. Standards.**

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

26 **"§ 160D-12-6. Service of complaints and orders.**

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

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

42 **"§ 160D-12-7. Periodic inspections.**

43 (a) Except as provided in subsection (b) of this section, the inspection department may
44 make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary,
45 or otherwise hazardous or unlawful conditions may exist in a residential building or structure.
46 However, when the inspection department determines that a safety hazard exists in one of the
47 dwelling units within a multifamily building, which in the opinion of the inspector poses an
48 immediate threat to the occupant, the inspection department may inspect, in the absence of a
49 specific complaint and actual knowledge of the unsafe condition, additional dwelling units in the
50 multifamily building to determine if that same safety hazard exists. For purposes of this section,
51 the term "reasonable cause" means any of the following: (i) the landlord or owner has a history

1 of more than two verified violations of the housing ordinances or codes within a 12-month period,
2 (ii) there has been a complaint that substandard conditions exist within the building or there has
3 been a request that the building be inspected, (iii) the inspection department has actual knowledge
4 of an unsafe condition within the building, or (iv) violations of the local ordinances or codes are
5 visible from the outside of the property. In conducting inspections authorized under this section,
6 the inspection department shall not discriminate between single-family and multifamily buildings
7 or between owner-occupied and tenant-occupied buildings. In exercising this power, members
8 of the department shall have a right to enter on any premises within the jurisdiction of the
9 department at all reasonable hours for the purposes of inspection or other enforcement action,
10 upon presentation of proper credentials. Nothing in this section shall be construed to prohibit
11 periodic inspections in accordance with State fire prevention code or as otherwise required by
12 State law.

13 (b) A local government may require periodic inspections as part of a targeted effort to
14 respond to blighted or potentially blighted conditions within a geographic area that has been
15 designated by the governing board. However, the total aggregate of targeted areas in the local
16 government jurisdiction at any one time shall not be greater than 1 square mile or five percent
17 (5%) of the area within the local government jurisdiction, whichever is greater. A targeted area
18 designated by the local government shall reflect the local government's stated neighborhood
19 revitalization strategy and shall consist of property that meets the definition of a "blighted area"
20 or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and G.S. 160A-503(2a),
21 respectively, except that for purposes of this subsection, the planning board is not required to
22 make a determination as to the property. The local government shall not discriminate in its
23 selection of areas or housing types to be targeted and shall (i) provide notice to all owners and
24 residents of properties in the affected area about the periodic inspections plan and information
25 regarding a public hearing regarding the plan, (ii) hold a public hearing regarding the plan, and
26 (iii) establish a plan to address the ability of low-income residential property owners to comply
27 with minimum housing code standards.

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

- 46 (1) The aggregate of all violations of housing ordinances or codes found in an
47 individual rental unit of residential real property during a 72-hour period.
48 (2) Any violations that have not been corrected by the owner or manager within
49 21 days of receipt of written notice from the local government of the
50 violations. Should the same violation occur more than two times in a 12-month
51 period, the owner or manager may not have the option of correcting the

1 violation. If the housing code provides that any form of prohibited tenant
2 behavior constitutes a violation by the owner or manager of the rental
3 property, it shall be deemed a correction of the tenant-related violation if the
4 owner or manager, within 30 days of receipt of written notice of the
5 tenant-related violation, brings a summary ejectment action to have the tenant
6 evicted.

7 (d) If a property is identified by the local government as being in the top ten percent
8 (10%) of properties with crime or disorder problems, the local government shall notify the
9 landlord of any crimes, disorders, or other violations that will be counted against the property to
10 allow the landlord an opportunity to attempt to correct the problems. In addition, the local
11 government and the county sheriff's office or city's police department shall assist the landlord in
12 addressing any criminal activity, which may include testifying in court in a summary ejectment
13 action or other matter to aid in evicting a tenant who has been charged with a crime. If the local
14 government or the county sheriff's office or city's police department does not cooperate in
15 evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a crime or
16 disorder problem as set forth in the local ordinance, and the property may not be included in the
17 top ten percent (10%) of properties as a result of that tenant's behavior or activity.

18 (e) If the local government takes action against an individual rental unit under this
19 section, the owner of the individual rental unit may appeal the decision to the housing appeals
20 board or the zoning board of adjustment, if operating, or the planning board if created under
21 G.S. 160D-3-1, or if neither is created, the governing board. The board shall fix a reasonable time
22 for hearing appeals, shall give due notice to the owner of the individual rental unit, and shall
23 render a decision within a reasonable time. The owner may appear in person or by agent or
24 attorney. The board may reverse or affirm the action, wholly or partly, or may modify the action
25 appealed from, and may make any decision and order that in the opinion of the board ought to be
26 made in the matter.

27 **"§ 160D-12-8. Remedies.**

28 (a) An ordinance adopted pursuant to this Article may provide for a housing appeals
29 board as provided by G.S. 160D-3-6. An appeal from any decision or order of the public officer
30 is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer,
31 board, or commission of the local government. Any appeal from the public officer shall be taken
32 within 10 days from the rendering of the decision or service of the order by filing with the public
33 officer and with the housing appeals board a notice of appeal that shall specify the grounds upon
34 which the appeal is based. Upon the filing of any notice of appeal, the public officer shall
35 forthwith transmit to the board all the papers constituting the record upon which the decision
36 appealed from was made. When an appeal is from a decision of the public officer refusing to
37 allow the person aggrieved thereby to do any act, the decision shall remain in force until modified
38 or reversed. When any appeal is from a decision of the public officer requiring the person
39 aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the
40 hearing by the board, unless the public officer certifies to the board, after the notice of appeal is
41 filed with the officer, that because of facts stated in the certificate, a copy of which shall be
42 furnished the appellant, a suspension of the requirement would cause imminent peril to life or
43 property. In that case the requirement shall not be suspended except by a restraining order, which
44 may be granted for due cause shown upon not less than one day's written notice to the public
45 officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this
46 section.

47 (b) The housing appeals board shall fix a reasonable time for hearing appeals, shall give
48 due notice to the parties, and shall render its decision within a reasonable time. Any party may
49 appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or
50 may modify the decision or order appealed from, and may make any decision and order that in
51 its opinion ought to be made in the matter, and, to that end, it shall have all the powers of the

1 public officer, but the concurring vote of four members of the board shall be necessary to reverse
2 or modify any decision or order of the public officer. The board shall have power also in passing
3 upon appeals, when unnecessary hardships would result from carrying out the strict letter of the
4 ordinance, to adapt the application of the ordinance to the necessities of the case to the end that
5 the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial
6 justice done.

7 (c) Every decision of the housing appeals board shall be subject to review by proceedings
8 in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

9 (d) Any person aggrieved by an order issued by the public officer or a decision rendered
10 by the housing appeals board may petition the superior court for an injunction restraining the
11 public officer from carrying out the order or decision and the court may, upon such petition, issue
12 a temporary injunction restraining the public officer pending a final disposition of the cause. The
13 petition shall be filed within 30 days after issuance of the order or rendering of the decision.
14 Hearings shall be had by the court on a petition within 20 days and shall be given preference over
15 other matters on the court's calendar. The court shall hear and determine the issues raised and
16 shall enter such final order or decree as law and justice may require. It shall not be necessary to
17 file bond in any amount before obtaining a temporary injunction under this subsection.

18 (e) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or
19 used in violation of this Article or of any ordinance or code adopted under authority of this Article
20 or any valid order or decision of the public officer or board made pursuant to any ordinance or
21 code adopted under authority of this Article, the public officer or board may institute any
22 appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction,
23 alteration, or use; to restrain, correct, or abate the violation; to prevent the occupancy of the
24 dwelling; or to prevent any illegal act, conduct, or use in or about the premises of the dwelling.

25 **"§ 160D-12-9. Compensation to owners of condemned property.**

26 Nothing in this Article shall be construed as preventing the owner or owners of any property
27 from receiving just compensation for the taking of property by the power of eminent domain
28 under the laws of this State nor as permitting any property to be condemned or destroyed except
29 in accordance with the police power of the State.

30 **"§ 160D-12-10. Additional powers of public officer.**

31 An ordinance adopted by the governing board may authorize the public officer to exercise
32 any powers necessary or convenient to carry out and effectuate the purpose and provisions of this
33 Article, including the following powers in addition to others herein granted:

34 (1) To investigate the dwelling conditions in the local government's planning and
35 development regulation jurisdiction in order to determine which dwellings
36 therein are unfit for human habitation.

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

38 (3) To enter upon premises for the purpose of making examinations in a manner
39 that will do the least possible inconvenience to the persons in possession.

40 (4) To appoint and fix the duties of officers, agents, and employees necessary to
41 carry out the purposes of the ordinances.

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

44 **"§ 160D-12-11. Administration of ordinance.**

45 A local government adopting an ordinance under this Article shall, as soon as possible
46 thereafter, prepare an estimate of the annual expenses or costs to provide the equipment,
47 personnel, and supplies necessary for periodic examinations and investigations of the dwellings
48 for the purpose of determining the fitness of dwellings for human habitation and for the
49 enforcement and administration of its ordinances adopted under this Article. The local
50 government is authorized to make appropriations from its revenues necessary for this purpose
51 and may accept and apply grants or donations to assist it.

1 **"§ 160D-12-12. Supplemental nature of Article.**

2 Nothing in this Article shall be construed to abrogate or impair the powers of the courts or of
3 any department of any local government to enforce any provisions of its charter or its ordinances
4 or regulations nor to prevent or punish violations thereof. The powers conferred by this Article
5 shall be supplemental to the powers conferred by any other law in carrying out the provisions of
6 the ordinances.

7 "Article 13.

8 "Additional Authority.

9 "Part 1. Open Space Acquisition.

10 **"§ 160D-13-1. Legislative intent.**

11 It is the intent of the General Assembly to provide a means whereby any local government
12 may acquire by purchase, gift, grant, devise, lease, or otherwise, and through the expenditure of
13 public funds, the fee or any lesser interest or right in real property in order to preserve, through
14 limitation of their future use, open spaces and areas for public use and enjoyment.

15 **"§ 160D-13-2. Finding of necessity.**

16 The General Assembly finds that the rapid growth and spread of urban development in the
17 State is encroaching upon, or eliminating, many open areas and spaces of varied size and
18 character, including many having significant scenic or aesthetic values, which areas and spaces
19 if preserved and maintained in their present open state would constitute important physical,
20 social, aesthetic, or economic assets to existing and impending urban development. The General
21 Assembly declares that it is necessary for sound and proper urban development and in the public
22 interest of the people of this State for any local government to expend or advance public funds
23 for, or to accept by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser interest
24 or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or
25 otherwise conserve open spaces and areas within their respective jurisdictions as defined by this
26 Article.

27 The General Assembly declares that the acquisition of interests or rights in real property for
28 the preservation of open spaces and areas constitutes a public purpose for which public funds
29 may be expended or advanced.

30 **"§ 160D-13-3. Local governments authorized to acquire and reconvey real property.**

31 Any local government may acquire by purchase, gift, grant, devise, lease, or otherwise, the
32 fee or any lesser interest, development right, easement, covenant, or other contractual right of or
33 to real property within its respective jurisdiction, when it finds that the acquisition is necessary
34 to achieve the purposes of this Part. Any local government may also acquire the fee to any
35 property for the purpose of conveying or leasing the property back to its original owner or other
36 person under covenants or other contractual arrangements that will limit the future use of the
37 property in accordance with the purposes of this Part, but when this is done, the property may be
38 conveyed back to its original owner but to no other person by private sale.

39 **"§ 160D-13-4. Joint action by governing bodies.**

40 A local government may enter into any agreement with any other local government for the
41 purpose of jointly exercising the authority granted by this Part.

42 **"§ 160D-13-5. Powers of governing bodies.**

43 A local government, in order to exercise the authority granted by this Part, may:

- 44 (1) Enter into and carry out contracts with the State or federal government or any
45 agencies thereof under which grants or other assistance are made to the local
46 government.
- 47 (2) Accept any assistance or funds that may be granted by the State or federal
48 government with or without a contract.
- 49 (3) Agree to and comply with any reasonable conditions imposed upon grants.
- 50 (4) Make expenditures from any funds so granted.

51 **"§ 160D-13-6. Appropriations authorized.**

1 For the purposes set forth in this Part, a local government may appropriate funds not
2 otherwise limited as to use by law.

3 **"§ 160D-13-7. Definitions.**

4 As used in this Part, the following definitions apply:

- 5 (1) Open space or open area. – Any space or area characterized by great natural
6 scenic beauty or where the existing openness, natural condition, or present
7 state of use, if retained, would enhance the present or potential value of
8 abutting or surrounding urban development or would maintain or enhance the
9 conservation of natural or scenic resources. The terms also include interests
10 or rights in real property and open space land or uses.
11 (2) Open space land or open space uses. – Any undeveloped or predominantly
12 undeveloped land in an urban area that has value for or is used for one or more
13 of the following purposes:
14 a. Park and recreational purposes.
15 b. Conservation of land and other natural resources.
16 c. Historic or scenic purposes.

17 **"§§ 160D-13-8 through 160D-13-10: Reserved for future codification purposes.**

18 "Part 2. Community Development and Redevelopment.

19 **"§ 160D-13-11. Community development programs and activities.**

20 (a) A local government is authorized to engage in, to accept federal and State grants and
21 loans for, and to appropriate and expend funds for community development programs and
22 activities. In undertaking community development programs and activities, in addition to other
23 authority granted by law, a local government may engage in the following activities:

- 24 (1) Programs of assistance and financing of rehabilitation of private buildings
25 principally for the benefit of low- and moderate-income persons, or for the
26 restoration or preservation of older neighborhoods or properties, including
27 direct repair, the making of grants or loans, the subsidization of interest
28 payments on loans, and the guaranty of loans.
29 (2) Programs concerned with employment, economic development, crime
30 prevention, child care, health, drug abuse, education, and welfare needs of
31 persons of low and moderate income.

32 (b) A governing board may exercise directly those powers granted by law to local
33 government redevelopment commissions and those powers granted by law to local government
34 housing authorities and may do so whether or not a redevelopment commission or housing
35 authority is in existence in such local government. Any governing board desiring to do so may
36 delegate to any redevelopment commission, created under Article 22 of Chapter 160A of the
37 General Statutes, or to any housing authority, created under Article 1 of Chapter 157 of the
38 General Statutes, the responsibility of undertaking or carrying out any specified community
39 development activities. Any governing board may by agreement undertake or carry out for
40 another any specified community development activities. Any governing board may contract
41 with any person, association, or corporation in undertaking any specified community
42 development activities. Any county or city board of health, county board of social services, or
43 county or city board of education may by agreement undertake or carry out for any other
44 governing board any specified community development activities.

45 (c) A local government undertaking community development programs or activities may
46 create one or more advisory committees to advise it and to make recommendations concerning
47 such programs or activities.

48 (d) A governing board proposing to undertake any loan guaranty or similar program for
49 rehabilitation of private buildings is authorized to submit to its voters the question whether such
50 program shall be undertaken, such referendum to be conducted pursuant to the general and local
51 laws applicable to special elections in such local government. No State or local taxes shall be

1 appropriated or expended by a county pursuant to this section for any purpose not expressly
2 authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein
3 provided.

4 (e) A government may receive and dispense funds from the Community Development
5 Block Grant (CDBG) Section 108 Loan Guarantee program, Subpart M, 24 C.F.R. § 570.700, et
6 seq., either through application to the North Carolina Department of Commerce or directly from
7 the federal government, in accordance with State and federal laws governing these funds. Any
8 local government that receives these funds directly from the federal government may pledge
9 current and future CDBG funds for use as loan guarantees in accordance with State and federal
10 laws governing these funds. A local government may implement the receipt, dispensing, and
11 pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a
12 portion of those funds to a third party in accordance with applicable laws governing the CDBG
13 program.

14 A government that has pledged current or future CDBG funds for use as loan guarantees prior
15 to the enactment of this subsection is authorized to have taken such action. A pledge of future
16 CDBG funds under this subsection is not a debt or liability of the State or any political
17 subdivision of the State or a pledge of the faith and credit of the State or any political subdivision
18 of the State. The pledging of future CDBG funds under this subsection does not directly,
19 indirectly, or contingently obligate the State or any political subdivision of the State to levy or to
20 pledge any taxes.

21 (f) All program income from Economic Development Grants from the Small Cities
22 Community Development Block Grant Program may be retained by recipient cities and counties
23 in "economically distressed counties," as defined in G.S. 143B-437.01, for the purposes of
24 creating local economic development revolving loan funds. Such program income derived
25 through the use by cities of Small Cities Community Development Block Grant money includes,
26 but is not limited to, (i) payment of principal and interest on loans made by the county using
27 CDBG funds, (ii) proceeds from the lease or disposition of real property acquired with CDBG
28 funds, and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The
29 local economic development revolving loan fund set up by the city shall fund only those activities
30 eligible under Title I of the federal Housing and Community Development Act of 1974, as
31 amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing
32 and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall
33 not affect this subsection as to designations of economically distressed counties made prior to its
34 expiration.

35 **"§ 160D-13-12. Acquisition and disposition of property for redevelopment.**

36 Any local government is authorized, either as a part of a community development program
37 or independently thereof, and without the necessity of compliance with the Urban
38 Redevelopment Law, to exercise the following powers:

- 39 (1) To acquire, by voluntary purchase from the owner or owners, real property
40 that meets any of the following criteria:
- 41 a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately
42 developed from the standpoint of sound community development and
43 growth.
 - 44 b. Appropriate for rehabilitation or conservation activities.
 - 45 c. Appropriate for housing construction or the economic development of
46 the community.
 - 47 d. Appropriate for the preservation or restoration of historic sites, the
48 beautification of urban land, the conservation of open space, natural
49 resources, and scenic areas, the provision of recreational opportunities,
50 or the guidance of urban development.

- 1 (2) To clear, demolish, remove, or rehabilitate buildings and improvements on
2 land so acquired.
- 3 (3) To retain property so acquired for public purposes, or to dispose, through sale,
4 lease, or otherwise, of any property so acquired to any person, firm,
5 corporation, or governmental unit, provided the disposition of such property
6 shall be undertaken in accordance with the procedures of Article 12 of Chapter
7 160A of the General Statutes, or the procedures of G.S. 160A-514, or any
8 applicable local act or charter provision modifying such procedures, or
9 subdivision (4) of this section.
- 10 (4) To sell, exchange, or otherwise transfer real property or any interest therein in
11 a community development project area to any redeveloper at private sale for
12 residential, recreational, commercial, industrial, or other uses or for public use
13 in accordance with the community development plan, subject to such
14 covenants, conditions, and restrictions as may be deemed to be in the public
15 interest or to carry out the purposes of this Article, provided that such sale,
16 exchange, or other transfer, and any agreement relating thereto, may be made
17 only after approval of the governing board and after a public hearing; a notice
18 of the public hearing shall be given once a week for two successive weeks in
19 a newspaper having general circulation in the local government's planning and
20 development jurisdiction area, the notice shall be published the first time not
21 less than 10 days nor more than 25 days preceding the public hearing, and the
22 notice shall disclose the terms of the sale, exchange, or transfer. At the public
23 hearing, the appraised value of the property to be sold, exchanged, or
24 transferred shall be disclosed, and the consideration for the conveyance shall
25 not be less than the appraised value.

26 **§ 160D-13-13. Urban Development Action Grants.**

27 Any local government is authorized, either as a part of a community development program
28 or independently thereof, to enter into contracts or agreements with any person, association, or
29 corporation to undertake and carry out specified activities in furtherance of the purposes of Urban
30 Development Action Grants authorized by the Housing and Community Development Act of
31 1977, P.L. 95-128, or any amendment thereto, that is a continuation of such grant programs by
32 whatever designation, including the authority to enter into and carry out contracts or agreements
33 to extend loans, loan subsidies, or grants to persons, associations, or corporations and to dispose
34 of real or personal property by private sale in furtherance of such contracts or agreements.

35 Any enabling legislation contained in local acts that refers to "Urban Development Action
36 Grants" or the Housing and Community Development Act of 1977, P.L. 95-128, shall be
37 construed also to refer to any continuation of such grant programs by whatever designation.

38 **§ 160D-13-14. Urban homesteading programs.**

39 A local government may establish a program of urban homesteading, in which residential
40 property of little or no value is conveyed to persons who agree to rehabilitate the property and
41 use it, for a minimum number of years, as their principal place of residence. Residential property
42 is considered of little or no value if the cost of bringing the property into compliance with the
43 local government's housing code exceeds sixty percent (60%) of the property's appraised value
44 on the county tax records. In undertaking such a program, a local government may:

- 45 (1) Acquire by purchase, gift, or otherwise, but not eminent domain, residential
46 property specifically for the purpose of reconveyance in the urban
47 homesteading program or may transfer to the program residential property
48 acquired for other purposes, including property purchased at a tax foreclosure
49 sale.

- 1 (2) Under procedures and standards established by the local government, convey
2 residential property by private sale under G.S. 160A-267 and for nominal
3 monetary consideration to persons who qualify as grantees.
- 4 (3) Convey property subject to the following conditions:
- 5 a. A requirement that the grantee shall use the property as the grantee's
6 principal place of residence for a minimum number of years.
- 7 b. A requirement that the grantee rehabilitate the property so that it meets
8 or exceeds minimum housing code standards.
- 9 c. A requirement that the grantee maintain insurance on the property.
- 10 d. Any other specific conditions, including, but not limited to, design
11 standards, or actions that the local government may require.
- 12 e. A provision for the termination of the grantee's interest in the property
13 and its reversion to the local government upon the grantee's failure to
14 meet any condition so established.
- 15 (4) Subordinate the local government's interest in the property to any security
16 interest granted by the grantee to a lender of funds to purchase or rehabilitate
17 the property.

18 **"§ 160D-13-15. Downtown development projects.**

19 (a) Definition. – As used in this section, "downtown development project" or "joint
20 development project" means a capital project, in a central business district, as that district is
21 defined by the governing board, comprising one or more buildings and including both public and
22 private facilities. By way of illustration but not limitation, such a project might include a single
23 building comprising a publicly owned parking structure and publicly owned convention center
24 and a privately owned hotel or office building.

25 (b) Authorization. – If the governing board finds that it is likely to have a significant
26 effect on the revitalization of the jurisdiction, the local government may acquire, construct, own,
27 and operate or participate in the acquisition, construction, ownership, and operation of a joint
28 development project or of specific facilities within such a project. The local government may
29 enter into binding contracts with one or more private developers with respect to acquiring,
30 constructing, owning, or operating such a project. Such a contract may, among other provisions,
31 specify the following:

- 32 (1) The property interests of both the local government and the developer or
33 developers in the project, provided that the property interests of the local
34 government shall be limited to facilities for a public purpose.
- 35 (2) The responsibilities of the local government and the developer or developers
36 for construction of the project.
- 37 (3) The responsibilities of the local government and the developer or developers
38 with respect to financing the project.

39 Such a contract may be entered into before the acquisition of any real property necessary to
40 the project.

41 (c) Eligible Property. – A joint development project may be constructed on property
42 acquired by the developer or developers, on property directly acquired by the local government,
43 or on property acquired by the local government while exercising the powers, duties, and
44 responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or G.S. 160D-13-11.

45 (d) Conveyance of Property Rights. – In connection with a joint development project, the
46 local government may convey interests in property owned by it, including air rights over public
47 facilities, as follows:

- 48 (1) If the property was acquired while the local government was exercising the
49 powers, duties, and responsibilities of a redevelopment commission, the local
50 government may convey property interests pursuant to the "Urban
51 Redevelopment Law" or any local modification thereof.

1 this purpose by promoting and encouraging renewable energy and energy efficiency within the
2 local government's territorial jurisdiction. In furtherance of this purpose, a local government may
3 establish a program to finance the purchase and installation of distributed generation renewable
4 energy sources or energy efficiency improvements that are permanently affixed to residential,
5 commercial, or other real property.

6 (b) Financing Assistance. – A local government may establish a revolving loan fund and
7 a loan loss reserve fund for the purpose of financing or assisting in the financing of the purchase
8 and installation of distributed generation renewable energy sources or energy efficiency
9 improvements that are permanently fixed to residential, commercial, or other real property. A
10 local government may establish other local government energy efficiency and distributed
11 generation renewable energy source finance programs funded through federal grants. A local
12 government may use State and federal grants and loans and its general revenue for this financing.
13 The annual interest rate charged for the use of funds from the revolving fund may not exceed
14 eight percent (8%) per annum, excluding other fees for loan application review and origination.
15 The term of any loan originated under this section may not be greater than 20 years.

16 (c) Definition. – As used in this Article, "renewable energy source" has the same meaning
17 as "renewable energy resource" in G.S. 62-133.8.

18 "Article 14.

19 "Judicial Review.

20 **"§ 160D-14-1. Declaratory judgments.**

21 Challenges of legislative decisions of governing boards, including the validity or
22 constitutionality of development regulations adopted pursuant to this Chapter, and actions
23 authorized by G.S. 160D-1-8(c) or (g) and G.S. 160D-4-5(c), may be brought pursuant to Article
24 26 of Chapter 1 of the General Statutes. The governmental unit making the challenged decision
25 shall be named a party to the action.

26 **"§ 160D-14-2. Appeals in the nature of certiorari.**

27 (a) Applicability. – This section applies to appeals of quasi-judicial decisions of
28 decision-making boards when that appeal is in the nature of certiorari as required by this Chapter.

29 (b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing a
30 petition for writ of certiorari with the superior court. The petition shall do all of the following:

- 31 (1) State the facts that demonstrate that the petitioner has standing to seek review.
- 32 (2) Set forth allegations sufficient to give the court and parties notice of the
33 grounds upon which the petitioner contends that an error was made.
- 34 (3) Set forth with particularity the allegations and facts, if any, in support of
35 allegations that, as the result of an impermissible conflict as described in
36 G.S. 160D-1-9, or locally adopted conflict rules, the decision-making body
37 was not sufficiently impartial to comply with due process principles.
- 38 (4) Set forth the relief the petitioner seeks.

39 (c) Standing. – A petition may be filed under this section only by a petitioner who has
40 standing to challenge the decision being appealed. The following persons shall have standing to
41 file a petition under this section:

- 42 (1) Any person possessing any of the following criteria:
 - 43 a. An ownership interest in the property that is the subject of the decision
44 being appealed, a leasehold interest in the property that is the subject
45 of the decision being appealed, or an interest created by easement,
46 restriction, or covenant in the property that is the subject of the
47 decision being appealed.
 - 48 b. An option or contract to purchase the property that is the subject of the
49 decision being appealed.
 - 50 c. An applicant before the decision-making board whose decision is
51 being appealed.

1 (2) Any other person who will suffer special damages as the result of the decision
2 being appealed.

3 (3) An incorporated or unincorporated association to which owners or lessees of
4 property in a designated area belong by virtue of their owning or leasing
5 property in that area, or an association otherwise organized to protect and
6 foster the interest of the particular neighborhood or local area, so long as at
7 least one of the members of the association would have standing as an
8 individual to challenge the decision being appealed, and the association was
9 not created in response to the particular development or issue that is the
10 subject of the appeal.

11 (4) A local government whose decision-making board has made a decision that
12 the governing board believes improperly grants a variance from or is
13 otherwise inconsistent with the proper interpretation of a development
14 regulation adopted by the governing board.

15 (d) Respondent. – The respondent named in the petition shall be the local government
16 whose decision-making board made the decision that is being appealed, except that if the
17 petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection
18 (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not
19 the applicant before the decision-making board whose decision is being appealed, the petitioner
20 shall also name that applicant as a respondent. Any petitioner may name as a respondent any
21 person with an ownership or leasehold interest in the property that is the subject of the decision
22 being appealed who participated in the hearing, or was an applicant, before the decision-making
23 board.

24 (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition
25 and a proposed writ of certiorari to the clerk of superior court of the county in which the matter
26 arose. The writ shall direct the respondent local government or the respondent decision-making
27 board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4)
28 of subsection (c) of this section, to prepare and certify to the court the record of proceedings
29 below within a specified date. The writ shall also direct that the petitioner shall serve the petition
30 and the writ upon each respondent named therein in the manner provided for service of a
31 complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a
32 decision-making board, the petition and the writ shall be served upon the chair of that
33 decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the
34 chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall
35 issue the writ without notice to the respondent or respondents if the petition has been properly
36 filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

37 Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution
38 or enforcement of the decision of the quasi-judicial board pending superior court review. The
39 court may grant a stay in its discretion and on such conditions that properly provide for the
40 security of the adverse party. A stay granted in favor of a city or county shall not require a bond
41 or other security.

42 (f) Response to the Petition. – The respondent may, but need not, file a response to the
43 petition, except that, if the respondent contends for the first time that any petitioner lacks standing
44 to bring the appeal, that contention must be set forth in a response served on all petitioners at
45 least 30 days prior to the hearing on the petition. If it is not served within that time period, the
46 matter may be continued to allow the petitioners time to respond.

47 (g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to
48 intervene as a petitioner or respondent in an action initiated under this section with the following
49 exceptions:

1 (1) Any person described in subdivision (1) of subsection (c) of this section shall
2 have standing to intervene and shall be allowed to intervene as a matter of
3 right.

4 (2) Any person, other than one described in subdivision (1) of subsection (c) of
5 this section, who seeks to intervene as a petitioner must demonstrate that the
6 person would have had standing to challenge the decision being appealed in
7 accordance with subdivisions (2) through (4) of subsection (c) of this section.

8 (3) Any person, other than one described in subdivision (1) of subsection (c) of
9 this section, who seeks to intervene as a respondent must demonstrate that the
10 person would have had standing to file a petition in accordance with
11 subdivisions (2) through (4) of subsection (c) of this section if the
12 decision-making board had made a decision that is consistent with the relief
13 sought by the petitioner.

14 (h) The Record. – The record shall consist of the decision and all documents and exhibits
15 submitted to the decision-making board whose decision is being appealed, together with the
16 minutes of the meeting or meetings at which the decision being appealed was considered. Upon
17 request of any party, the record shall also contain an audio or videotape of the meeting or
18 meetings at which the decision being appealed was considered if such a recording was made.
19 Any party may also include in the record a transcript of the proceedings, which shall be prepared
20 at the cost of the party choosing to include it. The parties may agree that matters unnecessary to
21 the court's decision be deleted from the record or that matters other than those specified herein
22 be included. The record shall be bound and paginated or otherwise organized for the convenience
23 of the parties and the court. A copy of the record shall be served by the local government
24 respondent, or the respondent decision-making board, upon all petitioners within three days after
25 it is filed with the court.

26 (i) Hearing on the Record. – The court shall hear and decide all issues raised by the
27 petition by reviewing the record submitted in accordance with subsection (h) of this section. The
28 court may, in its discretion, allow the record to be supplemented with affidavits, testimony of
29 witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate
30 to allow an appropriate determination of the following issues:

31 (1) Whether a petitioner or intervenor has standing.

32 (2) Whether, as a result of impermissible conflict as described in G.S. 160D-1-9
33 or locally adopted conflict rules, the decision-making body was not
34 sufficiently impartial to comply with due process principles.

35 (3) Whether the decision-making body erred for the reasons set forth in
36 sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

37 (j) Scope of Review. –

38 (1) When reviewing the decision under the provisions of this section, the court
39 shall ensure that the rights of petitioners have not been prejudiced because the
40 decision-making body's findings, inferences, conclusions, or decisions were:

41 a. In violation of constitutional provisions, including those protecting
42 procedural due process rights.

43 b. In excess of the statutory authority conferred upon the local
44 government or the authority conferred upon the decision-making
45 board by ordinance.

46 c. Inconsistent with applicable procedures specified by statute or
47 ordinance.

48 d. Affected by other error of law.

49 e. Unsupported by competent, material, and substantial evidence in view
50 of the entire record.

51 f. Arbitrary or capricious.

- 1 (2) When the issue before the court is whether the decision-making board erred
2 in interpreting an ordinance, the court shall review that issue de novo. The
3 court shall consider the interpretation of the decision-making board, but is not
4 bound by that interpretation, and may freely substitute its judgment as
5 appropriate.
- 6 (3) The term "competent evidence," as used in this subsection, shall not preclude
7 reliance by the decision-making board on evidence that would not be
8 admissible under the rules of evidence as applied in the trial division of the
9 General Court of Justice if (i) the evidence was admitted without objection or
10 (ii) the evidence appears to be sufficiently trustworthy and was admitted under
11 such circumstances that it was reasonable for the decision-making board to
12 rely upon it. The term "competent evidence," as used in this subsection, shall
13 not be deemed to include the opinion testimony of lay witnesses as to any of
14 the following:
- 15 a. The use of property in a particular way affects the value of other
16 property.
- 17 b. The increase in vehicular traffic resulting from a proposed
18 development poses a danger to the public safety.
- 19 c. Matters about which only expert testimony would generally be
20 admissible under the rules of evidence.
- 21 (k) Decision of the Court. – Following its review of the decision-making board in
22 accordance with subsection (j) of this section, the court may affirm the decision, reverse the
23 decision and remand the case with appropriate instructions, or remand the case for further
24 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
25 determine what relief should be granted to the petitioners:
- 26 (1) If the court concludes that the error committed by the decision-making board
27 is procedural only, the court may remand the case for further proceedings to
28 correct the procedural error.
- 29 (2) If the court concludes that the decision-making board has erred by failing to
30 make findings of fact such that the court cannot properly perform its function,
31 then the court may remand the case with appropriate instructions so long as
32 the record contains substantial competent evidence that could support the
33 decision below with appropriate findings of fact. However, findings of fact
34 are not necessary when the record sufficiently reveals the basis for the
35 decision below or when the material facts are undisputed and the case presents
36 only an issue of law.
- 37 (3) If the court concludes that the decision by the decision-making board is not
38 supported by competent, material, and substantial evidence in the record or is
39 based upon an error of law, then the court may remand the case with an order
40 that directs the decision-making board to take whatever action should have
41 been taken had the error not been committed or to take such other action as is
42 necessary to correct the error. Specifically:
- 43 a. If the court concludes that a permit was wrongfully denied because the
44 denial was not based on competent, material, and substantial evidence
45 or was otherwise based on an error of law, the court may remand with
46 instructions that the permit be issued, subject to reasonable and
47 appropriate conditions.
- 48 b. If the court concludes that a permit was wrongfully issued because the
49 issuance was not based on competent, material, and substantial
50 evidence or was otherwise based on an error of law, the court may
51 remand with instructions that the permit be revoked.

1 (l) Effect of Appeal and Ancillary Injunctive Relief. –

2 (1) If a development approval is appealed, the applicant shall have the right to
3 commence work while the appeal is pending. However, if the development
4 approval is reversed by a final decision of any court of competent jurisdiction,
5 the applicant shall not be deemed to have gained any vested rights on the basis
6 of actions taken prior to or during the pendency of the appeal and must proceed
7 as if no development approval had been granted.

8 (2) Upon motion of a party to a proceeding under this section, and under
9 appropriate circumstances, the court may issue an injunctive order requiring
10 any other party to that proceeding to take certain action or refrain from taking
11 action that is consistent with the court's decision on the merits of the appeal.

12 (m) Joinder. – A declaratory judgment brought under G.S. 160D-14-1 or other civil action
13 relating to the decision at issue may be joined with the petition for writ of certiorari and decided
14 in the same proceeding.

15 **"§ 160D-14-3. Appeals of decisions on subdivision plats.**

16 (a) When a subdivision regulation adopted under this Chapter provides that the decision
17 whether to approve or deny a preliminary or final subdivision plat is quasi-judicial, then that
18 decision of the board shall be subject to review by the superior court by proceedings in the nature
19 of certiorari. The provisions of G.S. 160D-4-6 and this section shall apply to those appeals.

20 (b) When a subdivision regulation adopted under this Chapter provides that the decision
21 whether to approve or deny a preliminary or final subdivision plat is administrative, then that
22 decision of the board shall be subject to review by filing an action in superior court seeking
23 appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the
24 decision, which shall be made as provided in G.S. 160D-4-3(b).

25 (c) For purposes of this section, a subdivision regulation shall be deemed to authorize a
26 quasi-judicial decision if the decision-making entity under G.S. 160D-8-3(c) is authorized to
27 decide whether to approve or deny the plat based not only upon whether the application complies
28 with the specific requirements set forth in the regulation but also on whether the application
29 complies with one or more generally stated standards requiring a discretionary decision to be
30 made.

31 **"§ 160D-14-4. Other civil actions.**

32 Except as expressly stated, this Article does not limit the availability of civil actions otherwise
33 authorized by law or alter the times in which they may be brought.

34 **"§ 160D-14-5. Statutes of limitation.**

35 (a) Zoning Map Adoption or Amendments. – A cause of action as to the validity of any
36 regulation adopting or amending a zoning map adopted under this Chapter or other applicable
37 law or a development agreement adopted under Article 10 of this Chapter shall accrue upon
38 adoption of such ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

39 (b) Text Adoption or Amendment. – Except as otherwise provided in subsection (a) of
40 this section, an action challenging the validity of a development regulation adopted under this
41 Chapter or other applicable law shall be brought within one year of the accrual of such action.
42 Such an action accrues when the party bringing such action first has standing to challenge the
43 ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process
44 shall be brought within three years after the adoption of the ordinance.

45 (c) Enforcement Defense. – Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1
46 shall bar a party in an action involving the enforcement of a development regulation from raising
47 as a defense in such proceedings the invalidity of the ordinance. Nothing in this section or in
48 G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
49 requirement, decision, or determination made by an administrative official contending that such
50 party is in violation of a development regulation from raising in the judicial appeal the invalidity
51 of such ordinance as a defense to such order, requirement, decision, or determination. A party in

1 an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an
 2 alleged defect in the adoption process unless the defense is formally raised within three years of
 3 the adoption of the challenged ordinance.

4 (d) Quasi-Judicial Decisions. – Unless specifically provided otherwise, a petition for
 5 review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of
 6 30 days after the decision is effective or after a written copy thereof is given in accordance with
 7 G.S. 160D-4-6(j). When first-class mail is used to deliver notice, three days shall be added to the
 8 time to file the petition.

9 (e) Others. – Except as provided by this section, the statutes of limitations shall be as
 10 provided in Subchapter II of Chapter 1 of the General Statutes."

11 **SECTION 2.5.(a)** G.S. 1-54 reads as rewritten:

12 **"§ 1-54. One year.**

13 Within one year an action or proceeding –

14 ...

15 (10) ~~Actions contesting the validity of any zoning or unified development~~
 16 ~~ordinance or any provision thereof adopted under Part 3 of Article 18 of~~
 17 ~~Chapter 153A or Part 3 of Article 19 of Chapter 160A Chapter 160D of the~~
 18 ~~General Statutes or other applicable law, other than an ordinance adopting or~~
 19 ~~amending a zoning map or approving a special use, conditional use, or~~
 20 ~~conditional zoning district rezoning request. map. Such an action accrues~~
 21 ~~when the party bringing such action first has standing to challenge the~~
 22 ~~ordinance; provided that, a challenge to an ordinance on the basis of an alleged~~
 23 ~~defect in the adoption process shall be brought within three years after the~~
 24 ~~adoption of the ordinance.~~

25"

26 **SECTION 2.5.(b)** G.S. 1-54.1 reads as rewritten:

27 **"§ 1-54.1. Two months.**

28 Within two months an action contesting the validity of any ordinance adopting or amending
 29 a zoning map ~~or approving a special use, conditional use, conditional zoning district rezoning~~
 30 ~~request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article 19~~
 31 ~~of Chapter 160A of the General Statutes or other applicable law. Article 7 of Chapter 160D of~~
 32 ~~the General Statutes. Such an action accrues upon adoption of such ordinance or amendment. As~~
 33 ~~used herein, the term two months shall be calculated as 60 days."~~

34 **SECTION 2.5.(c)** G.S. 63-31(a) reads as rewritten:

35 **"§ 63-31. Adoption of airport zoning regulations.**

36 (a) Every political subdivision may adopt, administer, and enforce, under the police
 37 power ~~and in the manner and upon the conditions hereinafter prescribed, or as a land development~~
 38 ~~regulation under Chapter 160D of the General Statutes, airport zoning regulations, which~~
 39 ~~regulations shall divide the area surrounding any airport within the jurisdiction of said political~~
 40 ~~subdivision into zones, and, within such zones, specify the land uses permitted, and regulate and~~
 41 ~~restrict the height to which structures and trees may be erected or allowed to grow. In adopting~~
 42 ~~or revising any such zoning regulations, the political subdivision shall consider, among other~~
 43 ~~things, the character of the flying operations expected to be conducted at the airport, the nature~~
 44 ~~of the terrain, the height of existing structures and trees above the level of the airport, the~~
 45 ~~possibility of lowering or removing existing obstructions, and the views of the agency of the~~
 46 ~~federal government charged with the fostering of civil aeronautics, as to the aerial approaches~~
 47 ~~necessary to safe flying operations at the airport."~~

48 **SECTION 2.5.(d)** G.S. 63-32(b) reads as rewritten:

49 **"§ 63-32. Permits, new structures, etc., and variances.**

50 ...

1 (b) Variances. – Any person desiring to erect any structures, or increase the height of any
 2 structure, or permit the growth of any tree, or otherwise use his property, in violation of airport
 3 zoning regulations adopted under this Article, may apply to the board of appeals, as provided in
 4 G.S. 63-33, subsection (c), for a variance from the zoning regulations in question. Such variances
 5 shall be allowed where a literal application or enforcement of the regulations would result in
 6 practical difficulty or unnecessary hardship and the relief granted would not be contrary to the
 7 public interest but do substantial justice and shall be considered pursuant to G.S. 160D-7-5(d)
 8 and be in accordance with the spirit of the regulations and this Article."

9 **SECTION 2.5.(e)** G.S. 63-33 reads as rewritten:

10 **"§ 63-33. Procedure.**

11 (a) Adoption of Zoning Regulations. – No airport zoning regulations shall be adopted,
 12 amended, or changed under this Article except by action of the legislative body of the political
 13 subdivision in question, or the joint board provided for in G.S. 63-31, subsection (c), ~~after a~~
 14 ~~public hearing in relation thereto, at which parties in interest and citizens shall have an~~
 15 ~~opportunity to be heard. At least 10 days' notice of the hearing shall be published in an official~~
 16 ~~paper, or a paper of general circulation, in the political subdivision or subdivisions in which the~~
 17 ~~airport is located, following the procedures set for adoption of development regulations in Article~~
 18 ~~6 of Chapter 160D of the General Statutes.~~

19 ...

20 (c) Administration of Airport Zoning Regulations – Board of Appeals. – Airport zoning
 21 regulations adopted under this Article shall provide for a board of appeals to have and exercise
 22 the following powers:

- 23 (1) To hear and decide appeals from any order, requirement, decision, or
 24 determination made by the administrative agency in the enforcement of this
 25 ~~Article or of any ordinance adopted pursuant thereto; Article.~~
 26 (2) To hear and decide special ~~exceptions to the terms of the ordinance use~~
 27 ~~permits upon which such board may be required to pass under such~~
 28 ~~ordinance; ordinance.~~
 29 (3) To hear and decide specific ~~variances under G.S. 63-32, subsection~~
 30 ~~(b); variances.~~

31 ~~Where a zoning board of appeals or adjustment already exists, it may be appointed as the~~
 32 ~~board of appeals. Otherwise, the board of appeals shall consist of five members, each to be~~
 33 ~~appointed for a term of three years and to be removable for cause by the appointing authority~~
 34 ~~upon written charges and after public hearing. G.S. 160D-4-5 and G.S. 160D-4-6 shall be~~
 35 ~~applicable to appeals, special use permits, and variance petitions made pursuant to this section.~~

36 ~~The board shall adopt rules in accordance with the provisions of any ordinance adopted under~~
 37 ~~this Article. Meetings of the board shall be held at the call of the chairman and at such other times~~
 38 ~~as the board may determine. The chairman, or in his absence the acting chairman, may administer~~
 39 ~~oaths and compel the attendance of witnesses. All meetings of the board shall be public. The~~
 40 ~~board shall keep minutes of its proceedings, showing the vote of each member upon each~~
 41 ~~question, or, if absent or failing to vote, indicating such fact, and shall keep records of its~~
 42 ~~examinations and other official actions, all of which shall immediately be filed in the office of~~
 43 ~~the board and shall be a public record.~~

44 ~~Appeals to the board may be taken by any person aggrieved, or by any officer, department,~~
 45 ~~board, or bureau of the political subdivision affected, by any decision of the administrative~~
 46 ~~agency. An appeal must be taken within a reasonable time, as provided by the rules of the board,~~
 47 ~~by filing with the agency from which the appeal is taken and with the board, a notice of appeal~~
 48 ~~specifying the grounds thereof. The agency from which the appeal is taken shall forthwith~~
 49 ~~transmit to the board all the papers constituting the record upon which the action appealed from~~
 50 ~~was taken.~~

1 An appeal shall stay all proceedings in furtherance of the action appealed from, unless the
2 agency from which the appeal is taken certifies to the board, after the notice of appeal has been
3 filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause
4 imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by
5 a restraining order which may be granted by the board or by a court of record on application on
6 notice to the agency from which the appeal is taken and on due cause shown.

7 The board shall fix a reasonable time for the hearing of the appeal, give public notice and due
8 notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing
9 any party may appear in person or by agent or by attorney.

10 The board may, in conformity with the provisions of this Article, reverse or affirm, wholly
11 or partly, or modify, the order, requirement, decision or determination appealed from and may
12 make such order, requirement, decision or determination as ought to be made, and to that end
13 shall have all the powers of the administrative agency from which the appeal is taken.

14 The concurring vote of a majority of the members of the board shall be sufficient to reverse
15 any order, requirement, decision, or determination of the administrative agency, or to decide in
16 favor of the applicant on any matter upon which it is required to pass under any such ordinance,
17 or to effect any variation in such ordinance."

18 **SECTION 2.5.(f)** G.S. 63-34 reads as rewritten:

19 **"§ 63-34. Judicial review.**

20 (a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or
21 any officer, department, board, or bureau of the political subdivision, may present to the superior
22 court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying
23 the grounds of the illegality. Such petition shall be presented to the court within 30 days after the
24 decision is filed in the office of the board. Such petition shall comply with the provisions of G.S.
25 160A-393.

26 (b) The allowance of the writ shall not stay proceedings upon the decision appealed from,
27 but the court may, on application, on notice to the board and on due cause shown, grant a
28 restraining order.

29 (c) The board of appeals shall not be required to return the original papers acted upon by
30 it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof
31 as may be called for by the writ. The return shall concisely set forth such other facts as may be
32 pertinent and material to show the grounds of the decision appealed from and shall be verified.

33 (d) Repealed by Session Laws 2009-421, s. 3, effective January 1, 2010.

34 (e) Costs shall not be allowed against the board of appeals unless it appears to the court
35 that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed
36 from.

37 G.S. 160D-14-1 shall be applicable to judicial review of administrative and quasi-judicial
38 decisions made pursuant to this Article."

39 **SECTION 2.5.(g)** G.S. 63-35 reads as rewritten:

40 **"§ 63-35. Enforcement and remedies.**

41 Each violation of this Article or of any regulations, order, or ruling promulgated or made
42 pursuant to this Article, shall constitute a Class 3 misdemeanor, and each day a violation
43 continues to exist shall constitute a separate offense. In addition, the political subdivision within
44 which the property is located may institute in any court of competent jurisdiction, an action to
45 prevent, restrain, correct or abate any violation of this Article, or of airport zoning regulations
46 adopted under this Article, or of any order or ruling made in connection with their administration
47 or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction
48 (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances
49 of the case, in order fully to effectuate the purposes of this Article and of the regulations adopted
50 and orders and rulings made pursuant thereto. G.S. 160D-4-4 shall be applicable to ordinances
51 adopted pursuant to this Article."

1 **SECTION 2.5.(h)** G.S. 143-215.57 reads as rewritten:

2 "**§ 143-215.57. Procedures in issuing permits.**

3 ...

4 (b) In prescribing standards and requirements for the issuance of permits under this Part
5 and in issuing permits, local governments shall proceed as in the case of an ordinance for the
6 better government of the county or city as the case may be. ~~A city may exercise the powers~~
7 ~~granted in this Part not only within its corporate boundaries but also within the area of its~~
8 ~~extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any~~
9 ~~place within the county that is outside the zoning jurisdiction of a city in the county. If a city does~~
10 ~~not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction, the~~
11 ~~county may exercise the powers granted in this Part in the city's extraterritorial zoning~~
12 ~~jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose~~
13 ~~governing body, by resolution, agrees to the regulation. The governing body of a city may, upon~~
14 ~~one year's written notice, withdraw its approval of the county regulations, and those regulations~~
15 ~~shall have no further effect within the city's jurisdiction.~~ Local government jurisdiction for these
16 ordinances shall be as specified in Article 2 of Chapter 160D of the General Statutes. Article 4
17 of Chapter 160D of the General Statutes shall apply to the administration, enforcement, and
18 appeals regarding these ordinances.

19 (e) ~~The local governing body is hereby empowered to adopt regulations it may deem~~
20 ~~necessary concerning the form, time, and manner of submission of applications for permits under~~
21 ~~this Part. These regulations may provide for the issuance of permits under this Part by the local~~
22 ~~governing body or by an agency designated by the local governing body, as prescribed by the~~
23 ~~governing body. Every final decision granting or denying a permit under this Part shall be subject~~
24 ~~to review by the superior court of the county, with the right of jury trial at the election of the~~
25 ~~party seeking review. The time and manner of election of a jury trial shall be governed by G.S.~~
26 ~~1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no~~
27 ~~action shall be taken that would be unlawful in the absence of a permit issued under this Part."~~

28 **SECTION 2.5.(i)** G.S. 143-215.58 reads as rewritten:

29 "**§ 143-215.58. Violations and penalties.**

30 ...

31 (a1) A local government may use all of the remedies available for the enforcement of
32 ordinances under Chapters ~~453A and 160A-153A~~, 160A, and 160D of the General Statutes to
33 enforce an ordinance adopted pursuant to this Part.

34 (b) Failure to remove any artificial obstruction or enlargement or replacement thereof,
35 that violates this Part or any ordinance adopted (or the provision of any permit issued) under the
36 authority of this Part, shall constitute a separate violation of this Part for each day that the failure
37 continues after written notice from the county board of commissioners or governing ~~body~~ board
38 of a city.

39 (c) In addition to or in lieu of other remedies, the county board of commissioners or
40 governing ~~body~~ board of a city may institute any appropriate action or proceeding to restrain or
41 prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit
42 issued) under the authority of this Part, or to require any person, firm or corporation that has
43 committed a violation to remove a violating obstruction or restore the conditions existing before
44 the placement of the obstruction."

45 **SECTION 2.5.(j)** G.S. 130A-55 reads as rewritten:

46 "**§ 130A-55. Corporate powers.**

47 A sanitary district board shall be a body politic and corporate and may sue and be sued in
48 matters relating to the sanitary district. Notwithstanding any limitation in the petition under
49 G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may
50 exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary
51 district board shall have the following powers:

1 ...
 2 (17) For the purpose of promoting and protecting the public health, safety and the
 3 general welfare of the State, a sanitary district board is authorized to establish
 4 as zoning units any portions of the sanitary district not under the control of the
 5 United States or this State or any agency or instrumentality of either, in
 6 accordance with the following:

7 ...
 8 b. When a zoning area is established within a sanitary district, the
 9 sanitary district board as to the zoning area shall have all rights,
 10 privileges, powers and duties granted to ~~municipal corporations under~~
 11 ~~Part 3, Article 19, Chapter 160A~~ local governments under Article 7 of
 12 Chapter 160D of the General Statutes. However, the sanitary district
 13 board shall not be required to appoint any zoning commission or board
 14 of adjustment. If neither a zoning commission nor board of adjustment
 15 is appointed, the sanitary district board shall have all rights.

16"
 17 **SECTION 2.5.(k)** G.S. 143-214.5(d) reads as rewritten:

18 "(d) Mandatory Local Programs. – The Department shall assist local governments to
 19 develop water supply watershed protection programs that comply with this section. Local
 20 government compliance programs shall include an implementing local ordinance and shall
 21 provide for maintenance, inspection, and enforcement procedures. As part of its assistance to
 22 local governments, the Commission shall approve and make available a model local water supply
 23 watershed management and protection ordinance. The model management and protection
 24 ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling
 25 development density, (ii) providing for performance-based alternatives to development density
 26 controls that are based on sound engineering principles, and (iii) a combination of both (i) and
 27 (ii). Local governments shall administer and enforce the minimum management requirements.
 28 Every local government that has within its jurisdiction all or a portion of a water supply watershed
 29 shall submit a local water supply watershed management and protection ordinance to the
 30 Commission for approval. Local governments may adopt such ordinances pursuant to their
 31 general police power, power to regulate the subdivision of land, zoning power, or any
 32 combination of such powers. In adopting a local ordinance that imposes water supply watershed
 33 management requirements that are more stringent than those adopted by the Commission, a
 34 ~~county local government~~ must comply with the notice provisions of G.S. 153A-343 and a
 35 ~~municipality must comply with the notice provisions of G.S. 160A-384.~~ Article 6 of Chapter
 36 160D of the General Statutes. This section shall not be construed to affect the validity of any
 37 local ordinance adopted for the protection of water supply watersheds prior to completion of the
 38 review of the ordinance by the Commission or prior to the assumption by the Commission of
 39 responsibility for a local water supply watershed protection program. Local governments may
 40 create or designate agencies to administer and enforce such programs. The Commission shall
 41 approve a local program only if it determines that the requirements of the program equal or
 42 exceed the minimum statewide water supply watershed management requirements adopted
 43 pursuant to this section."

44 **SECTION 2.5.(l)** G.S. 113A-208 reads as rewritten:

45 **"§ 113A-208. Regulation of mountain ridge construction by counties and cities.**

46 (a) Any county or city may adopt, effective not later than January 1, 1984, and may
 47 enforce an ordinance that regulates the construction of tall buildings or structures on protected
 48 mountain ridges by any person. The ordinance may provide for the issuance of permits to
 49 construct tall buildings on protected mountain ridges, the conditioning of such permits, and the
 50 denial of permits for such construction. Any ordinance adopted hereunder shall be based upon
 51 studies of the mountain ridges within the county, a statement of objectives to be sought by the

1 ordinance, and plans for achieving these objectives. Any such county ordinance shall apply
2 countywide except as otherwise provided in ~~G.S. 160A-360, Article 2 of Chapter 160D of the~~
3 General Statutes and any such city ordinance shall apply citywide, to construction of tall
4 buildings on protected mountain ridges within the city or county, as the case may be.

5 A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an ordinance
6 eliminating the requirement for an elevation of 3,000 feet, as permitted by G.S. 113A-206(6).

7 (b) Under the ordinance, permits shall be denied if a permit application (and shall be
8 revoked if a project) fails to provide for:

9 ...

10 (4) Adequate consideration to protecting the natural beauty of the mountains, as
11 determined by the local governing ~~body~~board.

12 ...

13 (f) Any county or city that adopts an ordinance pursuant to this section ~~must hold a public~~
14 ~~hearing before adopting the ordinance upon the question of adopting the ordinance or of allowing~~
15 ~~the construction of tall buildings on protected mountain ridges to be governed by G.S. 113A-209.~~
16 ~~The public hearing required by this section shall be held upon at least 10 days' notice in a~~
17 ~~newspaper of general circulation in the unit adopting the ordinance. Testimony at the hearing~~
18 ~~shall be recorded and any and all exhibits shall be preserved within the custody of the governing~~
19 ~~body. The testimony and evidence shall be made available for inspection and scrutiny by any~~
20 ~~person shall follow the procedures of Article 6 of Chapter 160D of the General Statutes.~~

21 (g) Any resident of a county or city that adopted an ordinance pursuant to this section, or
22 of an adjoining county, may bring a civil action against the ordinance adopting unit, contesting
23 the ordinance as not meeting the requirements of this section. If the ordinance is found not to
24 meet all of the requirements of this section, the county or city shall be enjoined from enforcing
25 the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this Article authorizes
26 the State of North Carolina or any of its agencies to bring a civil action to contest an ordinance,
27 or for a violation of this Article or of an ordinance adopted pursuant to this Article."

28 **SECTION 2.5.(m)** G.S. 113A-211(a) reads as rewritten:

29 "(a) Violations of this Article shall be subject to the same criminal sanctions, civil
30 penalties and equitable remedies as ~~violations of county ordinances under G.S.~~
31 ~~153A-123 provided by G.S. 160D-4-4."~~

32 **SECTION 2.5.(n)** G.S. 160A-75 reads as rewritten:

33 **"§ 160A-75. Voting.**

34 No member shall be excused from voting except upon matters involving the consideration of
35 the member's own financial interest or official conduct or on matters on which the member is
36 prohibited from voting under ~~G.S. 14-234, 160A-381(d), or 160A-388(e)(2).~~ G.S. 14-234 or
37 G.S. 160D-1-9. In all other cases except votes taken under ~~G.S. 160A-385, G.S. 160D-6-1,~~ a
38 failure to vote by a member who is physically present in the council chamber, or who has
39 withdrawn without being excused by a majority vote of the remaining members present, shall be
40 recorded as an affirmative vote. The question of the compensation and allowances of members
41 of the council is not a matter involving a member's own financial interest or official conduct.

42 An affirmative vote equal to a majority of all the members of the council not excused from
43 voting on the question in issue, including the mayor's vote in case of an equal division, shall be
44 required to adopt an ordinance, take any action having the effect of an ordinance, authorize or
45 commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of
46 the city. In addition, no ordinance nor any action having the effect of any ~~ordinance~~ordinance,
47 except an ordinance on which a public hearing must be held pursuant to G.S. 160D-6-1 before
48 the ordinance may be adopted, may be finally adopted on the date on which it is introduced except
49 by an affirmative vote equal to or greater than two thirds of all the actual membership of the
50 council, excluding vacant seats and not including the mayor unless the mayor has the right to

1 vote on all questions before the council. For purposes of this section, an ordinance shall be
2 deemed to have been introduced on the date the subject matter is first voted on by the council."

3 **SECTION 2.5.(o)** G.S. 136-18 reads as rewritten:

4 **"§ 136-18. Powers of Department of Transportation.**

5 The said Department of Transportation is vested with the following powers:

6 ...

7 (10) To make proper and reasonable rules, regulations and ordinances for the
8 placing or erection of telephone, telegraph, electric and other lines, above or
9 below ground, wireless facilities, signboards, fences, gas, water, sewerage,
10 oil, or other pipelines, and other similar obstructions that may, in the opinion
11 of the Department of Transportation, contribute to the hazard upon any of the
12 said highways or in any way interfere with the same, and to make reasonable
13 rules and regulations for the proper control thereof. And whenever the order
14 of the said Department of Transportation shall require the removal of, or
15 changes in, the location of telephone, telegraph, electric or other lines,
16 wireless facilities, signboards, fences, gas, water, sewerage, oil, or other
17 pipelines, or other similar obstructions, the owners thereof shall at their own
18 expense, except as provided in G.S. 136-19.5(c), move or change the same to
19 conform to the order of said Department of Transportation. Any violation of
20 such rules and regulations or noncompliance with such orders shall constitute
21 a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities"
22 shall have the definition set forth in ~~G.S. 160A-400.51~~G.S. 160D-9-31.

23"

24 **SECTION 2.5.(p)** G.S. 136-18.3A reads as rewritten:

25 **"§ 136-18.3A. Wireless communications infrastructure.**

26 (a) The definitions set forth in ~~G.S. 160A-400.51~~G.S. 160D-9-31 shall apply to this
27 section.

28"

29 **SECTION 2.6.(a)** G.S. 153A-102.1 is repealed.

30 **SECTION 2.6.(b)** G.S. 160A-4.1 is repealed.

31 **SECTION 2.6.(c)** G.S. 160A-181.1 is repealed.

32 **SECTION 2.6.(d)** G.S. 153A-143 is repealed.

33 **SECTION 2.6.(e)** G.S. 160A-199 is repealed.

34 **SECTION 2.6.(f)** G.S. 153A-144 is repealed.

35 **SECTION 2.6.(g)** G.S. 160A-201 is repealed.

36 **SECTION 2.6.(h)** G.S. 153A-452 is repealed.

37 **SECTION 2.6.(i)** G.S. 153A-455 is repealed.

38 **SECTION 2.6.(j)** Article 3 of Chapter 168 of the General Statutes is repealed.

39 **SECTION 2.7.** Article 23 of Chapter 153A of the General Statutes is amended by

40 adding the following new sections to read:

41 **"§ 153A-458. Submission of statement concerning improvements.**

42 A county may by ordinance require that when a property owner improves property at a cost
43 of more than two thousand five hundred dollars (\$2,500) but less than five thousand dollars
44 (\$5,000), the property owner must, within 14 days after the completion of the work, submit to
45 the county assessor a statement setting forth the nature of the improvement and the total cost
46 thereof.

47 **"§ 153A-459. Authorization to provide grants.**

48 A county may provide grants to unaffiliated qualified private providers of high-speed Internet
49 access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service
50 in unserved areas for economic development in the county. The grants shall be awarded on a
51 technology neutral basis, shall be open to qualified applicants, and may require matching funds

1 by the private provider. A county shall seek and consider requests for proposal from qualified
2 private providers within the county prior to awarding a broadband grant and shall use reasonable
3 means to ensure that potential applicants are made aware of the grant, including, at a minimum,
4 compliance with the notice procedures set forth in G.S. 160A-340.6(c). The county shall use only
5 unrestricted general fund revenue for the grants. For the purposes of this section, a qualified
6 private provider is a private provider of high-speed Internet access service in the State prior to
7 the issuance of the grant proposal. Nothing in this section authorizes a county to provide
8 high-speed Internet broadband service."

9 **SECTION 2.8.** If any provision of this act or its application is held invalid, the
10 invalidity does not affect other provisions or applications of this act that can be given effect
11 without the invalid provisions or application, and, to this end, the provisions of this act are
12 severable.

13 **SECTION 2.9.(a)** Any otherwise valid permit or development approval made prior
14 to January 1, 2021, shall not be invalid based on inconsistency with the provisions of this act.
15 The validity of any plan adopted prior to January 1, 2021, is not affected by a failure to comply
16 with the procedural requirements of G.S. 160D-5-1(b).

17 **SECTION 2.9.(b)** Any special use district or conditional use district zoning district
18 that is valid and in effect as of January 1, 2021, shall be deemed a conditional zoning district
19 consistent with the terms of this act, and the special or conditional use permits issued concurrently
20 with establishment of those districts shall be valid as specified in Section 2.9.(a) of this act. Any
21 valid "conditional use permit" issued prior to January 1, 2021, shall be deemed a "special use
22 permit" consistent with the provisions of this act.

23 **SECTION 2.9.(c)** Any local government that has adopted zoning regulations but that
24 has not adopted a comprehensive plan shall adopt such plan no later than July 1, 2022, in order
25 to retain the authority to adopt and apply zoning regulations.

26 **SECTION 2.10.** If Part II of this act becomes law in 2019, it is the intent of the
27 General Assembly that legislation contained in Part I of this act or in other acts enacted in the
28 2019 Regular Session of the 2019 General Assembly, or that affects statutes repealed and
29 replaced by similar provisions in Chapter 160D of the General Statutes, as enacted by Part II of
30 this act, also be incorporated into Chapter 160D of the General Statutes. It is the further intent of
31 the General Assembly that legislation contained in the telecommunications provisions of Part II
32 of this act makes no substantive policy changes from the statutes repealed. The North Carolina
33 General Statutes Commission shall study the need for legislation to accomplish this intent and
34 shall report its findings and recommendations, including any legislative proposals, to the 2020
35 Regular Session of the 2019 General Assembly.

36 37 **PART III. EFFECTIVE DATES**

38 **SECTION 3.1.** Part I of this act is effective when it becomes law. Sections 1.4, 1.5,
39 and 1.16 of this act apply to applications for down-zoning amendments and for driveway
40 improvements submitted on or after that date and to appeals from decisions related to such
41 applications filed on or after that date. Sections 1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12,
42 1.13, 1.14, 1.15, and 1.17 of this act clarify and restate the intent of existing law and apply to
43 ordinances adopted before, on, and after the effective date.

44 **SECTION 3.2.** Part II of this act becomes effective January 1, 2021, and applies to
45 local government development regulation decisions made on or after that date. Part II of this act
46 clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and
47 after the effective date.

48 **SECTION 3.3.** The remainder of this act is effective when it becomes law.