

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019**

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**SENATE BILL 422\***

Short Title: Planning/Development Changes. (Public)

Sponsors: Senators McKissick and Newton (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 1, 2019

A BILL TO BE ENTITLED  
AN ACT TO REORGANIZE, CONSOLIDATE, MODERNIZE, AND CLARIFY STATUTES  
REGARDING LOCAL PLANNING AND DEVELOPMENT REGULATION.

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

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

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

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

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

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

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

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 18 of Chapter 153A of the General Statutes is repealed.

**SECTION 2.** Article 19 of Chapter 160A of the General Statutes is repealed.

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

**"Chapter 160D.**

**"Local Planning and Development Regulation.**

**"Article 1.**

**"General Provisions.**

**"§ 160D-1-1. Application.**

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



1 contrary provisions in local charters or acts, G.S. 160D-1-11 is applicable unless this Chapter  
2 expressly provides otherwise. The provisions of this Article also apply to any other local  
3 ordinance that substantially affects land use and development.

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

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

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

16 **"§ 160D-1-2. Definitions.**

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

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

- 1           a.     The construction, erection, alteration, enlargement, renovation,  
2           substantial repair, movement to another site, or demolition of any  
3           structure.  
4           b.     The excavation, grading, filling, clearing, or alteration of land.  
5           c.     The subdivision of land as defined in G.S. 160D-8-2.  
6           d.     The initiation or substantial change in the use of land or the intensity  
7           of use of land.

8           This definition does not alter the scope of regulatory authority granted by this  
9           Chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **"§ 160D-1-5. Maps.**

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

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

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

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

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

6 **"§ 160D-1-7. Moratoria.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

7 a. The written consent of the affected landowner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 "Article 3.

37 "Boards and Organizational Arrangements.

38 **"§ 160D-3-1. Planning boards.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

31 **"§ 160D-3-9. Oath of office.**

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

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

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

38 "Article 4.

39 "Administration, Enforcement, and Appeals.

40 **"§ 160D-4-1. Application.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 **"§ 160D-4-4. Enforcement.**

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

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

17       **(c) Remedies.** –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 "Article 5.

36 "Planning.

37 **"§ 160D-5-1. Plans.**

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

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



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

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

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

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

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

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

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

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

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

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

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

13 "Article 6.

14 "Development Regulation.

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

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

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

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

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

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

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

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

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

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

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

### 31 **"§ 160D-6-3. Citizen comments.**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 "Article 7.

9 "Zoning Regulation.

10 **"§ 160D-7-1. Purposes.**

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

24 **"§ 160D-7-2. Grant of power.**

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

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

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

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

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

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

20 **"§ 160D-7-3. Zoning districts.**

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

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

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

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

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

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

9 **"§ 160D-7-4. Incentives.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 "Article 8.

47 "Subdivision Regulation.

48 **"§ 160D-8-1. Authority.**

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



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

4 **"§ 160D-8-2. Applicability.**

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

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

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

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

19 (4) The division of a tract in single ownership whose entire area is no greater than  
20 2 acres into not more than three lots, where no street right-of-way dedication  
21 is involved and where the resultant lots are equal to or exceed the standards of  
22 the local government, as shown in its subdivision regulations.

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

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

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

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

32 (2) No part of the tract or parcel to be divided has been divided under this  
33 subsection in the 10 years prior to division.

34 (3) The entire area of the tract or parcel to be divided is greater than 5 acres.

35 (4) After division, no more than three lots result from the division.

36 (5) After division, all resultant lots comply with all of the following:

37 a. All lot dimension size requirements of the applicable land-use  
38 regulations, if any.

39 b. The use of the lots is in conformity with the applicable zoning  
40 requirements, if any.

41 c. A permanent means of ingress and egress is recorded for each lot.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17                                   "Article 9.

18                                   "Regulation of Particular Uses and Areas.

19                                   "Part 1. Particular Land Uses.

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

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

28   **"§ 160D-9-2. Adult businesses.**

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

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

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

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

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

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

3 (3) Clothing restrictions for entertainers.

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

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

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

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

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

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

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

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

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

47 (4) A forest management plan.

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

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

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

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

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

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

43 **"§ 160D-9-4. Airport zoning.**

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

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

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



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

5 **"§ 160D-9-6. Family care homes.**

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

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

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

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

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

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

28 **"§ 160D-9-7. Fence wraps.**

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

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

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

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

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

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

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

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

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

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

18 **"§ 160D-9-10. Modular homes.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27            a.       The size and format of the sign.

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

31            c.       The timing of the relocation.

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

34            a.       The actual cost of removing the sign.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 **"§ 160D-9-16. Bee hives.**

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

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

48 "Part 2. Environmental Regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           (5)     Regulate and protect streets.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

5 "Part 3. Wireless Telecommunication Facilities.

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

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

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

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

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

27 **"§ 160D-9-31. Definitions.**

28 The following definitions apply in this Part:

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

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

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

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

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

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

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

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

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

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

32 b. Wireline backhaul facilities.

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

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

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

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

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

50 **§ 160D-9-32. Local authority.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **"§ 160D-9-38. Applicability.**

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

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

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

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

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

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

26 "Part 4. Historic Preservation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **"§ 160D-9-43. Appropriations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (e) Appeals. –

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

42 "Part 5. Community Appearance Commissions.

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

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

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

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

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



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

5 **"§ 160D-10-2. Definitions.**

6        The following definitions apply in this Article:

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

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

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

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

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

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

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

36 **"§ 160D-10-5. Public hearing.**

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

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

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

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

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

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

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

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

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

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

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

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

42          **"§ 160D-10-7. Vesting.**

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

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

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

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

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

4 **"§ 160D-10-8. Breach and cure.**

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

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

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

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

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

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

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

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

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

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

42 **"§ 160D-10-11. Recordation.**

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

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

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

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

3 "Article 11.

4 "Building Code Enforcement.

5 **"§ 160D-11-1. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44               (1) Appealing to the Building Code Council.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **"§ 160D-11-25. Enforcement.**

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

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

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

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

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

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

45 **"§ 160D-11-27. Appeals.**

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



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

3 **"§ 160D-11-28. Fire limits.**

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

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

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

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

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

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

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

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

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

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

18       (e) Limitations on Orders. –

19           (1) An order may require the owner to repair, alter, or improve the nonresidential  
20 building or structure in order to bring it into compliance with the minimum  
21 standards established by the governing board or to vacate and close the  
22 nonresidential building or structure for any use.

23           (2) An order may require the owner to remove or demolish the nonresidential  
24 building or structure if the cost of repair, alteration, or improvement of the  
25 building or structure would exceed fifty percent (50%) of its then current  
26 value. Notwithstanding any other provision of law, if the nonresidential  
27 building or structure is designated as a local historic landmark, listed in the  
28 National Register of Historic Places, or located in a locally designated historic  
29 district or in a historic district listed in the National Register of Historic Places  
30 and the governing board determines, after a public hearing as provided by  
31 ordinance, that the nonresidential building or structure is of individual  
32 significance or contributes to maintaining the character of the district, and the  
33 nonresidential building or structure has not been condemned as unsafe, the  
34 order may require that the nonresidential building or structure be vacated and  
35 closed until it is brought into compliance with the minimum standards  
36 established by the governing board.

37           (3) An order may not require repairs, alterations, or improvements to be made to  
38 vacant manufacturing facilities or vacant industrial warehouse facilities to  
39 preserve the original use. The order may require such building or structure to  
40 be vacated and closed, but repairs may be required only when necessary to  
41 maintain structural integrity or to abate a health or safety hazard that cannot  
42 be remedied by ordering the building or structure closed for any use.

43       (f) Action by Governing Board Upon Failure to Comply With Order. –

44           (1) If the owner fails to comply with an order to repair, alter, or improve or to  
45 vacate and close the nonresidential building or structure, the governing board  
46 may adopt an ordinance ordering the public officer to proceed to effectuate  
47 the purpose of this section with respect to the particular property or properties  
48 that the public officer found to be jeopardizing the health or safety of its  
49 occupants or members of the general public. The property or properties shall  
50 be described in the ordinance. The ordinance shall be recorded in the office of  
51 the register of deeds and shall be indexed in the name of the property owner

1                   or owners in the grantor index. Following adoption of an ordinance, the public  
2                   officer may cause the building or structure to be repaired, altered, or improved  
3                   or to be vacated and closed. The public officer may cause to be posted on the  
4                   main entrance of any nonresidential building or structure so closed a placard  
5                   with the following words: "This building is unfit for any use; the use or  
6                   occupation of this building for any purpose is prohibited and unlawful." Any  
7                   person who occupies or knowingly allows the occupancy of a building or  
8                   structure so posted shall be guilty of a Class 3 misdemeanor.

9                   (2) If the owner fails to comply with an order to remove or demolish the  
10                   nonresidential building or structure, the governing board may adopt an  
11                   ordinance ordering the public officer to proceed to effectuate the purpose of  
12                   this section with respect to the particular property or properties that the public  
13                   officer found to be jeopardizing the health or safety of its occupants or  
14                   members of the general public. No ordinance shall be adopted to require  
15                   demolition of a nonresidential building or structure until the owner has first  
16                   been given a reasonable opportunity to bring it into conformity with the  
17                   minimum standards established by the governing board. The property or  
18                   properties shall be described in the ordinance. The ordinance shall be recorded  
19                   in the office of the register of deeds and shall be indexed in the name of the  
20                   property owner or owners in the grantor index. Following adoption of an  
21                   ordinance, the public officer may cause the building or structure to be removed  
22                   or demolished.

23                   (g) Action by Governing Board Upon Abandonment of Intent to Repair. – If the  
24                   governing board has adopted an ordinance or the public officer has issued an order requiring the  
25                   building or structure to be repaired or vacated and closed and the building or structure has been  
26                   vacated and closed for a period of two years pursuant to the ordinance or order, the governing  
27                   board may make findings that the owner has abandoned the intent and purpose to repair, alter, or  
28                   improve the building or structure and that the continuation of the building or structure in its  
29                   vacated and closed status would be inimical to the health, safety, and welfare of the local  
30                   government in that it would continue to deteriorate, would create a fire or safety hazard, would  
31                   be a threat to children and vagrants, would attract persons intent on criminal activities, or would  
32                   cause or contribute to blight and the deterioration of property values in the area. Upon such  
33                   findings, the governing board may, after the expiration of the two-year period, enact an ordinance  
34                   and serve such ordinance on the owner, setting forth the following:

35                   (1) If the cost to repair the nonresidential building or structure to bring it into  
36                   compliance with the minimum standards is less than or equal to fifty percent  
37                   (50%) of its then current value, the ordinance shall require that the owner  
38                   either repair or demolish and remove the building or structure within 90 days.  
39                   (2) If the cost to repair the nonresidential building or structure to bring it into  
40                   compliance with the minimum standards exceeds fifty percent (50%) of its  
41                   then current value, the ordinance shall require the owner to demolish and  
42                   remove the building or structure within 90 days.

43                   In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the  
44                   building or structure must have been vacated and closed pursuant to an order or ordinance for a  
45                   period of five years before the governing board may take action under this subsection. The  
46                   ordinance shall be recorded in the office of the register of deeds in the county wherein the  
47                   property or properties are located and shall be indexed in the name of the property owner in the  
48                   grantor index. If the owner fails to comply with the ordinance, the public officer shall effectuate  
49                   the purpose of the ordinance.

50                   (h) Service of Complaints and Orders. – Complaints or orders issued by a public officer  
51                   pursuant to an ordinance adopted under this section shall be served upon persons either personally

1 or by certified mail so long as the means used are reasonably designed to achieve actual notice.  
2 When service is made by certified mail, a copy of the complaint or order may also be sent by  
3 regular mail. Service shall be deemed sufficient if the certified mail is refused but the regular  
4 mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a  
5 notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.  
6 If the identities of any owners or the whereabouts of persons are unknown and cannot be  
7 ascertained by the public officer in the exercise of reasonable diligence and the public officer  
8 makes an affidavit to that effect, the serving of the complaint or order upon the owners or other  
9 persons may be made by publication in a newspaper having general circulation in the local  
10 government at least once no later than the time that personal service would be required under this  
11 section. When service is made by publication, a notice of the pending proceedings shall be posted  
12 in a conspicuous place on the premises affected.

13 (i) Liens. –

14 (1) The amount of the cost of repairs, alterations, or improvements, or vacating  
15 and closing, or removal or demolition by the public officer shall be a lien  
16 against the real property upon which the cost was incurred, which lien shall  
17 be filed, have the same priority, and be collected as the lien for special  
18 assessment provided in Article 10 of Chapter 160A of the General Statutes.

19 (2) If the real property upon which the cost was incurred is located in an  
20 incorporated city, the amount of the costs is also a lien on any other real  
21 property of the owner located within the city limits except for the owner's  
22 primary residence. The additional lien provided in this subdivision is inferior  
23 to all prior liens and shall be collected as a money judgment.

24 (3) If the nonresidential building or structure is removed or demolished by the  
25 public officer, he or she shall offer for sale the recoverable materials of the  
26 building or structure and any personal property, fixtures, or appurtenances  
27 found in or attached to the building or structure and shall credit the proceeds  
28 of the sale, if any, against the cost of the removal or demolition, and any  
29 balance remaining shall be deposited in the superior court by the public  
30 officer, shall be secured in a manner directed by the court, and shall be  
31 disbursed by the court to the persons found to be entitled thereto by final order  
32 or decree of the court. Nothing in this section shall be construed to impair or  
33 limit in any way the power of the governing board to define and declare  
34 nuisances and to cause their removal or abatement by summary proceedings  
35 or otherwise.

36 (j) Ejectment. – If any occupant fails to comply with an order to vacate a nonresidential  
37 building or structure, the public officer may file a civil action in the name of the local government  
38 to remove the occupant. The action to vacate shall be in the nature of summary ejectment and  
39 shall be commenced by filing a complaint naming as parties-defendant any person occupying the  
40 nonresidential building or structure. The clerk of superior court shall issue a summons requiring  
41 the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10  
42 days from the issuance of the summons to answer the complaint. The summons and complaint  
43 shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor,  
44 and if on its return it appears to have been duly served and if at the hearing the public officer  
45 produces a certified copy of an ordinance adopted by the governing board pursuant to subsection  
46 (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall  
47 enter judgment ordering that the premises be vacated and all persons be removed. The judgment  
48 ordering that the nonresidential building or structure be vacated shall be enforced in the same  
49 manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any  
50 judgment entered under this subsection by the magistrate may be taken as provided in  
51 G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An

1 action to remove an occupant of a nonresidential building or structure who is a tenant of the  
2 owner may not be in the nature of a summary ejection proceeding pursuant to this subsection  
3 unless the occupant was served with notice, at least 30 days before the filing of the summary  
4 ejection proceeding, that the governing board has ordered the public officer to proceed to  
5 exercise his or her duties under subsection (f) of this section to vacate and close or remove and  
6 demolish the nonresidential building or structure.

7 (k) Civil Penalty. – The governing board may impose civil penalties against any person  
8 or entity that fails to comply with an order entered pursuant to this section. However, the  
9 imposition of civil penalties shall not limit the use of any other lawful remedies available to the  
10 governing board for the enforcement of any ordinances adopted pursuant to this section.

11 (l) Supplemental Powers. – The powers conferred by this section are supplemental to the  
12 powers conferred by any other law. An ordinance adopted by the governing board may authorize  
13 the public officer to exercise any powers necessary or convenient to carry out and effectuate the  
14 purpose and provisions of this section, including the following powers in addition to others herein  
15 granted:

16 (1) To investigate nonresidential buildings and structures in the local  
17 government's planning and development regulation jurisdiction to determine  
18 whether they have been properly maintained in compliance with the minimum  
19 standards so that the safety or health of the occupants or members of the  
20 general public are not jeopardized.

21 (2) To administer oaths, affirmations, examine witnesses, and receive evidence.

22 (3) To enter upon premises pursuant to subsection (b) of this section for the  
23 purpose of making examinations in a manner that will do the least possible  
24 inconvenience to the persons in possession.

25 (4) To appoint and fix the duties of officers, agents, and employees necessary to  
26 carry out the purposes of the ordinances adopted by the governing board.

27 (5) To delegate any of his or her functions and powers under the ordinance to  
28 other officers and agents.

29 (m) Appeals. – The governing board may provide that appeals may be taken from any  
30 decision or order of the public officer to the local government's housing appeals board or board  
31 of adjustment. Any person aggrieved by a decision or order of the public officer shall have the  
32 remedies provided in G.S. 160D-12-8.

33 (n) Funding. – The governing board is authorized to make appropriations from its  
34 revenues necessary to carry out the purposes of this section and may accept and apply grants or  
35 donations to assist in carrying out the provisions of the ordinances adopted by the governing  
36 board.

37 (o) No Effect on Just Compensation for Taking by Eminent Domain. – Nothing in this  
38 section shall be construed as preventing the owner or owners of any property from receiving just  
39 compensation for the taking of property by the power of eminent domain under the laws of this  
40 State nor as permitting any property to be condemned or destroyed except in accordance with the  
41 police power of the State.

42 (p) Definitions. – As used in this section, the following definitions apply:

43 (1) Parties in interest. – All individuals, associations, and corporations who have  
44 interests of record in a nonresidential building or structure and any who are in  
45 possession thereof.

46 (2) Vacant industrial warehouse. – Any building or structure designed for the  
47 storage of goods or equipment in connection with manufacturing processes,  
48 which has not been used for that purpose for at least one year and has not been  
49 converted to another use.

1           (3) Vacant manufacturing facility. – Any building or structure previously used for  
2 the lawful production or manufacturing of goods, which has not been used for  
3 that purpose for at least one year and has not been converted to another use.

4                                   "Article 12.

5                                   "Minimum Housing Codes.

6 **"§ 160D-12-1. Authorization.**

7           (a) Occupied Dwellings. – The existence and occupation of dwellings that are unfit for  
8 human habitation are inimical to the welfare and dangerous and injurious to the health and safety  
9 of the people of this State. A public necessity exists for the repair, closing, or demolition of such  
10 dwellings. Whenever any local government finds that there exists in the planning and  
11 development regulation jurisdiction dwellings that are unfit for human habitation due to  
12 dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of  
13 ventilation, light, or sanitary facilities; or other conditions rendering the dwellings unsafe or  
14 unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the  
15 welfare of the residents of the local government, power is conferred upon the local government  
16 to exercise its police powers to repair, close, or demolish the dwellings consistent with the  
17 provisions of this Article.

18           (b) Abandoned Structures. – Any local government may by ordinance provide for the  
19 repair, closing, or demolition of any abandoned structure that the governing board finds to be a  
20 health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire  
21 hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as  
22 living quarters in the absence of sanitary facilities. The ordinance may provide for the repair,  
23 closing, or demolition of such structure pursuant to the same provisions and procedures as are  
24 prescribed by this Article for the repair, closing, or demolition of dwellings found to be unfit for  
25 human habitation.

26 **"§ 160D-12-2. Definitions.**

27           The following terms shall have the meanings whenever used or referred to as indicated when  
28 used in this Part unless a different meaning clearly appears from the context:

- 29           (1) Owner. – The holder of the title in fee simple and every mortgagee of record.  
30           (2) Parties in interest. – All individuals, associations, and corporations who have  
31 interests of record in a dwelling and any who are in possession thereof.  
32           (3) Public authority. – Any housing authority or any officer who is in charge of  
33 any department or branch of the government of the city, county, or State  
34 relating to health, fire, building regulations, or other activities concerning  
35 dwellings in the local government.  
36           (4) Public officer. – The officer or officers who are authorized by ordinances  
37 adopted hereunder to exercise the powers prescribed by the ordinances and by  
38 this Article.

39 **"§ 160D-12-3. Ordinance authorized as to repair, closing, and demolition; order of public**  
40 **officer.**

41           Upon the adoption of an ordinance finding that dwelling conditions of the character described  
42 in G.S. 160D-12-1 exist, the governing board is authorized to adopt and enforce ordinances  
43 relating to dwellings within the planning and development regulation jurisdiction that are unfit  
44 for human habitation. These ordinances shall include the following provisions:

- 45           (1) Designation of enforcement officer. – One or more public officers shall be  
46 designated to exercise the powers prescribed by the ordinance.  
47           (2) Investigation, complaint, hearing. – Whenever a petition is filed with the  
48 public officer by a public authority or by at least five residents of the  
49 jurisdiction charging that any dwelling is unfit for human habitation or when  
50 it appears to the public officer that any dwelling is unfit for human habitation,  
51 the public officer shall, if a preliminary investigation discloses a basis for such

1 charges, issue and cause to be served upon the owner of and parties in interest  
2 in such dwellings a complaint stating the charges in that respect and  
3 containing a notice that an administrative hearing will be held before the  
4 public officer, or the officer's designated agent, at a place within the county in  
5 which the property is located. The hearing shall be not less than 10 days nor  
6 more than 30 days after the serving of the complaint. The owner and parties  
7 in interest shall be given the right to file an answer to the complaint and to  
8 appear in person, or otherwise, and give testimony at the place and time fixed  
9 in the complaint. The rules of evidence prevailing in courts of law shall not be  
10 controlling in administrative hearings before the public officer.

11 (3) Orders. – If, after notice and hearing, the public officer determines that the  
12 dwelling under consideration is unfit for human habitation, the officer shall  
13 state in writing findings of fact in support of that determination and shall issue  
14 and cause to be served upon the owner one of the following orders, as  
15 appropriate:

16 a. If the repair, alteration, or improvement of the dwelling can be made  
17 at a reasonable cost in relation to the value of the dwelling, requiring  
18 the owner, within the time specified, to repair, alter, or improve the  
19 dwelling in order to render it fit for human habitation. The ordinance  
20 may fix a certain percentage of this value as being reasonable. The  
21 order may require that the property be vacated and closed only if  
22 continued occupancy during the time allowed for repair will present a  
23 significant threat of bodily harm, taking into account the nature of the  
24 necessary repairs, alterations, or improvements; the current state of the  
25 property; and any additional risks due to the presence and capacity of  
26 minors under the age of 18 or occupants with physical or mental  
27 disabilities. The order shall state that the failure to make timely repairs  
28 as directed in the order shall make the dwelling subject to the issuance  
29 of an unfit order under subdivision (4) of this section.

30 b. If the repair, alteration, or improvement of the dwelling cannot be  
31 made at a reasonable cost in relation to the value of the dwelling,  
32 requiring the owner, within the time specified in the order, to remove  
33 or demolish such dwelling. The ordinance may fix a certain percentage  
34 of this value as being reasonable. However, notwithstanding any other  
35 provision of law, if the dwelling is located in a historic district and the  
36 Historic District Commission determines, after a public hearing as  
37 provided by ordinance, that the dwelling is of particular significance  
38 or value toward maintaining the character of the district, and the  
39 dwelling has not been condemned as unsafe, the order may require that  
40 the dwelling be vacated and closed consistent with G.S. 160D-9-49.

41 (4) Repair, closing, and posting. – If the owner fails to comply with an order to  
42 repair, alter, or improve or to vacate and close the dwelling, the public officer  
43 may cause the dwelling to be repaired, altered, or improved or to be vacated  
44 and closed, and the public officer may cause to be posted on the main entrance  
45 of any dwelling so closed a placard with the following words: "This building  
46 is unfit for human habitation; the use or occupation of this building for human  
47 habitation is prohibited and unlawful." Occupation of a building so posted  
48 shall constitute a Class 1 misdemeanor. The duties of the public officer set  
49 forth in this subdivision shall not be exercised until the governing board shall  
50 have by ordinance ordered the public officer to proceed to effectuate the  
51 purpose of this Article with respect to the particular property or properties that

1 the public officer shall have found to be unfit for human habitation and which  
2 property or properties shall be described in the ordinance. This ordinance shall  
3 be recorded in the office of the register of deeds in the county where the  
4 property or properties are located and shall be indexed in the name of the  
5 property owner in the grantor index.

6 (5) Demolition. – If the owner fails to comply with an order to remove or  
7 demolish the dwelling, the public officer may cause such dwelling to be  
8 removed or demolished. The duties of the public officer set forth in this  
9 subdivision shall not be exercised until the governing board shall have by  
10 ordinance ordered the public officer to proceed to effectuate the purpose of  
11 this Article with respect to the particular property or properties that the public  
12 officer shall have found to be unfit for human habitation and which property  
13 or properties shall be described in the ordinance. No such ordinance shall be  
14 adopted to require demolition of a dwelling until the owner has first been  
15 given a reasonable opportunity to bring it into conformity with the housing  
16 code. This ordinance shall be recorded in the office of the register of deeds in  
17 the county where the property or properties are located and shall be indexed  
18 in the name of the property owner in the grantor index.

19 (6) Abandonment of Intent to Repair. – If the dwelling has been vacated and  
20 closed for a period of one year pursuant to an ordinance adopted pursuant to  
21 subdivision (4) of this section or after a public officer issues an order or  
22 proceedings have commenced under the substandard housing regulations  
23 regarding a dwelling to be repaired or vacated and closed as provided in this  
24 subdivision, then the governing board may find that the owner has abandoned  
25 the intent and purpose to repair, alter, or improve the dwelling in order to  
26 render it fit for human habitation and that the continuation of the dwelling in  
27 its vacated and closed status would be inimical to the health, safety, and  
28 welfare of the local government in that the dwelling would continue to  
29 deteriorate, would create a fire and safety hazard, would be a threat to children  
30 and vagrants, would attract persons intent on criminal activities, would cause  
31 or contribute to blight and the deterioration of property values in the area, and  
32 would render unavailable property and a dwelling that might otherwise have  
33 been made available to ease the persistent shortage of decent and affordable  
34 housing in this State, then in such circumstances, the governing board may,  
35 after the expiration of such one-year period, enact an ordinance and serve such  
36 ordinance on the owner, setting forth the following:

37 a. If it is determined that the repair of the dwelling to render it fit for  
38 human habitation can be made at a cost not exceeding fifty percent  
39 (50%) of the then current value of the dwelling, the ordinance shall  
40 require that the owner either repair or demolish and remove the  
41 dwelling within 90 days.

42 b. If it is determined that the repair of the dwelling to render it fit for  
43 human habitation cannot be made at a cost not exceeding fifty percent  
44 (50%) of the then current value of the dwelling, the ordinance shall  
45 require the owner to demolish and remove the dwelling within 90 days.

46 This ordinance shall be recorded in the office of the register of deeds in  
47 the county wherein the property or properties are located and shall be indexed  
48 in the name of the property owner in the grantor index. If the owner fails to  
49 comply with this ordinance, the public officer shall effectuate the purpose of  
50 the ordinance.

51 (7) Liens. –



- 1           a.     The amount of the cost of repairs, alterations, or improvements, or  
2           vacating and closing, or removal or demolition by the public officer  
3           shall be a lien against the real property upon which the cost was  
4           incurred, which lien shall be filed, have the same priority, and be  
5           collected as the lien for special assessment provided in Article 10 of  
6           Chapter 160A of the General Statutes.
- 7           b.     If the real property upon which the cost was incurred is located in an  
8           incorporated city, then the amount of the cost is also a lien on any other  
9           real property of the owner located within the city limits or within one  
10          mile thereof except for the owner's primary residence. The additional  
11          lien provided in this sub-subdivision is inferior to all prior liens and  
12          shall be collected as a money judgment.
- 13          c.     If the dwelling is removed or demolished by the public officer, the  
14          local government shall sell the materials of the dwelling, and any  
15          personal property, fixtures, or appurtenances found in or attached to  
16          the dwelling, and shall credit the proceeds of the sale against the cost  
17          of the removal or demolition, and any balance remaining shall be  
18          deposited in the superior court by the public officer, shall be secured  
19          in a manner directed by the court, and shall be disbursed by the court  
20          to the persons found to be entitled thereto by final order or decree of  
21          the court. Nothing in this section shall be construed to impair or limit  
22          in any way the power of the local government to define and declare  
23          nuisances and to cause their removal or abatement by summary  
24          proceedings or otherwise.

25       (8)     Civil action. – If any occupant fails to comply with an order to vacate a  
26       dwelling, the public officer may file a civil action in the name of the local  
27       government to remove such occupant. The action to vacate the dwelling shall  
28       be in the nature of summary ejectment and shall be commenced by filing a  
29       complaint naming as defendant any person occupying such dwelling. The  
30       clerk of superior court shall issue a summons requiring the defendant to appear  
31       before a magistrate at a certain time, date, and place not to exceed 10 days  
32       from the issuance of the summons to answer the complaint. The summons and  
33       complaint shall be served as provided in G.S. 42-29. If the summons appears  
34       to have been duly served and if at the hearing the public officer produces a  
35       certified copy of an ordinance adopted by the governing board pursuant to  
36       subdivision (5) of this section authorizing the officer to proceed to vacate the  
37       occupied dwelling, the magistrate shall enter judgment ordering that the  
38       premises be vacated and that all persons be removed. The judgment ordering  
39       that the dwelling be vacated shall be enforced in the same manner as the  
40       judgment for summary ejectment entered under G.S. 42-30. An appeal from  
41       any judgment entered hereunder by the magistrate may be taken as provided  
42       in G.S. 7A-228, and the execution of such judgment may be stayed as  
43       provided in G.S. 7A-227. An action to remove an occupant of a dwelling who  
44       is a tenant of the owner may not be in the nature of a summary ejectment  
45       proceeding pursuant to this paragraph unless such occupant was served with  
46       notice at least 30 days before the filing of the summary ejectment proceeding  
47       that the governing board has ordered the public officer to proceed to exercise  
48       his duties under subdivisions (4) and (5) of this section to vacate and close or  
49       remove and demolish the dwelling.

50       (9)     Additional notices to affordable housing organizations. – Whenever a  
51       determination is made pursuant to subdivision (3) of this section that a

1 dwelling must be vacated and closed, or removed or demolished, under the  
2 provisions of this section, notice of the order shall be given by first-class mail  
3 to any organization involved in providing or restoring dwellings for affordable  
4 housing that has filed a written request for such notices. A minimum period  
5 of 45 days from the mailing of such notice shall be given before removal or  
6 demolition by action of the public officer, to allow the opportunity for any  
7 organization to negotiate with the owner to make repairs, lease, or purchase  
8 the property for the purpose of providing affordable housing. The public  
9 officer or clerk shall certify the mailing of the notices, and the certification  
10 shall be conclusive in the absence of fraud. Only an organization that has filed  
11 a written request for such notices may raise the issue of failure to mail such  
12 notices, and the sole remedy shall be an order requiring the public officer to  
13 wait 45 days before causing removal or demolition.

14 **"§ 160D-12-4. Heat source required.**

15 (a) A local government shall, by ordinance, require that every dwelling unit leased as  
16 rental property within the city shall have, at a minimum, a central or electric heating system or  
17 sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least  
18 one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit  
19 measured 3 feet above the floor with an outside temperature of 20 degrees Fahrenheit.

20 (b) If a dwelling unit contains a heating system or heating appliances that meet the  
21 requirements of subsection (a) of this section, the owner of the dwelling unit shall not be required  
22 to install a new heating system or heating appliances, but the owner shall be required to maintain  
23 the existing heating system or heating appliances in a good and safe working condition.  
24 Otherwise, the owner of the dwelling unit shall install a heating system or heating appliances that  
25 meet the requirements of subsection (a) of this section and shall maintain the heating system or  
26 heating appliances in a good and safe working condition.

27 (c) Portable kerosene heaters are not acceptable as a permanent source of heat as required  
28 by subsection (a) of this section but may be used as a supplementary source in single-family  
29 dwellings and duplex units. An owner who has complied with subsection (a) of this section shall  
30 not be held in violation of this section where an occupant of a dwelling unit uses a kerosene  
31 heater as a primary source of heat.

32 (d) This section applies only to local governments with a population of 200,000 or over  
33 within their planning and development regulation jurisdiction, according to the most recent  
34 decennial federal census.

35 (e) Nothing in this section shall be construed to diminish the rights or remedies available  
36 to a tenant under a lease agreement, statute, or at common law or to prohibit a city from adopting  
37 an ordinance with more stringent heating requirements than provided for by this section.

38 **"§ 160D-12-5. Standards.**

39 An ordinance adopted under this Article shall provide that the public officer may determine  
40 that a dwelling is unfit for human habitation if the officer finds that conditions exist in the  
41 dwelling that render it dangerous or injurious to the health, safety, or welfare of the occupants of  
42 the dwelling, the occupants of neighboring dwellings, or other residents of the jurisdiction.  
43 Defective conditions may include the following, without limiting the generality of the foregoing:  
44 defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate  
45 ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanliness.  
46 The ordinances may provide additional standards to guide the public officers in determining the  
47 fitness of a dwelling for human habitation.

48 **"§ 160D-12-6. Service of complaints and orders.**

49 (a) Complaints or orders issued by a public officer pursuant to an ordinance adopted  
50 under this Article shall be served upon persons either personally or by certified mail. When  
51 service is made by certified mail, a copy of the complaint or order may also be sent by regular

1 mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the  
2 regular mail is not returned by the post office within 10 days after the mailing. If regular mail is  
3 used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises  
4 affected.

5 (b) If the identities of any owners or the whereabouts of persons are unknown and cannot  
6 be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are  
7 known but have refused to accept service by certified mail, and the public officer makes an  
8 affidavit to that effect, then the serving of the complaint or order upon the owners or other persons  
9 may be made by publication in a newspaper having general circulation in the jurisdiction at least  
10 once no later than the time at which personal service would be required under the provisions of  
11 this Article. When service is made by publication, a notice of the pending proceedings shall be  
12 posted in a conspicuous place on the premises thereby affected.

13 **§ 160D-12-7. Periodic inspections.**

14 (a) Except as provided in subsection (b) of this section, the inspection department may  
15 make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary,  
16 or otherwise hazardous or unlawful conditions may exist in a residential building or structure.  
17 However, when the inspection department determines that a safety hazard exists in one of the  
18 dwelling units within a multifamily building, which in the opinion of the inspector poses an  
19 immediate threat to the occupant, the inspection department may inspect, in the absence of a  
20 specific complaint and actual knowledge of the unsafe condition, additional dwelling units in the  
21 multifamily building to determine if that same safety hazard exists. For purposes of this section,  
22 the term "reasonable cause" means any of the following: (i) the landlord or owner has a history  
23 of more than two verified violations of the housing ordinances or codes within a 12-month period;  
24 (ii) there has been a complaint that substandard conditions exist within the building or there has  
25 been a request that the building be inspected; (iii) the inspection department has actual knowledge  
26 of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are  
27 visible from the outside of the property. In conducting inspections authorized under this section,  
28 the inspection department shall not discriminate between single-family and multifamily buildings  
29 or between owner-occupied and tenant-occupied buildings. In exercising this power, members  
30 of the department shall have a right to enter on any premises within the jurisdiction of the  
31 department at all reasonable hours for the purposes of inspection or other enforcement action,  
32 upon presentation of proper credentials. Nothing in this section shall be construed to prohibit  
33 periodic inspections in accordance with State fire prevention code or as otherwise required by  
34 State law.

35 (b) A local government may require periodic inspections as part of a targeted effort to  
36 respond to blighted or potentially blighted conditions within a geographic area that has been  
37 designated by the governing board. However, the total aggregate of targeted areas in the local  
38 government jurisdiction at any one time shall not be greater than 1 square mile or five percent  
39 (5%) of the area within the local government jurisdiction, whichever is greater. A targeted area  
40 designated by the local government shall reflect the local government's stated neighborhood  
41 revitalization strategy and shall consist of property that meets the definition of a "blighted area"  
42 or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and G.S. 160A-503(2a),  
43 respectively, except that for purposes of this subsection, the planning board is not required to  
44 make a determination as to the property. The local government shall not discriminate in its  
45 selection of areas or housing types to be targeted and shall (i) provide notice to all owners and  
46 residents of properties in the affected area about the periodic inspections plan and information  
47 regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and  
48 (iii) establish a plan to address the ability of low-income residential property owners to comply  
49 with minimum housing code standards.

50 (c) In no event may a local government do any of the following: (i) adopt or enforce any  
51 ordinance that would require any owner or manager of rental property to obtain any permit or

1 permission under Article 11 or Article 12 of this Chapter from the local government to lease or  
2 rent residential real property or to register rental property with the local government, except for  
3 those individual properties that have more than four verified violations in a rolling 12-month  
4 period or two or more verified violations in a rolling 30-day period, or upon the property being  
5 identified within the top ten percent (10%) of properties with crime or disorder problems as set  
6 forth in a local ordinance; (ii) require that an owner or manager of residential rental property  
7 enroll or participate in any governmental program as a condition of obtaining a certificate of  
8 occupancy; (iii) levy a special fee or tax on residential rental property that is not also levied  
9 against other commercial and residential properties, unless expressly authorized by general law  
10 or applicable only to an individual rental unit or property described in clause (i) of this subsection  
11 and the fee does not exceed five hundred dollars (\$500.00) in any 12-month period in which the  
12 unit or property is found to have verified violations; (iv) provide that any violation of a rental  
13 registration ordinance is punishable as a criminal offense; or (v) require any owner or manager  
14 of rental property to submit to an inspection before receiving any utility service provided by the  
15 local government. For purposes of this section, the term "verified violation" means all of the  
16 following:

17 (1) The aggregate of all violations of housing ordinances or codes found in an  
18 individual rental unit of residential real property during a 72-hour period.

19 (2) Any violations that have not been corrected by the owner or manager within  
20 21 days of receipt of written notice from the local government of the  
21 violations. Should the same violation occur more than two times in a 12-month  
22 period, the owner or manager may not have the option of correcting the  
23 violation. If the housing code provides that any form of prohibited tenant  
24 behavior constitutes a violation by the owner or manager of the rental  
25 property, it shall be deemed a correction of the tenant-related violation if the  
26 owner or manager, within 30 days of receipt of written notice of the  
27 tenant-related violation, brings a summary ejectment action to have the tenant  
28 evicted.

29 (d) If a property is identified by the local government as being in the top ten percent  
30 (10%) of properties with crime or disorder problems, the local government shall notify the  
31 landlord of any crimes, disorders, or other violations that will be counted against the property to  
32 allow the landlord an opportunity to attempt to correct the problems. In addition, the local  
33 government and the county sheriff's office or city's police department shall assist the landlord in  
34 addressing any criminal activity, which may include testifying in court in a summary ejectment  
35 action or other matter to aid in evicting a tenant who has been charged with a crime. If the local  
36 government or the county sheriff's office or city's police department does not cooperate in  
37 evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a crime or  
38 disorder problem as set forth in the local ordinance, and the property may not be included in the  
39 top ten percent (10%) of properties as a result of that tenant's behavior or activity.

40 (e) If the local government takes action against an individual rental unit under this  
41 section, the owner of the individual rental unit may appeal the decision to the housing appeals  
42 board or the zoning board of adjustment, if operating, or the planning board if created under  
43 G.S. 160D-3-1, or if neither is created, the governing board. The board shall fix a reasonable time  
44 for hearing appeals, shall give due notice to the owner of the individual rental unit, and shall  
45 render a decision within a reasonable time. The owner may appear in person or by agent or  
46 attorney. The board may reverse or affirm the action, wholly or partly, or may modify the action  
47 appealed from, and may make any decision and order that in the opinion of the board ought to be  
48 made in the matter.

49 **"§ 160D-12-8. Remedies.**

50 (a) An ordinance adopted pursuant to this Article may provide for a housing appeals  
51 board as provided by G.S. 160D-3-6. An appeal from any decision or order of the public officer

1 is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer,  
2 board, or commission of the local government. Any appeal from the public officer shall be taken  
3 within 10 days from the rendering of the decision or service of the order by filing with the public  
4 officer and with the housing appeals board a notice of appeal that shall specify the grounds upon  
5 which the appeal is based. Upon the filing of any notice of appeal, the public officer shall  
6 forthwith transmit to the board all the papers constituting the record upon which the decision  
7 appealed from was made. When an appeal is from a decision of the public officer refusing to  
8 allow the person aggrieved thereby to do any act, the decision shall remain in force until modified  
9 or reversed. When any appeal is from a decision of the public officer requiring the person  
10 aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the  
11 hearing by the board, unless the public officer certifies to the board, after the notice of appeal is  
12 filed with the officer, that because of facts stated in the certificate, a copy of which shall be  
13 furnished the appellant, a suspension of the requirement would cause imminent peril to life or  
14 property. In that case the requirement shall not be suspended except by a restraining order, which  
15 may be granted for due cause shown upon not less than one day's written notice to the public  
16 officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this  
17 section.

18 (b) The housing appeals board shall fix a reasonable time for hearing appeals, shall give  
19 due notice to the parties, and shall render its decision within a reasonable time. Any party may  
20 appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or  
21 may modify the decision or order appealed from, and may make any decision and order that in  
22 its opinion ought to be made in the matter, and, to that end, it shall have all the powers of the  
23 public officer, but the concurring vote of four members of the board shall be necessary to reverse  
24 or modify any decision or order of the public officer. The board shall have power also in passing  
25 upon appeals, when unnecessary hardships would result from carrying out the strict letter of the  
26 ordinance, to adapt the application of the ordinance to the necessities of the case to the end that  
27 the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial  
28 justice done.

29 (c) Every decision of the housing appeals board shall be subject to review by proceedings  
30 in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

31 (d) Any person aggrieved by an order issued by the public officer or a decision rendered  
32 by the housing appeals board may petition the superior court for an injunction restraining the  
33 public officer from carrying out the order or decision and the court may, upon such petition, issue  
34 a temporary injunction restraining the public officer pending a final disposition of the cause. The  
35 petition shall be filed within 30 days after issuance of the order or rendering of the decision.  
36 Hearings shall be had by the court on a petition within 20 days and shall be given preference over  
37 other matters on the court's calendar. The court shall hear and determine the issues raised and  
38 shall enter such final order or decree as law and justice may require. It shall not be necessary to  
39 file bond in any amount before obtaining a temporary injunction under this subsection.

40 (e) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or  
41 used in violation of this Article or of any ordinance or code adopted under authority of this Article  
42 or any valid order or decision of the public officer or board made pursuant to any ordinance or  
43 code adopted under authority of this Article, the public officer or board may institute any  
44 appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction,  
45 alteration, or use; to restrain, correct, or abate the violation; to prevent the occupancy of the  
46 dwelling; or to prevent any illegal act, conduct, or use in or about the premises of the dwelling.

47 **§ 160D-12-9. Compensation to owners of condemned property.**

48 Nothing in this Article shall be construed as preventing the owner or owners of any property  
49 from receiving just compensation for the taking of property by the power of eminent domain  
50 under the laws of this State nor as permitting any property to be condemned or destroyed except  
51 in accordance with the police power of the State.

1 **"§ 160D-12-10. Additional powers of public officer.**

2 An ordinance adopted by the governing board may authorize the public officer to exercise  
3 any powers necessary or convenient to carry out and effectuate the purpose and provisions of this  
4 Article, including the following powers in addition to others herein granted:

- 5 (1) To investigate the dwelling conditions in the local government's planning and  
6 development regulation jurisdiction in order to determine which dwellings  
7 therein are unfit for human habitation.  
8 (2) To administer oaths, affirmations, examine witnesses, and receive evidence.  
9 (3) To enter upon premises for the purpose of making examinations in a manner  
10 that will do the least possible inconvenience to the persons in possession.  
11 (4) To appoint and fix the duties of officers, agents, and employees necessary to  
12 carry out the purposes of the ordinances.  
13 (5) To delegate any of his or her functions and powers under the ordinance to  
14 other officers and other agents.

15 **"§ 160D-12-11. Administration of ordinance.**

16 A local government adopting an ordinance under this Article shall, as soon as possible  
17 thereafter, prepare an estimate of the annual expenses or costs to provide the equipment,  
18 personnel, and supplies necessary for periodic examinations and investigations of the dwellings  
19 for the purpose of determining the fitness of dwellings for human habitation and for the  
20 enforcement and administration of its ordinances adopted under this Article. The local  
21 government is authorized to make appropriations from its revenues necessary for this purpose  
22 and may accept and apply grants or donations to assist it.

23 **"§ 160D-12-12. Supplemental nature of Article.**

24 Nothing in this Article shall be construed to abrogate or impair the powers of the courts or of  
25 any department of any local government to enforce any provisions of its charter or its ordinances  
26 or regulations nor to prevent or punish violations thereof. The powers conferred by this Article  
27 shall be supplemental to the powers conferred by any other law in carrying out the provisions of  
28 the ordinances.

29 "Article 13.

30 "Additional Authority.

31 "Part 1. Open Space Acquisition.

32 **"§ 160D-13-1. Legislative intent.**

33 It is the intent of the General Assembly to provide a means whereby any local government  
34 may acquire by purchase, gift, grant, devise, lease, or otherwise, and through the expenditure of  
35 public funds, the fee or any lesser interest or right in real property in order to preserve, through  
36 limitation of their future use, open spaces and areas for public use and enjoyment.

37 **"§ 160D-13-2. Finding of necessity.**

38 The General Assembly finds that the rapid growth and spread of urban development in the  
39 State is encroaching upon, or eliminating, many open areas and spaces of varied size and  
40 character, including many having significant scenic or aesthetic values, which areas and spaces  
41 if preserved and maintained in their present open state would constitute important physical,  
42 social, aesthetic, or economic assets to existing and impending urban development. The General  
43 Assembly declares that it is necessary for sound and proper urban development and in the public  
44 interest of the people of this State for any local government to expend or advance public funds  
45 for, or to accept by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser interest  
46 or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or  
47 otherwise conserve open spaces and areas within their respective jurisdictions as defined by this  
48 Article.

49 The General Assembly declares that the acquisition of interests or rights in real property for  
50 the preservation of open spaces and areas constitutes a public purpose for which public funds  
51 may be expended or advanced.

**"§ 160D-13-3. Local governments authorized to acquire and reconvey real property.**

Any local government may acquire by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any local government may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale.

**"§ 160D-13-4. Joint action by governing bodies.**

A local government may enter into any agreement with any other local government for the purpose of jointly exercising the authority granted by this Part.

**"§ 160D-13-5. Powers of governing bodies.**

A local government, in order to exercise the authority granted by this Part, may:

- (1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which grants or other assistance are made to the local government.
- (2) Accept any assistance or funds that may be granted by the State or federal government with or without a contract.
- (3) Agree to and comply with any reasonable conditions imposed upon grants.
- (4) Make expenditures from any funds so granted.

**"§ 160D-13-6. Appropriations authorized.**

For the purposes set forth in this Part, a local government may appropriate funds not otherwise limited as to use by law.

**"§ 160D-13-7. Definitions.**

As used in this Part, the following definitions apply:

- (1) Open space or open area. – Any space or area characterized by great natural scenic beauty or where the existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural or scenic resources. The terms also include interests or rights in real property and open space land or uses.
- (2) Open space land or open space uses. – Any undeveloped or predominantly undeveloped land in an urban area that has value for or is used for one or more of the following purposes:
  - a. Park and recreational purposes.
  - b. Conservation of land and other natural resources.
  - c. Historic or scenic purposes.

**"§§ 160D-13-8 through 160D-13-10:** Reserved for future codification purposes.

"Part 2. Community Development and Redevelopment.

**"§ 160D-13-11. Community development programs and activities.**

(a) A local government is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a local government may engage in the following activities:

- (1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low- and moderate-income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans.

1           (2) Programs concerned with employment, economic development, crime  
2           prevention, child care, health, drug abuse, education, and welfare needs of  
3           persons of low and moderate income.

4           (b) A governing board may exercise directly those powers granted by law to local  
5           government redevelopment commissions and those powers granted by law to local government  
6           housing authorities and may do so whether or not a redevelopment commission or housing  
7           authority is in existence in such local government. Any governing board desiring to do so may  
8           delegate to any redevelopment commission, created under Article 22 of Chapter 160A of the  
9           General Statutes, or to any housing authority, created under Article 1 of Chapter 157 of the  
10           General Statutes, the responsibility of undertaking or carrying out any specified community  
11           development activities. Any governing board may by agreement undertake or carry out for  
12           another any specified community development activities. Any governing board may contract  
13           with any person, association, or corporation in undertaking any specified community  
14           development activities. Any county or city board of health, county board of social services, or  
15           county or city board of education may by agreement undertake or carry out for any other  
16           governing board any specified community development activities.

17           (c) A local government undertaking community development programs or activities may  
18           create one or more advisory committees to advise it and to make recommendations concerning  
19           such programs or activities.

20           (d) A governing board proposing to undertake any loan guaranty or similar program for  
21           rehabilitation of private buildings is authorized to submit to its voters the question whether such  
22           program shall be undertaken, such referendum to be conducted pursuant to the general and local  
23           laws applicable to special elections in such local government. No State or local taxes shall be  
24           appropriated or expended by a county pursuant to this section for any purpose not expressly  
25           authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein  
26           provided.

27           (e) A government may receive and dispense funds from the Community Development  
28           Block Grant (CDBG) Section 108 Loan Guarantee program, Subpart M, 24 C.F.R. § 570.700, et  
29           seq., either through application to the North Carolina Department of Commerce or directly from  
30           the federal government, in accordance with State and federal laws governing these funds. Any  
31           local government that receives these funds directly from the federal government may pledge  
32           current and future CDBG funds for use as loan guarantees in accordance with State and federal  
33           laws governing these funds. A local government may implement the receipt, dispensing, and  
34           pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a  
35           portion of those funds to a third party in accordance with applicable laws governing the CDBG  
36           program.

37           A government that has pledged current or future CDBG funds for use as loan guarantees prior  
38           to the enactment of this subsection is authorized to have taken such action. A pledge of future  
39           CDBG funds under this subsection is not a debt or liability of the State or any political  
40           subdivision of the State or a pledge of the faith and credit of the State or any political subdivision  
41           of the State. The pledging of future CDBG funds under this subsection does not directly,  
42           indirectly, or contingently obligate the State or any political subdivision of the State to levy or to  
43           pledge any taxes.

44           (f) All program income from Economic Development Grants from the Small Cities  
45           Community Development Block Grant Program may be retained by recipient cities and counties  
46           in "economically distressed counties," as defined in G.S. 143B-437.01, for the purposes of  
47           creating local economic development revolving loan funds. Such program income derived  
48           through the use by cities of Small Cities Community Development Block Grant money includes,  
49           but is not limited to, (i) payment of principal and interest on loans made by the county using  
50           CDBG funds; (ii) proceeds from the lease or disposition of real property acquired with CDBG  
51           funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The



1 local economic development revolving loan fund set up by the city shall fund only those activities  
2 eligible under Title I of the federal Housing and Community Development Act of 1974, as  
3 amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing  
4 and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall  
5 not affect this subsection as to designations of economically distressed counties made prior to its  
6 expiration.

7 **"§ 160D-13-12. Acquisition and disposition of property for redevelopment.**

8 Any local government is authorized, either as a part of a community development program  
9 or independently thereof, and without the necessity of compliance with the Urban  
10 Redevelopment Law, to exercise the following powers:

- 11 (1) To acquire, by voluntary purchase from the owner or owners, real property  
12 that meets any of the following criteria:  
13 a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately  
14 developed from the standpoint of sound community development and  
15 growth.  
16 b. Appropriate for rehabilitation or conservation activities.  
17 c. Appropriate for housing construction or the economic development of  
18 the community.  
19 d. Appropriate for the preservation or restoration of historic sites, the  
20 beautification of urban land, the conservation of open space, natural  
21 resources, and scenic areas, the provision of recreational opportunities,  
22 or the guidance of urban development.  
23 (2) To clear, demolish, remove, or rehabilitate buildings and improvements on  
24 land so acquired.  
25 (3) To retain property so acquired for public purposes, or to dispose, through sale,  
26 lease, or otherwise, of any property so acquired to any person, firm,  
27 corporation, or governmental unit, provided the disposition of such property  
28 shall be undertaken in accordance with the procedures of Article 12 of Chapter  
29 160A of the General Statutes, or the procedures of G.S. 160A-514, or any  
30 applicable local act or charter provision modifying such procedures, or  
31 subdivision (4) of this section.  
32 (4) To sell, exchange, or otherwise transfer real property or any interest therein in  
33 a community development project area to any redeveloper at private sale for  
34 residential, recreational, commercial, industrial, or other uses or for public use  
35 in accordance with the community development plan, subject to such  
36 covenants, conditions, and restrictions as may be deemed to be in the public  
37 interest or to carry out the purposes of this Article, provided that such sale,  
38 exchange, or other transfer, and any agreement relating thereto, may be made  
39 only after approval of the governing board and after a public hearing; a notice  
40 of the public hearing shall be given once a week for two successive weeks in  
41 a newspaper having general circulation in the local government's planning and  
42 development jurisdiction area, the notice shall be published the first time not  
43 less than 10 days nor more than 25 days preceding the public hearing, and the  
44 notice shall disclose the terms of the sale, exchange, or transfer. At the public  
45 hearing, the appraised value of the property to be sold, exchanged, or  
46 transferred shall be disclosed, and the consideration for the conveyance shall  
47 not be less than the appraised value.

48 **"§ 160D-13-13. Urban Development Action Grants.**

49 Any local government is authorized, either as a part of a community development program  
50 or independently thereof, to enter into contracts or agreements with any person, association, or  
51 corporation to undertake and carry out specified activities in furtherance of the purposes of Urban

1 Development Action Grants authorized by the Housing and Community Development Act of  
2 1977, P.L. 95-128, or any amendment thereto, that is a continuation of such grant programs by  
3 whatever designation, including the authority to enter into and carry out contracts or agreements  
4 to extend loans, loan subsidies, or grants to persons, associations, or corporations and to dispose  
5 of real or personal property by private sale in furtherance of such contracts or agreements.

6 Any enabling legislation contained in local acts that refers to "Urban Development Action  
7 Grants" or the Housing and Community Development Act of 1977, P.L. 95-128, shall be  
8 construed also to refer to any continuation of such grant programs by whatever designation.

9 **"§ 160D-13-14. Urban homesteading programs.**

10 A local government may establish a program of urban homesteading, in which residential  
11 property of little or no value is conveyed to persons who agree to rehabilitate the property and  
12 use it, for a minimum number of years, as their principal place of residence. Residential property  
13 is considered of little or no value if the cost of bringing the property into compliance with the  
14 local government's housing code exceeds sixty percent (60%) of the property's appraised value  
15 on the county tax records. In undertaking such a program, a local government may:

- 16 (1) Acquire by purchase, gift, or otherwise, but not eminent domain, residential  
17 property specifically for the purpose of reconveyance in the urban  
18 homesteading program or may transfer to the program residential property  
19 acquired for other purposes, including property purchased at a tax foreclosure  
20 sale.
- 21 (2) Under procedures and standards established by the local government, convey  
22 residential property by private sale under G.S. 160A-267 and for nominal  
23 monetary consideration to persons who qualify as grantees.
- 24 (3) Convey property subject to the following conditions:
- 25 a. A requirement that the grantee shall use the property as the grantee's  
26 principal place of residence for a minimum number of years.
- 27 b. A requirement that the grantee rehabilitate the property so that it meets  
28 or exceeds minimum housing code standards.
- 29 c. A requirement that the grantee maintain insurance on the property.
- 30 d. Any other specific conditions, including, but not limited to, design  
31 standards, or actions that the local government may require.
- 32 e. A provision for the termination of the grantee's interest in the property  
33 and its reversion to the local government upon the grantee's failure to  
34 meet any condition so established.
- 35 (4) Subordinate the local government's interest in the property to any security  
36 interest granted by the grantee to a lender of funds to purchase or rehabilitate  
37 the property.

38 **"§ 160D-13-15. Downtown development projects.**

39 (a) Definition. – As used in this section, "downtown development project" or "joint  
40 development project" means a capital project, in a central business district, as that district is  
41 defined by the governing board, comprising one or more buildings and including both public and  
42 private facilities. By way of illustration but not limitation, such a project might include a single  
43 building comprising a publicly owned parking structure and publicly owned convention center  
44 and a privately owned hotel or office building.

45 (b) Authorization. – If the governing board finds that it is likely to have a significant  
46 effect on the revitalization of the jurisdiction, the local government may acquire, construct, own,  
47 and operate or participate in the acquisition, construction, ownership, and operation of a joint  
48 development project or of specific facilities within such a project. The local government may  
49 enter into binding contracts with one or more private developers with respect to acquiring,  
50 constructing, owning, or operating such a project. Such a contract may, among other provisions,  
51 specify the following:

1           (1)    The property interests of both the local government and the developer or  
2           developers in the project, provided that the property interests of the local  
3           government shall be limited to facilities for a public purpose.

4           (2)    The responsibilities of the local government and the developer or developers  
5           for construction of the project.

6           (3)    The responsibilities of the local government and the developer or developers  
7           with respect to financing the project.

8           Such a contract may be entered into before the acquisition of any real property necessary to  
9           the project.

10          (c)    Eligible Property. – A joint development project may be constructed on property  
11          acquired by the developer or developers, on property directly acquired by the local government,  
12          or on property acquired by the local government while exercising the powers, duties, and  
13          responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or G.S. 160D-13-11.

14          (d)    Conveyance of Property Rights. – In connection with a joint development project, the  
15          local government may convey interests in property owned by it, including air rights over public  
16          facilities, as follows:

17               (1)    If the property was acquired while the local government was exercising the  
18               powers, duties, and responsibilities of a redevelopment commission, the local  
19               government may convey property interests pursuant to the "Urban  
20               Redevelopment Law" or any local modification thereof.

21               (2)    If the property was acquired by the local government directly, the local  
22               government may convey property interests pursuant to G.S. 160D-13-12, and  
23               Article 12 of Chapter 160A of the General Statutes does not apply to such  
24               dispositions.

25               (3)    In lieu of conveying the fee interest in air rights, the local government may  
26               convey a leasehold interest for a period not to exceed 99 years, using the  
27               procedures of subdivision (1) or (2) of this subsection, as applicable.

28          (e)    Construction. – The contract between the local government and the developer or  
29          developers may provide that the developer or developers shall be responsible for construction of  
30          the entire joint development project. If so, the contract shall include such provisions as the  
31          governing board deems sufficient to assure that the public facility or facilities included in the  
32          project meet the needs of the local government and are constructed at a reasonable price. A  
33          project constructed pursuant to this subsection is not subject to Article 8 of Chapter 143 of the  
34          General Statutes, provided that local government funds constitute no more than fifty percent  
35          (50%) of the total costs of the joint development project. Federal funds available for loan to  
36          private developers in connection with a joint development project shall not be considered local  
37          government funds for purposes of this subsection.

38          (f)    Operation. – The local government may contract for the operation of any public  
39          facility or facilities included in a joint redevelopment project by a person, partnership, firm, or  
40          corporation, public or private. Such a contract shall include provisions sufficient to assure that  
41          any such facility or facilities are operated for the benefit of the citizens of the local government.

42          (g)    Grant Funds. – To assist in the financing of its share of a joint development project,  
43          the local government may apply for, accept, and expend grant funds from the federal or state  
44          governments.

45          "**§ 160D-13-16. Low- and moderate-income housing programs.**

46               Any local government is authorized to exercise the following powers:

47                   (1)    To engage in and to appropriate and expend funds for residential housing  
48                   construction, new or rehabilitated, for sale or rental to persons and families of  
49                   low and moderate income. Any governing board may contract with any  
50                   person, association, or corporation to implement the provisions of this  
51                   subdivision.

- 1           (2)    To acquire real property by voluntary purchase from the owners to be  
2           developed by the local government or to be used by the local government to  
3           provide affordable housing to persons of low and moderate income.
- 4           (3)    To convey property by private sale to any public or private entity that provides  
5           affordable housing to persons of low or moderate income under procedures  
6           and standards established by the local government, The local government shall  
7           include as part of any such conveyance covenants or conditions that assure the  
8           property will be developed by the entity for sale or lease to persons of low or  
9           moderate income.
- 10          (4)    To convey residential property by private sale to persons of low or moderate  
11          income, in accordance with procedures and standards established by the local  
12          government, with G.S. 160A-267, and with any terms and conditions that the  
13          governing board may determine.

14 **"§§ 160D-13-17 through 160D-13-19:** Reserved for future codification purposes.

15                                   "Part 3. Miscellaneous.

16 **"§ 160D-13-20. Program to finance energy improvements.**

17       (a)    Purpose. – The General Assembly finds it is in the best interest of the citizens of North  
18       Carolina to promote and encourage renewable energy and energy efficiency within the State in  
19       order to conserve energy, promote economic competitiveness, and expand employment in the  
20       State. The General Assembly also finds that a local government has an integral role in furthering  
21       this purpose by promoting and encouraging renewable energy and energy efficiency within the  
22       local government's territorial jurisdiction. In furtherance of this purpose, a local government may  
23       establish a program to finance the purchase and installation of distributed generation renewable  
24       energy sources or energy efficiency improvements that are permanently affixed to residential,  
25       commercial, or other real property.

26       (b)    Financing Assistance. – A local government may establish a revolving loan fund and  
27       a loan loss reserve fund for the purpose of financing or assisting in the financing of the purchase  
28       and installation of distributed generation renewable energy sources or energy efficiency  
29       improvements that are permanently fixed to residential, commercial, or other real property. A  
30       local government may establish other local government energy efficiency and distributed  
31       generation renewable energy source finance programs funded through federal grants. A local  
32       government may use State and federal grants and loans and its general revenue for this financing.  
33       The annual interest rate charged for the use of funds from the revolving fund may not exceed  
34       eight percent (8%) per annum, excluding other fees for loan application review and origination.  
35       The term of any loan originated under this section may not be greater than 20 years.

36       (c)    Definition. – As used in this Article, "renewable energy source" has the same meaning  
37       as "renewable energy resource" in G.S. 62-133.8.

38                                   "Article 14.

39                                   "Judicial Review.

40 **"§ 160D-14-1. Declaratory judgments.**

41       Challenges of legislative decisions of governing boards, including the validity or  
42       constitutionality of development regulations adopted pursuant to this Chapter, and actions  
43       authorized by G.S. 160D-1-8(c) or (g) and G.S. 160D-4-5(c), may be brought pursuant to Article  
44       26 of Chapter 1 of the General Statutes. The governmental unit making the challenged decision  
45       shall be named a party to the action.

46 **"§ 160D-14-2. Appeals in the nature of certiorari.**

47       (a)    Applicability. – This section applies to appeals of quasi-judicial decisions of  
48       decision-making boards when that appeal is in the nature of certiorari as required by this Chapter.

49       (b)    Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing a  
50       petition for writ of certiorari with the superior court. The petition shall do all of the following:

- 51           (1)    State the facts that demonstrate that the petitioner has standing to seek review.

- 1           (2)    Set forth allegations sufficient to give the court and parties notice of the  
2           grounds upon which the petitioner contends that an error was made.
- 3           (3)    Set forth with particularity the allegations and facts, if any, in support of  
4           allegations that, as the result of an impermissible conflict as described in  
5           G.S. 160D-1-9, or locally adopted conflict rules, the decision-making body  
6           was not sufficiently impartial to comply with due process principles.
- 7           (4)    Set forth the relief the petitioner seeks.
- 8       (c)    Standing. – A petition may be filed under this section only by a petitioner who has  
9       standing to challenge the decision being appealed. The following persons shall have standing to  
10       file a petition under this section:
- 11           (1)    Any person possessing any of the following criteria:
- 12           a.    An ownership interest in the property that is the subject of the decision  
13           being appealed, a leasehold interest in the property that is the subject  
14           of the decision being appealed, or an interest created by easement,  
15           restriction, or covenant in the property that is the subject of the  
16           decision being appealed.
- 17           b.    An option or contract to purchase the property that is the subject of the  
18           decision being appealed.
- 19           c.    An applicant before the decision-making board whose decision is  
20           being appealed.
- 21           (2)    Any other person who will suffer special damages as the result of the decision  
22           being appealed.
- 23           (3)    An incorporated or unincorporated association to which owners or lessees of  
24           property in a designated area belong by virtue of their owning or leasing  
25           property in that area, or an association otherwise organized to protect and  
26           foster the interest of the particular neighborhood or local area, so long as at  
27           least one of the members of the association would have standing as an  
28           individual to challenge the decision being appealed, and the association was  
29           not created in response to the particular development or issue that is the  
30           subject of the appeal.
- 31           (4)    A local government whose decision-making board has made a decision that  
32           the governing board believes improperly grants a variance from or is  
33           otherwise inconsistent with the proper interpretation of a development  
34           regulation adopted by the governing board.
- 35       (d)    Respondent. – The respondent named in the petition shall be the local government  
36       whose decision-making board made the decision that is being appealed, except that if the  
37       petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection  
38       (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not  
39       the applicant before the decision-making board whose decision is being appealed, the petitioner  
40       shall also name that applicant as a respondent. Any petitioner may name as a respondent any  
41       person with an ownership or leasehold interest in the property that is the subject of the decision  
42       being appealed who participated in the hearing, or was an applicant, before the decision-making  
43       board.
- 44       (e)    Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition  
45       and a proposed writ of certiorari to the clerk of superior court of the county in which the matter  
46       arose. The writ shall direct the respondent local government or the respondent decision-making  
47       board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4)  
48       of subsection (c) of this section, to prepare and certify to the court the record of proceedings  
49       below within a specified date. The writ shall also direct that the petitioner shall serve the petition  
50       and the writ upon each respondent named therein in the manner provided for service of a  
51       complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a

1 decision-making board, the petition and the writ shall be served upon the chair of that  
2 decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the  
3 chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall  
4 issue the writ without notice to the respondent or respondents if the petition has been properly  
5 filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

6 Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution  
7 or enforcement of the decision of the quasi-judicial board pending superior court review. The  
8 court may grant a stay in its discretion and on such conditions that properly provide for the  
9 security of the adverse party. A stay granted in favor of a city or county shall not require a bond  
10 or other security.

11 (f) Response to the Petition. – The respondent may, but need not, file a response to the  
12 petition, except that, if the respondent contends for the first time that any petitioner lacks standing  
13 to bring the appeal, that contention must be set forth in a response served on all petitioners at  
14 least 30 days prior to the hearing on the petition. If it is not served within that time period, the  
15 matter may be continued to allow the petitioners time to respond.

16 (g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to  
17 intervene as a petitioner or respondent in an action initiated under this section with the following  
18 exceptions:

19 (1) Any person described in subdivision (1) of subsection (c) of this section shall  
20 have standing to intervene and shall be allowed to intervene as a matter of  
21 right.

22 (2) Any person, other than one described in subdivision (1) of subsection (c) of  
23 this section, who seeks to intervene as a petitioner must demonstrate that the  
24 person would have had standing to challenge the decision being appealed in  
25 accordance with subdivisions (2) through (4) of subsection (c) of this section.

26 (3) Any person, other than one described in subdivision (1) of subsection (c) of  
27 this section, who seeks to intervene as a respondent must demonstrate that the  
28 person would have had standing to file a petition in accordance with  
29 subdivisions (2) through (4) of subsection (c) of this section if the  
30 decision-making board had made a decision that is consistent with the relief  
31 sought by the petitioner.

32 (h) The Record. – The record shall consist of the decision and all documents and exhibits  
33 submitted to the decision-making board whose decision is being appealed, together with the  
34 minutes of the meeting or meetings at which the decision being appealed was considered. Upon  
35 request of any party, the record shall also contain an audio or videotape of the meeting or  
36 meetings at which the decision being appealed was considered if such a recording was made.  
37 Any party may also include in the record a transcript of the proceedings, which shall be prepared  
38 at the cost of the party choosing to include it. The parties may agree that matters unnecessary to  
39 the court's decision be deleted from the record or that matters other than those specified herein  
40 be included. The record shall be bound and paginated or otherwise organized for the convenience  
41 of the parties and the court. A copy of the record shall be served by the local government  
42 respondent, or the respondent decision-making board, upon all petitioners within three days after  
43 it is filed with the court.

44 (i) Hearing on the Record. – The court shall hear and decide all issues raised by the  
45 petition by reviewing the record submitted in accordance with subsection (h) of this section. The  
46 court may, in its discretion, allow the record to be supplemented with affidavits, testimony of  
47 witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate  
48 to allow an appropriate determination of the following issues:

49 (1) Whether a petitioner or intervenor has standing.

- 1           (2)    Whether, as a result of impermissible conflict as described in G.S. 160D-1-9  
2           or locally adopted conflict rules, the decision-making body was not  
3           sufficiently impartial to comply with due process principles.
- 4           (3)    Whether the decision-making body erred for the reasons set forth in  
5           sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.
- 6       (j)    Scope of Review. –
- 7           (1)    When reviewing the decision under the provisions of this section, the court  
8           shall ensure that the rights of petitioners have not been prejudiced because the  
9           decision-making body's findings, inferences, conclusions, or decisions were:
- 10           a.     In violation of constitutional provisions, including those protecting  
11           procedural due process rights.
- 12           b.     In excess of the statutory authority conferred upon the local  
13           government or the authority conferred upon the decision-making  
14           board by ordinance.
- 15           c.     Inconsistent with applicable procedures specified by statute or  
16           ordinance.
- 17           d.     Affected by other error of law.
- 18           e.     Unsupported by competent, material, and substantial evidence in view  
19           of the entire record.
- 20           f.     Arbitrary or capricious.
- 21           (2)    When the issue before the court is whether the decision-making board erred  
22           in interpreting an ordinance, the court shall review that issue de novo. The  
23           court shall consider the interpretation of the decision-making board, but is not  
24           bound by that interpretation, and may freely substitute its judgment as  
25           appropriate.
- 26           (3)    The term "competent evidence," as used in this subsection, shall not preclude  
27           reliance by the decision-making board on evidence that would not be  
28           admissible under the rules of evidence as applied in the trial division of the  
29           General Court of Justice if (i) the evidence was admitted without objection or  
30           (ii) the evidence appears to be sufficiently trustworthy and was admitted under  
31           such circumstances that it was reasonable for the decision-making board to  
32           rely upon it. The term "competent evidence," as used in this subsection, shall  
33           not be deemed to include the opinion testimony of lay witnesses as to any of  
34           the following:
- 35           a.     The use of property in a particular way affects the value of other  
36           property.
- 37           b.     The increase in vehicular traffic resulting from a proposed  
38           development poses a danger to the public safety.
- 39           c.     Matters about which only expert testimony would generally be  
40           admissible under the rules of evidence.
- 41       (k)    Decision of the Court. – Following its review of the decision-making board in  
42           accordance with subsection (j) of this section, the court may affirm the decision, reverse the  
43           decision and remand the case with appropriate instructions, or remand the case for further  
44           proceedings. If the court does not affirm the decision below in its entirety, then the court shall  
45           determine what relief should be granted to the petitioners:
- 46           (1)    If the court concludes that the error committed by the decision-making board  
47           is procedural only, the court may remand the case for further proceedings to  
48           correct the procedural error.
- 49           (2)    If the court concludes that the decision-making board has erred by failing to  
50           make findings of fact such that the court cannot properly perform its function,  
51           then the court may remand the case with appropriate instructions so long as

1 the record contains substantial competent evidence that could support the  
2 decision below with appropriate findings of fact. However, findings of fact  
3 are not necessary when the record sufficiently reveals the basis for the  
4 decision below or when the material facts are undisputed and the case presents  
5 only an issue of law.

6 (3) If the court concludes that the decision by the decision-making board is not  
7 supported by competent, material, and substantial evidence in the record or is  
8 based upon an error of law, then the court may remand the case with an order  
9 that directs the decision-making board to take whatever action should have  
10 been taken had the error not been committed or to take such other action as is  
11 necessary to correct the error. Specifically:

12 a. If the court concludes that a permit was wrongfully denied because the  
13 denial was not based on competent, material, and substantial evidence  
14 or was otherwise based on an error of law, the court may remand with  
15 instructions that the permit be issued, subject to reasonable and  
16 appropriate conditions.

17 b. If the court concludes that a permit was wrongfully issued because the  
18 issuance was not based on competent, material, and substantial  
19 evidence or was otherwise based on an error of law, the court may  
20 remand with instructions that the permit be revoked.

21 (l) Effect of Appeal and Ancillary Injunctive Relief. –

22 (1) If a development approval is appealed, the applicant shall have the right to  
23 commence work while the appeal is pending. However, if the development  
24 approval is reversed by a final decision of any court of competent jurisdiction,  
25 the applicant shall not be deemed to have gained any vested rights on the basis  
26 of actions taken prior to or during the pendency of the appeal and must proceed  
27 as if no development approval had been granted.

28 (2) Upon motion of a party to a proceeding under this section, and under  
29 appropriate circumstances, the court may issue an injunctive order requiring  
30 any other party to that proceeding to take certain action or refrain from taking  
31 action that is consistent with the court's decision on the merits of the appeal.

32 (m) Joinder. – A declaratory judgment brought under G.S. 160D-14-1 or other civil action  
33 relating to the decision at issue may be joined with the petition for writ of certiorari and decided  
34 in the same proceeding.

35 **"§ 160D-14-3. Appeals of decisions on subdivision plats.**

36 (a) When a subdivision regulation adopted under this Chapter provides that the decision  
37 whether to approve or deny a preliminary or final subdivision plat is quasi-judicial, then that  
38 decision of the board shall be subject to review by the superior court by proceedings in the nature  
39 of certiorari. The provisions of G.S. 160D-4-6 and this section shall apply to those appeals.

40 (b) When a subdivision regulation adopted under this Chapter provides that the decision  
41 whether to approve or deny a preliminary or final subdivision plat is administrative, then that  
42 decision of the board shall be subject to review by filing an action in superior court seeking  
43 appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the  
44 decision, which shall be made as provided in G.S. 160D-4-3(b).

45 (c) For purposes of this section, a subdivision regulation shall be deemed to authorize a  
46 quasi-judicial decision if the decision-making entity under G.S. 160D-8-3(c) is authorized to  
47 decide whether to approve or deny the plat based not only upon whether the application complies  
48 with the specific requirements set forth in the regulation but also on whether the application  
49 complies with one or more generally stated standards requiring a discretionary decision to be  
50 made.

51 **"§ 160D-14-4. Other civil actions.**



1 Except as expressly stated, this Article does not limit the availability of civil actions otherwise  
 2 authorized by law or alter the times in which they may be brought.

3 **"§ 160D-14-5. Statutes of limitation.**

4 (a) Zoning Map Adoption or Amendments. – A cause of action as to the validity of any  
 5 regulation adopting or amending a zoning map adopted under this Chapter or other applicable  
 6 law or a development agreement adopted under Article 10 of this Chapter shall accrue upon  
 7 adoption of such ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

8 (b) Text Adoption or Amendment. – Except as otherwise provided in subsection (a) of  
 9 this section, an action challenging the validity of a development regulation adopted under this  
 10 Chapter or other applicable law shall be brought within one year of the accrual of such action.  
 11 Such an action accrues when the party bringing such action first has standing to challenge the  
 12 ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process  
 13 shall be brought within three years after the adoption of the ordinance.

14 (c) Enforcement Defense. – Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1  
 15 shall bar a party in an action involving the enforcement of a development regulation from raising  
 16 as a defense in such proceedings the invalidity of the ordinance. Nothing in this section or in  
 17 G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,  
 18 requirement, decision, or determination made by an administrative official contending that such  
 19 party is in violation of a development regulation from raising in the judicial appeal the invalidity  
 20 of such ordinance as a defense to such order, requirement, decision, or determination. A party in  
 21 an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an  
 22 alleged defect in the adoption process unless the defense is formally raised within three years of  
 23 the adoption of the challenged ordinance.

24 (d) Quasi-Judicial Decisions. – Unless specifically provided otherwise, a petition for  
 25 review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of  
 26 30 days after the decision is effective or after a written copy thereof is given in accordance with  
 27 G.S. 160D-4-6(j). When first-class mail is used to deliver notice, three days shall be added to the  
 28 time to file the petition.

29 (e) Others. – Except as provided by this section, the statutes of limitations shall be as  
 30 provided in Subchapter II of Chapter 1 of the General Statutes."

31 **SECTION 4.1.** G.S. 1-54 reads as rewritten:

32 **"§ 1-54. One year.**

33 Within one year an action or proceeding –

34 ...

35 (10) Actions contesting the validity of any zoning or unified development  
 36 ordinance or any provision thereof adopted under ~~Part 3 of Article 18 of~~  
 37 ~~Chapter 153A or Part 3 of Article 19 of Chapter 160A~~ Chapter 160D of the  
 38 General Statutes or other applicable law, other than an ordinance adopting or  
 39 amending a zoning map or approving a special use, conditional use, or  
 40 conditional zoning district rezoning request. map. Such an action accrues  
 41 when the party bringing such action first has standing to challenge the  
 42 ordinance; provided that, a challenge to an ordinance on the basis of an alleged  
 43 defect in the adoption process shall be brought within three years after the  
 44 adoption of the ordinance.

45 ...."

46 **SECTION 4.2.** G.S. 1-54.1 reads as rewritten:

47 **"§ 1-54.1. Two months.**

48 Within two months an action contesting the validity of any ordinance adopting or amending  
 49 a zoning map ~~or approving a special use, conditional use, conditional zoning district rezoning~~  
 50 ~~request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article 19~~  
 51 ~~of Chapter 160A of the General Statutes or other applicable law. Article 7 of Chapter 160D of~~

1 the General Statutes. Such an action accrues upon adoption of such ordinance or amendment. As  
 2 used herein, the term two months shall be calculated as 60 days."

3 **SECTION 4.3.** G.S. 63-31(a) reads as rewritten:

4 "**§ 63-31. Adoption of airport zoning regulations.**

5 (a) Every political subdivision may adopt, administer, and enforce, under the police  
 6 power ~~and in the manner and upon the conditions hereinafter prescribed, or as a land development~~  
 7 regulation under Chapter 160D of the General Statutes, airport zoning regulations, which  
 8 regulations shall divide the area surrounding any airport within the jurisdiction of said political  
 9 subdivision into zones, and, within such zones, specify the land uses permitted, and regulate and  
 10 restrict the height to which structures and trees may be erected or allowed to grow. In adopting  
 11 or revising any such zoning regulations, the political subdivision shall consider, among other  
 12 things, the character of the flying operations expected to be conducted at the airport, the nature  
 13 of the terrain, the height of existing structures and trees above the level of the airport, the  
 14 possibility of lowering or removing existing obstructions, and the views of the agency of the  
 15 federal government charged with the fostering of civil aeronautics, as to the aerial approaches  
 16 necessary to safe flying operations at the airport."

17 **SECTION 4.4.** G.S. 63-32(b) reads as rewritten:

18 "**§ 63-32. Permits, new structures, etc., and variances.**

19 ...

20 (b) Variances. – Any person desiring to erect any structures, or increase the height of any  
 21 structure, or permit the growth of any tree, or otherwise use his property, in violation of airport  
 22 zoning regulations adopted under this Article, may apply to the board of appeals, as provided in  
 23 G.S. 63-33, subsection (c), for a variance from the zoning regulations in question. Such variances  
 24 ~~shall be allowed where a literal application or enforcement of the regulations would result in~~  
 25 ~~practical difficulty or unnecessary hardship and the relief granted would not be contrary to the~~  
 26 ~~public interest but do substantial justice and shall be considered pursuant to G.S. 160D-7-5(d)~~  
 27 and be in accordance with the spirit of the regulations and this Article."

28 **SECTION 4.5.** G.S. 63-33 reads as rewritten:

29 "**§ 63-33. Procedure.**

30 (a) Adoption of Zoning Regulations. – No airport zoning regulations shall be adopted,  
 31 amended, or changed under this Article except by action of the legislative body of the political  
 32 subdivision in question, or the joint board provided for in G.S. 63-31, subsection (c), ~~after a~~  
 33 ~~public hearing in relation thereto, at which parties in interest and citizens shall have an~~  
 34 ~~opportunity to be heard. At least 10 days' notice of the hearing shall be published in an official~~  
 35 ~~paper, or a paper of general circulation, in the political subdivision or subdivisions in which the~~  
 36 ~~airport is located, following the procedures set for adoption of development regulations in Article~~  
 37 6 of Chapter 160D of the General Statutes.

38 ...

39 (c) Administration of Airport Zoning Regulations – Board of Appeals. – Airport zoning  
 40 regulations adopted under this Article shall provide for a board of appeals to have and exercise  
 41 the following powers:

- 42 (1) To hear and decide appeals from any order, requirement, decision, or  
 43 determination made by the administrative agency in the enforcement of this  
 44 ~~Article or of any ordinance adopted pursuant thereto;~~Article.
- 45 (2) To hear and decide special ~~exceptions to the terms of the ordinance use~~  
 46 permits upon which such board may be required to pass under such  
 47 ~~ordinance;~~ordinance.
- 48 (3) To hear and decide specific ~~variances under G.S. 63-32, subsection~~  
 49 ~~(b);~~variances.

50 ~~Where a zoning board of appeals or adjustment already exists, it may be appointed as the~~  
 51 board of appeals. Otherwise, the board of appeals shall consist of five members, each to be

1 appointed for a term of three years and to be removable for cause by the appointing authority  
2 upon written charges and after public hearing. G.S. 160D-4-5 and G.S. 160D-4-6 shall be  
3 applicable to appeals, special use permits, and variance petitions made pursuant to this section.

4 ~~The board shall adopt rules in accordance with the provisions of any ordinance adopted under~~  
5 ~~this Article. Meetings of the board shall be held at the call of the chairman and at such other times~~  
6 ~~as the board may determine. The chairman, or in his absence the acting chairman, may administer~~  
7 ~~oaths and compel the attendance of witnesses. All meetings of the board shall be public. The~~  
8 ~~board shall keep minutes of its proceedings, showing the vote of each member upon each~~  
9 ~~question, or, if absent or failing to vote, indicating such fact, and shall keep records of its~~  
10 ~~examinations and other official actions, all of which shall immediately be filed in the office of~~  
11 ~~the board and shall be a public record.~~

12 ~~Appeals to the board may be taken by any person aggrieved, or by any officer, department,~~  
13 ~~board, or bureau of the political subdivision affected, by any decision of the administrative~~  
14 ~~agency. An appeal must be taken within a reasonable time, as provided by the rules of the board,~~  
15 ~~by filing with the agency from which the appeal is taken and with the board, a notice of appeal~~  
16 ~~specifying the grounds thereof. The agency from which the appeal is taken shall forthwith~~  
17 ~~transmit to the board all the papers constituting the record upon which the action appealed from~~  
18 ~~was taken.~~

19 ~~An appeal shall stay all proceedings in furtherance of the action appealed from, unless the~~  
20 ~~agency from which the appeal is taken certifies to the board, after the notice of appeal has been~~  
21 ~~filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause~~  
22 ~~imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by~~  
23 ~~a restraining order which may be granted by the board or by a court of record on application on~~  
24 ~~notice to the agency from which the appeal is taken and on due cause shown.~~

25 ~~The board shall fix a reasonable time for the hearing of the appeal, give public notice and due~~  
26 ~~notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing~~  
27 ~~any party may appear in person or by agent or by attorney.~~

28 ~~The board may, in conformity with the provisions of this Article, reverse or affirm, wholly~~  
29 ~~or partly, or modify, the order, requirement, decision or determination appealed from and may~~  
30 ~~make such order, requirement, decision or determination as ought to be made, and to that end~~  
31 ~~shall have all the powers of the administrative agency from which the appeal is taken.~~

32 ~~The concurring vote of a majority of the members of the board shall be sufficient to reverse~~  
33 ~~any order, requirement, decision, or determination of the administrative agency, or to decide in~~  
34 ~~favor of the applicant on any matter upon which it is required to pass under any such ordinance,~~  
35 ~~or to effect any variation in such ordinance."~~

36 **SECTION 4.6.** G.S. 63-34 reads as rewritten:

37 **"§ 63-34. Judicial review.**

38 (a) ~~Any person aggrieved by any decision of the board of appeals, or any taxpayer, or~~  
39 ~~any officer, department, board, or bureau of the political subdivision, may present to the superior~~  
40 ~~court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying~~  
41 ~~the grounds of the illegality. Such petition shall be presented to the court within 30 days after the~~  
42 ~~decision is filed in the office of the board. Such petition shall comply with the provisions of G.S.~~  
43 ~~160A-393.~~

44 (b) ~~The allowance of the writ shall not stay proceedings upon the decision appealed from,~~  
45 ~~but the court may, on application, on notice to the board and on due cause shown, grant a~~  
46 ~~restraining order.~~

47 (c) ~~The board of appeals shall not be required to return the original papers acted upon by~~  
48 ~~it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof~~  
49 ~~as may be called for by the writ. The return shall concisely set forth such other facts as may be~~  
50 ~~pertinent and material to show the grounds of the decision appealed from and shall be verified.~~

51 (d) ~~Repealed by Session Laws 2009-421, s. 3, effective January 1, 2010.~~

1 (e) Costs shall not be allowed against the board of appeals unless it appears to the court  
2 that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed  
3 from.

4 G.S. 160D-14-1 shall be applicable to judicial review of administrative and quasi-judicial  
5 decisions made pursuant to this Article."

6 **SECTION 4.7.** G.S. 63-35 reads as rewritten:

7 **"§ 63-35. Enforcement and remedies.**

8 ~~Each violation of this Article or of any regulations, order, or ruling promulgated or made~~  
9 ~~pursuant to this Article, shall constitute a Class 3 misdemeanor, and each day a violation~~  
10 ~~continues to exist shall constitute a separate offense. In addition, the political subdivision within~~  
11 ~~which the property is located may institute in any court of competent jurisdiction, an action to~~  
12 ~~prevent, restrain, correct or abate any violation of this Article, or of airport zoning regulations~~  
13 ~~adopted under this Article, or of any order or ruling made in connection with their administration~~  
14 ~~or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction~~  
15 ~~(which may be mandatory) or otherwise, as may be proper under all the facts and circumstances~~  
16 ~~of the case, in order fully to effectuate the purposes of this Article and of the regulations adopted~~  
17 ~~and orders and rulings made pursuant thereto.~~G.S. 160D-4-4 shall be applicable to ordinances  
18 adopted pursuant to this Article."

19 **SECTION 4.8.** G.S. 143-215.57 reads as rewritten:

20 **"§ 143-215.57. Procedures in issuing permits.**

21 ...

22 (b) In prescribing standards and requirements for the issuance of permits under this Part  
23 and in issuing permits, local governments shall proceed as in the case of an ordinance for the  
24 better government of the county or city as the case may be. ~~A city may exercise the powers~~  
25 ~~granted in this Part not only within its corporate boundaries but also within the area of its~~  
26 ~~extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any~~  
27 ~~place within the county that is outside the zoning jurisdiction of a city in the county. If a city does~~  
28 ~~not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction, the~~  
29 ~~county may exercise the powers granted in this Part in the city's extraterritorial zoning~~  
30 ~~jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose~~  
31 ~~governing body, by resolution, agrees to the regulation. The governing body of a city may, upon~~  
32 ~~one year's written notice, withdraw its approval of the county regulations, and those regulations~~  
33 ~~shall have no further effect within the city's jurisdiction.~~Local government jurisdiction for these  
34 ordinances shall be as specified in Article 2 of Chapter 160D of the General Statutes. Article 4  
35 of Chapter 160D of the General Statutes shall apply to the administration, enforcement, and  
36 appeals regarding these ordinances.

37 (c) ~~The local governing body is hereby empowered to adopt regulations it may deem~~  
38 ~~necessary concerning the form, time, and manner of submission of applications for permits under~~  
39 ~~this Part. These regulations may provide for the issuance of permits under this Part by the local~~  
40 ~~governing body or by an agency designated by the local governing body, as prescribed by the~~  
41 ~~governing body. Every final decision granting or denying a permit under this Part shall be subject~~  
42 ~~to review by the superior court of the county, with the right of jury trial at the election of the~~  
43 ~~party seeking review. The time and manner of election of a jury trial shall be governed by G.S.~~  
44 ~~1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no~~  
45 ~~action shall be taken that would be unlawful in the absence of a permit issued under this Part."~~

46 **SECTION 4.9.** G.S. 143-215.58 reads as rewritten:

47 **"§ 143-215.58. Violations and penalties.**

48 ...

49 (a1) A local government may use all of the remedies available for the enforcement of  
50 ordinances under Chapters ~~153A and 160A-153A~~, 160A, and 160D of the General Statutes to  
51 enforce an ordinance adopted pursuant to this Part.

1 (b) Failure to remove any artificial obstruction or enlargement or replacement thereof,  
2 that violates this Part or any ordinance adopted (or the provision of any permit issued) under the  
3 authority of this Part, shall constitute a separate violation of this Part for each day that the failure  
4 continues after written notice from the county board of commissioners or governing ~~body~~board  
5 of a city.

6 (c) In addition to or in lieu of other remedies, the county board of commissioners or  
7 governing ~~body~~board of a city may institute any appropriate action or proceeding to restrain or  
8 prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit  
9 issued) under the authority of this Part, or to require any person, firm or corporation that has  
10 committed a violation to remove a violating obstruction or restore the conditions existing before  
11 the placement of the obstruction."

12 **SECTION 4.10.** G.S. 130A-55 reads as rewritten:

13 **"§ 130A-55. Corporate powers.**

14 A sanitary district board shall be a body politic and corporate and may sue and be sued in  
15 matters relating to the sanitary district. Notwithstanding any limitation in the petition under  
16 G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may  
17 exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary  
18 district board shall have the following powers:

19 ...  
20 (17) For the purpose of promoting and protecting the public health, safety and the  
21 general welfare of the State, a sanitary district board is authorized to establish  
22 as zoning units any portions of the sanitary district not under the control of the  
23 United States or this State or any agency or instrumentality of either, in  
24 accordance with the following:

25 ...  
26 b. When a zoning area is established within a sanitary district, the  
27 sanitary district board as to the zoning area shall have all rights,  
28 privileges, powers and duties granted to ~~municipal corporations under~~  
29 ~~Part 3, Article 19, Chapter 160A~~ local governments under Article 7 of  
30 Chapter 160D of the General Statutes. However, the sanitary district  
31 board shall not be required to appoint any zoning commission or board  
32 of adjustment. If neither a zoning commission nor board of adjustment  
33 is appointed, the sanitary district board shall have all rights.

34 ...."

35 **SECTION 4.11.** G.S. 143-214.5(d) reads as rewritten:

36 "(d) **Mandatory Local Programs.** – The Department shall assist local governments to  
37 develop water supply watershed protection programs that comply with this section. Local  
38 government compliance programs shall include an implementing local ordinance and shall  
39 provide for maintenance, inspection, and enforcement procedures. As part of its assistance to  
40 local governments, the Commission shall approve and make available a model local water supply  
41 watershed management and protection ordinance. The model management and protection  
42 ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling  
43 development density, (ii) providing for performance-based alternatives to development density  
44 controls that are based on sound engineering principles, and (iii) a combination of both (i) and  
45 (ii). Local governments shall administer and enforce the minimum management requirements.  
46 Every local government that has within its jurisdiction all or a portion of a water supply watershed  
47 shall submit a local water supply watershed management and protection ordinance to the  
48 Commission for approval. Local governments may adopt such ordinances pursuant to their  
49 general police power, power to regulate the subdivision of land, zoning power, or any  
50 combination of such powers. In adopting a local ordinance that imposes water supply watershed  
51 management requirements that are more stringent than those adopted by the Commission, a

1 ~~county local government must comply with the notice provisions of G.S. 153A-343 and a~~  
 2 ~~municipality must comply with the notice provisions of G.S. 160A-384. Article 6 of Chapter~~  
 3 ~~160D of the General Statutes. This section shall not be construed to affect the validity of any~~  
 4 ~~local ordinance adopted for the protection of water supply watersheds prior to completion of the~~  
 5 ~~review of the ordinance by the Commission or prior to the assumption by the Commission of~~  
 6 ~~responsibility for a local water supply watershed protection program. Local governments may~~  
 7 ~~create or designate agencies to administer and enforce such programs. The Commission shall~~  
 8 ~~approve a local program only if it determines that the requirements of the program equal or~~  
 9 ~~exceed the minimum statewide water supply watershed management requirements adopted~~  
 10 ~~pursuant to this section."~~

11 **SECTION 4.12.** G.S. 113A-208 reads as rewritten:

12 "**§ 113A-208. Regulation of mountain ridge construction by counties and cities.**

13 (a) Any county or city may adopt, effective not later than January 1, 1984, and may  
 14 enforce an ordinance that regulates the construction of tall buildings or structures on protected  
 15 mountain ridges by any person. The ordinance may provide for the issuance of permits to  
 16 construct tall buildings on protected mountain ridges, the conditioning of such permits, and the  
 17 denial of permits for such construction. Any ordinance adopted hereunder shall be based upon  
 18 studies of the mountain ridges within the county, a statement of objectives to be sought by the  
 19 ordinance, and plans for achieving these objectives. Any such county ordinance shall apply  
 20 countywide except as otherwise provided in ~~G.S. 160A-360, Article 2 of Chapter 160D of the~~  
 21 ~~General Statutes~~ and any such city ordinance shall apply citywide, to construction of tall  
 22 buildings on protected mountain ridges within the city or county, as the case may be.

23 A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an ordinance  
 24 eliminating the requirement for an elevation of 3,000 feet, as permitted by G.S. 113A-206(6).

25 (b) Under the ordinance, permits shall be denied if a permit application (and shall be  
 26 revoked if a project) fails to provide for:

27 ...

28 (4) Adequate consideration to protecting the natural beauty of the mountains, as  
 29 determined by the local governing ~~body~~ board.

30 ...

31 (f) Any county or city that adopts an ordinance pursuant to this section ~~must hold a public~~  
 32 ~~hearing before adopting the ordinance upon the question of adopting the ordinance or of allowing~~  
 33 ~~the construction of tall buildings on protected mountain ridges to be governed by G.S. 113A-209.~~  
 34 ~~The public hearing required by this section shall be held upon at least 10 days' notice in a~~  
 35 ~~newspaper of general circulation in the unit adopting the ordinance. Testimony at the hearing~~  
 36 ~~shall be recorded and any and all exhibits shall be preserved within the custody of the governing~~  
 37 ~~body. The testimony and evidence shall be made available for inspection and scrutiny by any~~  
 38 ~~person shall follow the procedures of Article 6 of Chapter 160D of the General Statutes.~~

39 (g) ~~Any resident of a county or city that adopted an ordinance pursuant to this section, or~~  
 40 ~~of an adjoining county, may bring a civil action against the ordinance-adopting unit, contesting~~  
 41 ~~the ordinance as not meeting the requirements of this section. If the ordinance is found not to~~  
 42 ~~meet all of the requirements of this section, the county or city shall be enjoined from enforcing~~  
 43 ~~the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this Article authorizes~~  
 44 ~~the State of North Carolina or any of its agencies to bring a civil action to contest an ordinance,~~  
 45 ~~or for a violation of this Article or of an ordinance adopted pursuant to this Article."~~

46 **SECTION 4.13.** G.S. 113A-211(a) reads as rewritten:

47 "(a) Violations of this Article shall be subject to the same criminal sanctions, civil  
 48 penalties and equitable remedies as ~~violations of county ordinances under G.S.~~  
 49 ~~153A-123 provided by G.S. 160D-4-4."~~

50 **SECTION 4.14.** G.S. 160A-75 reads as rewritten:

51 "**§ 160A-75. Voting.**

1 No member shall be excused from voting except upon matters involving the consideration of  
2 the member's own financial interest or official conduct or on matters on which the member is  
3 prohibited from voting under ~~G.S. 14-234, 160A-381(d), or 160A-388(e)(2)~~. ~~G.S. 14-234 or~~  
4 ~~G.S. 160D-1-9~~. In all other cases except votes taken under ~~G.S. 160A-385, G.S. 160D-6-1~~, a  
5 failure to vote by a member who is physically present in the council chamber, or who has  
6 withdrawn without being excused by a majority vote of the remaining members present, shall be  
7 recorded as an affirmative vote. The question of the compensation and allowances of members  
8 of the council is not a matter involving a member's own financial interest or official conduct.

9 An affirmative vote equal to a majority of all the members of the council not excused from  
10 voting on the question in issue, including the mayor's vote in case of an equal division, shall be  
11 required to adopt an ordinance, take any action having the effect of an ordinance, authorize or  
12 commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of  
13 the city. In addition, no ordinance nor any action having the effect of any ~~ordinance~~ ordinance,  
14 except an ordinance on which a public hearing must be held pursuant to G.S. 160D-6-1 before  
15 the ordinance may be adopted, may be finally adopted on the date on which it is introduced except  
16 by an affirmative vote equal to or greater than two thirds of all the actual membership of the  
17 council, excluding vacant seats and not including the mayor unless the mayor has the right to  
18 vote on all questions before the council. For purposes of this section, an ordinance shall be  
19 deemed to have been introduced on the date the subject matter is first voted on by the council."

20 **SECTION 5.1.** G.S. 153A-102.1 is repealed.

21 **SECTION 5.2.** G.S. 160A-4.1 is repealed.

22 **SECTION 5.3.** G.S. 160A-181.1 is repealed.

23 **SECTION 5.4.** G.S. 153A-143 is repealed.

24 **SECTION 5.5.** G.S. 160A-199 is repealed.

25 **SECTION 5.6.** G.S. 153A-144 is repealed.

26 **SECTION 5.7.** G.S. 160A-201 is repealed.

27 **SECTION 5.8.** G.S. 153A-452 is repealed.

28 **SECTION 5.9.** G.S. 153A-455 is repealed.

29 **SECTION 5.10.** Article 3 of Chapter 168 of the General Statutes is repealed.

30 **SECTION 6.** Article 23 of Chapter 153A of the General Statutes is amended by  
31 adding the following new sections to read:

32 **"§ 153A-458. Submission of statement concerning improvements.**

33 A county may by ordinance require that when a property owner improves property at a cost  
34 of more than two thousand five hundred dollars (\$2,500) but less than five thousand dollars  
35 (\$5,000), the property owner must, within 14 days after the completion of the work, submit to  
36 the county assessor a statement setting forth the nature of the improvement and the total cost  
37 thereof.

38 **"§ 153A-459. Authorization to provide grants.**

39 A county may provide grants to unaffiliated qualified private providers of high-speed Internet  
40 access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service  
41 in unserved areas for economic development in the county. The grants shall be awarded on a  
42 technology neutral basis, shall be open to qualified applicants, and may require matching funds  
43 by the private provider. A county shall seek and consider requests for proposal from qualified  
44 private providers within the county prior to awarding a broadband grant and shall use reasonable  
45 means to ensure that potential applicants are made aware of the grant, including, at a minimum,  
46 compliance with the notice procedures set forth in G.S. 160A-340.6(c). The county shall use only  
47 unrestricted general fund revenue for the grants. For the purposes of this section, a qualified  
48 private provider is a private provider of high-speed Internet access service in the State prior to  
49 the issuance of the grant proposal. Nothing in this section authorizes a county to provide  
50 high-speed Internet broadband service."

1           **SECTION 7.** If any provision of this act or its application is held invalid, the  
2 invalidity does not affect other provisions or applications of this act that can be given effect  
3 without the invalid provisions or application, and, to this end, the provisions of this act are  
4 severable.

5           **SECTION 8.1.** Any otherwise valid permit or development approval made prior to  
6 January 1, 2021, shall not be invalid based on inconsistency with the provisions of this act. The  
7 validity of any plan adopted prior to January 1, 2021, is not affected by a failure to comply with  
8 the procedural requirements of G.S. 160D-5-1(b).

9           **SECTION 8.2.** Any special use district or conditional use district zoning district that  
10 is valid and in effect as of January 1, 2021, shall be deemed a conditional zoning district  
11 consistent with the terms of this act, and the special or conditional use permits issued concurrently  
12 with establishment of those districts shall be valid as specified in Section 8.1 of this act. Any  
13 valid "conditional use permit" issued prior to January 1, 2021, shall be deemed a "special use  
14 permit" consistent with the provisions of this act.

15           **SECTION 8.3.** Any local government that has adopted zoning regulations but that  
16 has not adopted a comprehensive plan shall adopt such plan no later than July 1, 2022, in order  
17 to retain the authority to adopt and apply zoning regulations.

18           **SECTION 9.** If this act becomes law in 2019, it is the intent of the General Assembly  
19 that legislation in other acts enacted in the 2019 Regular Session of the 2019 General Assembly  
20 that affects statutes repealed and replaced by similar provisions in Chapter 160D of the General  
21 Statutes, as enacted by this act, also be incorporated into Chapter 160D of the General Statutes.  
22 The North Carolina General Statutes Commission shall study the need for legislation to  
23 accomplish this intent and shall report its findings and recommendations, including any  
24 legislative proposals, to the 2020 Regular Session of the 2019 General Assembly.

25           **SECTION 10.** Section 10 of this act is effective when it becomes law. The remainder  
26 of this act becomes effective January 1, 2021, and applies to local government development  
27 regulation decisions made on or after that date. This act clarifies and restates the intent of existing  
28 law and applies to ordinances adopted before, on, and after the effective date.