

Proposed technical correction:

SECTION #.(a) G.S. 1-54.1 reads as rewritten:

"§ 1-54.1. ~~Two months. Sixty days.~~

★ ~~Within two months an~~ An action contesting the validity of any ordinance adopting or amending a zoning map or approving a conditional zoning district rezoning request ~~under Article 7 of Chapter 160D of the General Statutes. Such an action accrues upon adoption of such ordinance or amendment. As used herein, the term two months shall be calculated as 60 days.~~ shall be brought within 60 days of the adoption of the ordinance." (1981, c. 705, s. 1; c. 891, s. 4; 1991 (Reg. Sess., 1992), c. 1030, s. 1; 1995 (Reg. Sess., 1996), c. 746, s. 5; 2011-384, s. 2; 2019-111, s. 2.5(b); 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

SECTION #.(b) G.S. 160D-1405 reads as rewritten:

"§ 160D-1405. Statutes of limitation.

(a) Zoning Map Adoption or Amendments. – A cause of action as to the validity of any regulation adopting or amending a zoning map adopted under this Chapter or other applicable law or a development agreement adopted under Article 10 of this Chapter accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

→ ★ (b) Text Adoption or Amendment. – Except as otherwise provided in subsection (a) of this section, an action challenging the validity of a development regulation adopted under this Chapter or other applicable law shall be brought within one year of the accrual of ~~such action. the action~~ as provided in G.S. 1-54(10). ~~Such an~~ The action accrues when the party bringing ~~such the~~ the action first has standing to challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ~~ordinance. ordinance~~ as provided in G.S. 1-54(10).

→ ★ (c) Enforcement Defense. – Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 bars a party in an action involving the enforcement of a development regulation or in an action under G.S. 160D-1403.1 from raising as a claim or defense ~~in the proceedings~~ the enforceability or the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 bars a party ~~who that~~ who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that the party is in violation of a development regulation from raising in the judicial appeal the invalidity of the ordinance as a defense to the order, requirement, decision, or determination. A party in an enforcement action or appeal ~~may shall~~ shall not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance.

(c1) Termination of Grandfathered Status. – When a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, a local government shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety.

→ (d) Quasi-Judicial Decisions. – Unless specifically provided otherwise, a petition for review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy ~~thereof of it~~ thereof is given in accordance with G.S. 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(e) Others. – Except as provided by this section, the statutes of limitations are as provided in Subchapter II of Chapter 1 of the General Statutes." (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 48, 50(b), 51(a), (b), (d).)

Explanation: This proposed technical correction amends G.S. 1-54.1 by adding the phrase "or approving a" that was mistakenly deleted from the statute by S.L. 2019-111 (the session law that reorganized the land-use laws into Chapter 160D of the General Statutes). It also adds the phrase "shall be brought" to complete a sentence fragment and makes stylistic changes to shorten the language.

At a previous meeting, the Commission directed staff to add a reference to G.S. 1-54 in subsection (b) of G.S. 160D-1405 to be consistent with the rest of that section. Staff has included other clean-up changes to that section.

Reported by Professor David Owens at the UNC School of Government. Mike Carpenter from the NC Home Builders Association and Craig Justus also provided valuable feedback.

Background:

Session law excerpt:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SESSION LAW 2019-111
SENATE BILL 355**

**AN ACT TO CLARIFY, CONSOLIDATE, AND REORGANIZE THE LAND-USE
REGULATORY LAWS OF THE STATE.**

The General Assembly of North Carolina enacts:

...

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

...

SECTION 2.5.(b) G.S. 1-54.1 reads as rewritten:
"§ 1-54.1. Two months.

Within two months an action contesting the validity of any ordinance adopting or amending a zoning map ~~or approving a special use, conditional use, conditional zoning district rezoning request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law.~~ Article 7 of Chapter 160D of the General Statutes. Such an action accrues upon adoption of such ordinance or amendment. As used herein, the term two months shall be calculated as 60 days."

...

SECTION 3.2. Part II of this act becomes effective January 1, 2021, and applies to local government development regulation decisions made on or after that date. Part II of this act clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and after the effective date.

SECTION 3.3. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Sarah Stevens
Speaker Pro Tempore of the House of Representatives

s/ Roy Cooper
Governor

Approved 1:41 p.m. this 11th day of July, 2019

Background statute:

§ 1-54. One year.

Within one year an action or proceeding -

- (1) Repealed by Session Laws 1975, c. 252, s. 5.
- (2) Upon a statute, for a penalty or forfeiture, where the action is given to the State alone, or in whole or in part to the party aggrieved, or to a common informer, except where the statute imposing it prescribes a different limitation.
- (3) For libel and slander.
- (4) Against a public officer, for the escape of a prisoner arrested or imprisoned on civil process.
- (5) For the year's allowance of a surviving spouse or children.
- (6) For a deficiency judgment on any debt, promissory note, bond or other evidence of indebtedness after the foreclosure of a mortgage or deed of trust on real estate securing such debt, promissory note, bond or other evidence of indebtedness, which period of limitation above prescribed commences with the date of the delivery of the deed pursuant to the foreclosure sale: Provided, however, that if an action on the debt, note, bond or other evidence of indebtedness secured would be earlier barred by the expiration of the remainder of any other period of limitation prescribed by this subchapter, that limitation shall govern.
- (7) Repealed by Session Laws 1971, c. 939, s. 2.
- (7a) For recovery of damages under Article 1A of Chapter 18B of the General Statutes.

- (8) As provided in G.S. 105-377, to contest the validity of title to real property acquired in any tax foreclosure action or to reopen or set aside the judgment in any tax foreclosure action.
- (9) As provided in Article 14 of Chapter 126 of the General Statutes, entitled "Protection for Reporting Improper Government Activities".
- (10) Actions contesting the validity of any zoning or unified development ordinance or any provision thereof adopted under Chapter 160D of the General Statutes or other applicable law, other than an ordinance adopting or amending a zoning map. Such an action accrues when the party bringing such action first has standing to challenge the ordinance; provided that, a challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.
- (11) No suit, action, or proceeding under G.S. 14-190.5A(g) shall be brought or maintained against any person unless such suit, action, or proceeding is commenced within one year after the initial discovery of the disclosure, but in no event may the action be commenced more than seven years from the most recent disclosure of the private image.
- (12) Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017. (C.C.P., s. 35; Code, s. 156; 1885, c. 96; Rev., s. 397; C.S., s. 443; 1933, c. 529, s. 1; 1951, c. 837, s. 2; 1965, c. 9; 1969, c. 1001, s. 2; 1971, c. 12; c. 939, s. 2; 1975, c. 252, s. 5; 1977, c. 886, s. 3; 1983, c. 435, s. 38; 1989, c. 236, s. 4; 2001-175, s. 1; 2011-384, s. 1; 2015-250, s. 1.1; 2016-99, s. 2; 2017-4, s. 1; 2019-111, s. 2.5(a); 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

Email from Professor David Owens:

From: Owens, David W. <owens@sog.unc.edu>
Sent: Thursday, September 16, 2021 4:02 PM
To: David Unwin (Bill Drafting) <David.Unwin@ncleg.gov>
Cc: Caroline Sorensen (Bill Drafting) <Caroline.Sorensen@ncleg.gov>
Subject: RE: Additional technical correction related to Ch. 160D

Thank you. I assumed it would be the next session before this could be addressed.

I did look back through my drafting files for the original version of amendment and I found the source of the confusion. The drafting committee had placed a period after the phrase "zoning map" and intended to delete all of the rest of the language in that sentence as superfluous. However, the strikethrough for the rest of the sentence inadvertently left the phrase "conditional zoning district rezoning request under" without strikethrough. So as introduced and adopted, the bill took out the period and reinserted the reference to Article 7 so that the sentence would not be left hanging with "under . . ."

Within two months an action contesting the validity of any ordinance adopting or amending a zoning map. ~~or approving a special use,~~

~~conditional use, or conditional zoning district rezoning request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article 19 of Chapter 160A Article 7 of Chapter 160D of the General Statutes or other applicable law.~~ Such an action accrues upon adoption of such ordinance or amendment. As used herein, the term "two months" shall be calculated as sixty days.

It would be fine to just end the sentence after zoning map as originally intended or to make the tweak I sent you earlier. They are substantively the same.

Thanks.

From: David Unwin (Bill Drafting) <David.Unwin@ncleg.gov>
Sent: Thursday, September 16, 2021 3:47 PM
To: Owens, David W. <owens@sog.unc.edu>
Cc: Caroline Sorensen (Bill Drafting) <Caroline.Sorensen@ncleg.gov>
Subject: RE: Additional technical correction related to Ch. 160D

Thank you, Professor Owens, for pointing this out and for this explanation. Yes, we will share this with the General Statutes Commission. This year's General Statutes Commission technical corrections bill has already been enacted, so we will ask that this be included in next year's bill.

Best regards,
David

From: Owens, David W. <owens@sog.unc.edu>
Sent: Thursday, September 16, 2021 3:34 PM
To: David Unwin (Bill Drafting) <David.Unwin@ncleg.gov>
Cc: Caroline Sorensen (Bill Drafting) <Caroline.Sorensen@ncleg.gov>
Subject: Additional technical correction related to Ch. 160D

A practitioner recently sent me a query that identified another needed technical correction related to the adoption of Ch. 160D in 2019.

Sec. 2.5(b) of S.L. 2019-111 inadvertently included deletion of the conjunction "or" when deleting phrases related to special use and conditional use districts (as those types of rezonings were deleted elsewhere by Ch. 160D). That deletion is highlighted below:

SECTION 2.5.(b) G.S. 1-54.1 reads as rewritten: "§ 1-54.1. Two months. Within two months an action contesting the validity of any ordinance adopting or amending a zoning map ~~or approving a special use, conditional use,~~ conditional zoning district rezoning request under ~~Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article 19 of Chapter 160A of the General Statutes or other applicable law.~~

Article 7 of Chapter 160D of the General Statutes. Such an action accrues upon adoption of such ordinance or amendment. As used herein, the term two months shall be calculated as 60 days."

That inadvertent deletion leaves a current ungrammatical rendering of the statute as "adopting or amending a zoning map conditional zoning district rezoning." One potential literal reading of the resultant sentence would have the two month statute of limitations only apply to a zoning map amendment that involved a conditional zoning district rather than to all zoning map amendments. That would clearly be contrary to GS 160D-1405(a), also adopted by SL 2019-111, which continued the two-month statute of limits for rezonings in prior law. It also conflicts with GS 1-54(10) which sets a one year statute of limitations for challenges to zoning text amendments while explicitly stating that the one-year provision does not apply to zoning map amendments (since all of those were intended to be covered by GS 1-54.1). I suspect a court would resolve the ambiguity created by such a literal reading by effectuating the intent of the two-month limit applying to all rezonings, but it would certainly be helpful to remove the ambiguity by correcting this typo,

I think the corrected wording of the first sentence of GS 1-54.1 would be: "Within two months an action contesting the validity of any ordinance adopting or amending a zoning map or approving a conditional zoning district rezoning request" or something along those lines.

I hope you will be able to add this to your list of potential future technical corrections.

Thanks.

David W. Owens

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