

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS15095-MQ-26 (02/08)

Short Title: Planning/Development Changes. (Public)

Sponsors: Senators Lee and McKissick (Primary Sponsors).

Referred to:

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

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

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

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

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

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

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

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

26 The General Assembly of North Carolina enacts:

27 **SECTION 1.** Article 18 of Chapter 153A of the General Statutes is repealed.

28 **SECTION 2.** Article 19 of Chapter 160A of the General Statutes is repealed.

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

30 **"Chapter 160D.**

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

32 **"Article 1.**

33 **"General Provisions.**

34 **"§ 160D-1-1. Application.**

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



1 there are contrary provisions in local charters or acts, G.S. 160D-1-12 is applicable unless this
2 Chapter expressly provides otherwise. The provisions of this Article also apply to any other
3 local 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 apply any of the definitions and procedures authorized by
9 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. – A plan officially adopted by the governing board
33 pursuant to G.S. 160D-5-1(c).
- 34 (7) Conditional zoning. – A legislative zoning map amendment with
35 site-specific conditions incorporated into the zoning map amendment.
- 36 (8) County. – Any one of the counties listed in G.S. 153A-10.
- 37 (9) Decision-making board. – A governing board, planning board, board of
38 adjustment, historic district board, or other board assigned to make
39 quasi-judicial decisions under this Chapter.
- 40 (10) Determination. – A written, final, and binding order, requirement, or
41 determination regarding an administrative decision.
- 42 (11) Developer. – A person, including a governmental agency or redevelopment
43 authority, who undertakes any development and who is the landowner of the
44 property to be developed or who has been authorized by the landowner to
45 undertake development on that property.
- 46 (12) Development. – Unless the context clearly indicates otherwise, the term
47 means any of the following:
- 48 a. The construction, erection, alteration, enlargement, renovation,
49 substantial repair, movement to another site, or demolition of any
50 structure.
- 51 b. The excavation, grading, filling, clearing, or alteration of land.

- 1 c. The subdivision of land as defined in G.S. 160D-8-2.
2 d. The initiation or substantial change in the use of land or the intensity
3 of use of land.
- 4 (13) Development approval. – An administrative or quasi-judicial approval made
5 pursuant to this Chapter that is written and that is required prior to
6 commencing development or undertaking a specific activity, project, or
7 development proposal. Development approvals include, but are not limited
8 to, zoning permits, site plan approvals, special use permits, variances, and
9 certificates of appropriateness. The term also includes plat approvals,
10 development agreements, and building permits as governed by this Chapter.
- 11 (14) Development regulation. – A unified development ordinance, zoning
12 regulation, subdivision regulation, erosion and sedimentation control
13 regulation, floodplain or flood damage prevention regulation, mountain ridge
14 protection regulation, stormwater control regulation, wireless
15 telecommunication facility regulation, historic preservation or landmark
16 regulation, housing code, State Building Code enforcement, or any other
17 regulation adopted pursuant to this Chapter, or a local act or charter that
18 regulates land use or development.
- 19 (15) Dwelling. – Any building, structure, manufactured home, or mobile home,
20 or part thereof, used and occupied for human habitation or intended to be so
21 used, and includes any outhouses and appurtenances belonging thereto or
22 usually enjoyed therewith. For the purposes of Article 12 of this Chapter, the
23 term does not include any manufactured home, mobile home, or recreational
24 vehicle, if used solely for a seasonal vacation purpose.
- 25 (16) Evidentiary hearing. – A hearing to gather competent, material, and
26 substantial evidence in order to make findings for a quasi-judicial decision
27 required by a development regulation adopted under this Chapter.
- 28 (17) Governing board. – The city council or board of county commissioners. The
29 term is interchangeable with the terms "board of aldermen" and "boards of
30 commissioners" and shall mean any governing board without regard to the
31 terminology employed in charters, local acts, other portions of the General
32 Statutes, or local customary usage.
- 33 (18) Landowner or owner. – The holder of the title in fee simple. Absent
34 evidence to the contrary, a local government may rely on the county tax
35 records to determine who is a landowner. The landowner may authorize a
36 person holding a valid option, lease, or contract to purchase to act as his or
37 her agent or representative for the purpose of making applications for
38 development approvals.
- 39 (19) Legislative decision. – The adoption, amendment, or repeal of a regulation
40 under this Chapter or an applicable local act. The term also includes the
41 decision to approve, amend, or rescind a development agreement consistent
42 with the provisions of Article 10 of this Chapter.
- 43 (20) Legislative hearing. – A hearing to solicit public comment on a proposed
44 legislative decision.
- 45 (21) Local act. – As defined in G.S. 160A-1(2).
- 46 (22) Local government. – A city or county.
- 47 (23) Manufactured home or mobile home. – A structure as defined in
48 G.S. 143-145(7).
- 49 (24) Person. – An individual, partnership, firm, association, joint venture, public
50 or private corporation, trust, estate, commission, board, public or private

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

1 local government that has previously adopted zoning regulations and (ii) the
2 application of an overlay zoning district or a conditional zoning district. The
3 term does not include (i) the initial adoption of a zoning map by a local
4 government, (ii) the repeal of a zoning map and readoption of a new zoning
5 map for the entire planning and development regulation jurisdiction, or (iii)
6 updating the zoning map to incorporate amendments to the names of zoning
7 districts made by zoning text amendments where there are no changes in the
8 boundaries of the zoning district or land uses permitted in the district.

9 (35) Zoning regulation. – A zoning regulation authorized by Article 7 of this
10 Chapter or the zoning portion of a unified development ordinance.

11 **"§ 160D-1-3. Unified development ordinance.**

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

19 **"§ 160D-1-4. Development approvals run with the land.**

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

23 **"§ 160D-1-5. Maps.**

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

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

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

43 **"§ 160D-1-6. Refund of illegal fees.**

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

49 **"§ 160D-1-7. Moratoria.**

50 (a) Authority. – As provided in this section, local governments may adopt temporary
51 moratoria on any development approval required by law, except for the purpose of developing

1 and adopting new or amended plans or development regulations governing residential uses. The
2 duration of any moratorium shall be reasonable in light of the specific conditions that warrant
3 imposition of the moratorium and may not exceed the period of time necessary to correct,
4 modify, or resolve such conditions.

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

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

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

26 (1) A statement of the problems or conditions necessitating the moratorium and
27 what courses of action, alternative to a moratorium, were considered by the
28 local government and why those alternative courses of action were not
29 deemed adequate.

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

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

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

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

47 (f) Expedited Judicial Review. – Any person aggrieved by the imposition of a
48 moratorium on development approvals required by law may apply to the General Court of
49 Justice for an order enjoining the enforcement of the moratorium. Actions brought pursuant to
50 this section shall be scheduled for expedited hearing, and subsequent proceedings in those
51 actions shall be accorded priority by the trial and appellate courts. In such actions, the local

1 government shall have the burden of showing compliance with the procedural requirements of
2 this subsection.

3 **"§ 160D-1-8. Vested rights and permit choice.**

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

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

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

25 (d) Types and Duration of Statutory Vested Rights. – Except as provided by this
26 section, amendments in local development regulations shall not be applicable or enforceable
27 with regard to development that has been authorized prior to the enactment of the regulation
28 making the change or changes so long as one of the types of approvals listed in this subsection
29 remains valid and unexpired. Each type of vested right listed in this subsection is defined by
30 and is subject to the limitations provided in this section. Vested rights established under this
31 section are not mutually exclusive and the establishment of a vested right does not preclude the
32 establishment of one or more other vested rights. Vested rights established by local government
33 approvals are as follows:

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

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

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

45 a. Duration. – A vested right for a site-specific vesting plan shall
46 remain vested for a period of two years. This vesting shall not be
47 extended by any amendments or modifications to a site-specific
48 vesting plan unless expressly provided by the local government. A
49 local government may provide that rights regarding a site-specific
50 vesting plan shall be vested for a period exceeding two years, but not
51 exceeding five years, if warranted by the size and phasing of

1 development, the level of investment, the need for the development,
2 economic cycles, and market conditions, or other considerations.
3 This determination shall be in the discretion of the local government
4 and shall be made following the process specified for the particular
5 form of a site-specific vesting plan involved in accordance with
6 sub-subdivision c. of this subdivision.

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

14 c. Requirements for site-specific vesting plans. – For the purposes of
15 this section a "site-specific vesting plan" means a plan submitted to a
16 local government pursuant to this section describing with reasonable
17 certainty the type and intensity of use for a specific parcel or parcels
18 of property. The plan may be in the form of, but not be limited to,
19 any of the following plans or approvals: a planned unit development
20 plan, a subdivision plat, a site plan, a preliminary or general
21 development plan, a special use permit, a conditional zoning, or any
22 other development approval as may be used by a local government.
23 Unless otherwise expressly provided by the local government, the
24 plan shall include the approximate boundaries of the site; significant
25 topographical and other natural features effecting development of the
26 site; the approximate location on the site of the proposed buildings,
27 structures, and other improvements; the approximate dimensions,
28 including height, of the proposed buildings and other structures; and
29 the approximate location of all existing and proposed infrastructure
30 on the site, including water, sewer, roads, and pedestrian walkways.
31 What constitutes a site-specific vesting plan shall be finally
32 determined by the local government pursuant to an ordinance and the
33 document that triggers vesting shall be so identified at the time of its
34 approval. At a minimum, the regulation shall designate a vesting
35 point earlier than the issuance of a building permit. In the event a
36 local government fails to adopt an ordinance setting forth what
37 constitutes a site-specific vesting plan, any development approval
38 shall be considered to be a site-specific vesting plan. A variance shall
39 not constitute a site-specific vesting plan and approval of a
40 site-specific vesting plan with the condition that a variance be
41 obtained shall not confer a vested right unless and until the necessary
42 variance is obtained. If a sketch plan or other document fails to
43 describe with reasonable certainty the type and intensity of use for a
44 specified parcel or parcels of property, it may not constitute a
45 site-specific vesting plan.

46 d. Process for approval and amendment of site-specific vesting plans. –
47 If a site-specific vesting plan is based on an approval required by a
48 local development regulation, the local government shall provide
49 whatever notice and hearing is required for that underlying approval.
50 If the site-specific vesting plan is not based on such an approval, a
51 legislative hearing with notice as required by G.S. 160D-6-2 shall be

1 held. A local government may approve a site-specific vesting plan
2 upon such terms and conditions as may reasonably be necessary to
3 protect the public health, safety, and welfare. Such conditional
4 approval shall result in a vested right, although failure to abide by its
5 terms and conditions will result in a forfeiture of vested rights. A
6 local government shall not require a landowner to waive vested rights
7 as a condition of developmental approval. A site-specific vesting
8 plan shall be deemed approved upon the effective date of the local
9 government's decision approving the plan or such other date as
10 determined by the governing board upon approval. An approved
11 site -specific vesting plan and its conditions may be amended with
12 the approval of the owner and the local government as follows: any
13 substantial modification must be reviewed and approved in the same
14 manner as the original approval; minor modifications may be
15 approved by staff, if such are defined and authorized by local
16 regulation.

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

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

32 (e) Continuing Review. – Following approval or conditional approval of a statutory
33 vested right, a local government may make subsequent reviews and require subsequent
34 approvals by the local government to ensure compliance with the terms and conditions of the
35 original approval, provided that such reviews and approvals are not inconsistent with the
36 original approval. The local government may revoke the original approval for failure to comply
37 with applicable terms and conditions of the original approval or the applicable local
38 development regulations.

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

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

45 a. The written consent of the affected landowner.

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

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

9 d. Findings made, after notice and an evidentiary hearing, that the
10 landowner or his representative intentionally supplied inaccurate
11 information or made material misrepresentations that made a
12 difference in the approval by the local government of the vested
13 right.

14 e. The enactment or promulgation of a State or federal law or regulation
15 that precludes development as contemplated in the approved vested
16 right, in which case the local government may modify the affected
17 provisions, upon a finding that the change in State or federal law has
18 a fundamental effect on the plan, after notice and an evidentiary
19 hearing.

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

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

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

42 **"§ 160D-1-9. Conflicts of interest.**

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

50 (b) Appointed Boards. – Members of appointed boards providing advice to the
51 governing board shall not vote on recommendations regarding any legislative decision

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

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

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

20 (d) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial
21 functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in
22 a manner that would violate affected persons' constitutional rights to an impartial decision
23 maker. Impermissible violations of due process include, but are not limited to, a member
24 having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed
25 ex parte communications, a close familial, business, or other associational relationship with an
26 affected person, or a financial interest in the outcome of the matter. If an objection is raised to a
27 member's participation and that member does not recuse himself or herself, the remaining
28 members shall by majority vote rule on the objection.

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

32 **"§ 160D-1-10. Chapter construction.**

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

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

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

39 **"§ 160D-1-11. Effect on prior laws.**

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

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

1 prior to the date of hearing. The person or persons mailing the notices shall certify to the city
2 council that the notices were sent by first-class mail, and the certificate shall be deemed
3 conclusive in the absence of fraud.

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

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

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

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

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

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

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

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

"§ 160D-2-3. Split jurisdiction.

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

"§ 160D-2-4. Pending jurisdiction.

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

"Article 3.

"Boards and Organizational Arrangements.

"§ 160D-3-1. Planning boards.

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

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

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

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

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

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

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

- 1 (4) To advise the governing board concerning the implementation of plans,
2 including, but not limited to, review and comment on all zoning text and
3 map amendments as required by G.S. 160D-6-4.
- 4 (5) To exercise any functions in the administration and enforcement of various
5 means for carrying out plans that the governing board may direct.
- 6 (6) To provide a preliminary forum for review of quasi-judicial decisions,
7 provided that no part of the forum or recommendation may be used as a
8 basis for the deciding board.
- 9 (7) To perform any other related duties that the governing board may direct.

10 **"§ 160D-3-2. Boards of adjustment.**

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

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

30 **"§ 160D-3-3. Historic preservation commission.**

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

43 (b) Alternative Forms. – In lieu of establishing a historic preservation commission, a
44 local government may designate as its historic preservation commission (i) a separate historic
45 districts commission or a separate historic landmarks commission established pursuant to this
46 Chapter to deal only with historic districts or landmarks respectively, (ii) a planning board
47 established pursuant to this Chapter, or (iii) a community appearance commission established
48 pursuant to this Chapter. In order for a commission or board other than the historic preservation
49 commission to be designated, at least three of its members shall have demonstrated special
50 interest, experience, or education in history, architecture, or related fields. At the discretion of a
51 local government the ordinance may also provide that the preservation commission may

1 exercise within a historic district any or all of the powers of a planning board or a community
2 appearance commission.

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

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

9 **"§ 160D-3-4. Appearance commission.**

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

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

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

30 **"§ 160D-3-5. Housing appeals board.**

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

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

38 **"§ 160D-3-6. Other advisory boards.**

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

42 **"§ 160D-3-7. Extraterritorial representation on boards.**

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

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

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

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

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

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

41 (d) Financial Support. – The local government may appropriate for the support of the
42 staff any funds that it deems necessary. It shall have power to fix reasonable fees for support,
43 administration, and implementation of programs authorized by this Chapter and all such fees
44 shall be used for no other purposes.

45 **"§ 160D-4-3. Administrative development approvals and determinations.**

46 (a) Development Approvals. – No person shall commence or proceed with development
47 without first securing any required development approval from the local government with
48 jurisdiction over the site of the development. A development approval shall be in writing and
49 may contain a provision that the development shall comply with all applicable State and local
50 laws. A local government may issue development approvals in print or electronic form. Any
51 development approval issued exclusively in electronic form shall be protected from further

1 editing once issued. Applications for development approvals may be made by the landowner, a
2 lessee or person holding an option or contract to purchase or lease land, or an authorized agent
3 of the landowner.

4 (b) Determinations and Notice of Determinations. – A development regulations enacted
5 under the authority of this Chapter may designate the staff member or members charged with
6 making decisions under the development regulation. As used in this Article, "decision" includes
7 any final and binding order, requirement, or determination.

8 The officer making the decision shall give written notice to the owner of the property that is
9 the subject of the decision and to the party who sought the decision, if different from the owner.
10 The written notice shall be delivered by personal delivery, electronic mail, or by first-class
11 mail.

12 It shall be conclusively presumed that all persons with standing to appeal have constructive
13 notice of the decision from the date a sign providing notice that a decision has been made is
14 prominently posted on the property that is the subject of the decision, provided the sign remains
15 on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or
16 "Subdivision Decision" or similar language for other determinations in letters at least six inches
17 high and shall identify the means to contact a local government staff member for information
18 about the decision. Posting of signs is not the only form of constructive notice. Any such
19 posting shall be the responsibility of the landowner, applicant, or person who sought the
20 decision. Verification of the posting shall be provided to the staff member responsible for the
21 decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

22 (c) Duration of Development Approval. – Unless a different period is specified by this
23 Chapter or other specific applicable law or a different period is provided by a quasi-judicial
24 development approval, a development agreement, or a local ordinance, a development approval
25 issued pursuant to this Chapter shall expire one year after the date of issuance if the work
26 authorized by the development approval has not been substantially commenced. Local
27 development regulations may provide for development approvals of shorter duration for
28 temporary land uses, special events, temporary signs, and similar development. Unless
29 provided otherwise by this Chapter or other specific applicable law or a longer period is
30 provided by local ordinance, if after commencement the work or activity is discontinued for a
31 period of 12 months after commencement, the development approval shall immediately expire.
32 Subject to the provisions of G.S. 160D-14-2(l), the time periods set out in this subsection shall
33 be tolled during the pendency of any appeal. No work or activity authorized by any
34 development approval that has expired shall thereafter be performed until a new development
35 approval has been secured.

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

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

48 (f) Revocation of Development Approvals. – In addition to initiation of enforcement
49 actions under G.S. 160D-4-4, development approvals may be revoked by the local government
50 issuing the development approval by notifying the holder in writing stating the reason for the
51 revocation. The local government shall follow the same development review and approval

1 process required for issuance of the development approval, including any required notice or
2 hearing, in the review and approval of any revocation of that approval. Development approvals
3 shall be revoked for any substantial departure from the approved application, plans, or
4 specifications; for refusal or failure to comply with the requirements of any applicable local
5 development regulation or any State law enforced by the local government; or for false
6 statements or misrepresentations made in securing the approval. Any development approval
7 mistakenly issued in violation of an applicable State or local law may also be revoked. The
8 revocation of a development approval by a staff member may be appealed pursuant to
9 G.S. 160D-4-5. If an appeal is filed regarding a development regulation adopted by a local
10 government pursuant to this Chapter, the provisions of G.S. 160D-4-5(e) regarding stays shall
11 be applicable.

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

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

22 **"§ 160D-4-4. Enforcement.**

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

36 (b) Stop Work Orders. – Whenever any work or activity subject to regulation pursuant
37 to this Chapter or other applicable local development regulation or any State law enforced by
38 the local government is undertaken in substantial violation of any State or local law, or in a
39 manner that endangers life or property, staff may order the specific part of the work or activity
40 that is in violation or presents such a hazard to be immediately stopped. The order shall be in
41 writing, directed to the person doing the work or activity, and shall state the specific work or
42 activity to be stopped, the reasons therefor, and the conditions under which the work or activity
43 may be resumed. A copy of the order shall be delivered to the holder of the development
44 approval and to the owner of the property involved (if that person is not the holder of the
45 development approval) by personal delivery, electronic delivery, or first-class mail. The person
46 or persons delivering the stop work order shall certify to the local government that the order
47 was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as
48 provided by G.S. 160D-11-12 and G.S. 160D-12-8, a stop work order may be appealed
49 pursuant to G.S. 160D-4-5. No further work or activity shall take place in violation of a stop
50 work order pending a ruling on the appeal. Violation of a stop work order shall constitute a
51 Class 1 misdemeanor.

1 (c) Remedies. –

2 (1) Subject to the provisions of the development regulation, any development
3 regulation adopted pursuant to authority conferred by this Chapter may be
4 enforced by any remedy provided by G.S. 160A-175 or G.S. 153A-123. If a
5 building or structure is erected, constructed, reconstructed, altered, repaired,
6 converted, or maintained, or any building, structure or land is used or
7 developed in violation of this Chapter or of any development regulation or
8 other regulation made under authority of this Chapter, the local government,
9 in addition to other remedies, may institute any appropriate action or
10 proceedings to prevent the unlawful erection, construction, reconstruction,
11 alteration, repair, conversion, maintenance, use, or development; to restrain,
12 correct or abate the violation; to prevent occupancy of the building, structure
13 or land; or to prevent any illegal act, conduct, business, or use in or about the
14 premises.

15 (2) When a development regulation adopted pursuant to authority conferred by
16 this Chapter is to be applied or enforced in any area outside the planning and
17 development regulation jurisdiction of a city as set forth in Article 2 of this
18 Chapter, the city and the property owner shall certify that the application or
19 enforcement of the city development regulation is not under coercion or
20 otherwise based on representation by the city that the city's development
21 approval would be withheld without the application or enforcement of the
22 city development regulation outside the jurisdiction of the city. The
23 certification may be evidenced by a signed statement of the parties on any
24 development approval.

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

37 **"§ 160D-4-5. Appeals of administrative decisions.**

38 (a) Appeals. – Except as provided in subsection (b) of this section, appeals of decisions
39 made by the staff under this Chapter shall be made to the board of adjustment unless a different
40 board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this
41 Chapter. If this function of the board of adjustment is assigned to any other board pursuant to
42 G.S. 160D-3-2(b), that board shall comply with all of the procedures and processes applicable
43 to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and
44 sedimentation control regulation, a stormwater control regulation, or a provision of the housing
45 code shall not be made to the board of adjustment unless required by a local government
46 ordinance or code provision.

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

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

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

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

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

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

34 **"§ 160D-4-6. Quasi-judicial procedure.**

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

38 (b) Notice of Hearing. – Notice of evidentiary hearings conducted pursuant to this
39 Chapter shall be mailed to the person or entity whose appeal, application, or request is the
40 subject of the hearing; to the owner of the property that is the subject of the hearing if the
41 owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of
42 land that is the subject of the hearing; and to any other persons entitled to receive notice as
43 provided by the local development regulation. In the absence of evidence to the contrary, the
44 local government may rely on the county tax listing to determine owners of property entitled to
45 mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25
46 days, prior to the date of the hearing. Within that same time period, the local government shall
47 also prominently post a notice of the hearing on the site that is the subject of the hearing or on
48 an adjacent street or highway right-of-way.

49 (c) Administrative Materials. – The administrator or staff to the board shall transmit to
50 the board all applications, reports, and written materials relevant to the matter being considered.
51 The administrative materials may be distributed to the members of the board prior to the

1 hearing if at the same time they are distributed to the board a copy is also provided to the
2 appellant or applicant and to the landowner if that person is not the appellant or applicant. The
3 administrative materials shall become a part of the hearing record. The administrative materials
4 may be provided in written or electronic form. Objections to inclusion or exclusion of
5 administrative materials may be made before or during the hearing. Rulings on unresolved
6 objections shall be made by the board at the hearing.

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

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

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

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

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

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

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

48 (j) Decisions. – The board shall determine contested facts and make its decision within
49 a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly,
50 or may modify the decision appealed from and shall make any order, requirement, decision, or
51 determination that ought to be made. The board shall have all the powers of the official who

1 made the decision. Every quasi-judicial decision shall be based upon competent, material, and
2 substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing,
3 reflect the board's determination of contested facts and their application to the applicable
4 standards, and be approved by the board and signed by the chair or other duly authorized
5 member of the board. A quasi-judicial decision is effective upon filing the written decision with
6 the clerk to the board or such other office or official as the development regulation specifies.
7 The decision of the board shall be delivered within a reasonable time by personal delivery,
8 electronic mail, or first-class mail to the applicant, landowner, and any person who has
9 submitted a written request for a copy prior to the date the decision becomes effective. The
10 person required to provide notice shall certify to the local government that proper notice has
11 been made and the certificate shall be deemed conclusive in the absence of fraud.

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

15 "Article 5.

16 "Planning.

17 **"§ 160D-5-1. Plans.**

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

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

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

- 30 (1) Issues and opportunities facing the local government, including
31 consideration of trends, values expressed by citizens, community vision, and
32 guiding principles for growth and development.
- 33 (2) The pattern of desired growth and development and civic design, including
34 the location, distribution, and characteristics of future land uses, urban form,
35 utilities, and transportation networks.
- 36 (3) Employment opportunities, economic development, and community
37 development.
- 38 (4) Acceptable levels of public services and infrastructure to support
39 development, including water, waste disposal, utilities, emergency services,
40 transportation, education, recreation, community facilities, and other public
41 services, including plans and policies for provision of and financing for
42 public infrastructure.
- 43 (5) Housing with a range of types and affordability to accommodate persons and
44 households of all types and income levels.
- 45 (6) Recreation and open spaces.
- 46 (7) Mitigation of natural hazards such as flooding, winds, wildfires, and
47 unstable lands.
- 48 (8) Protection of the environment and natural resources, including agricultural
49 resources, mineral resources, and water and air quality.
- 50 (9) Protection of significant architectural, scenic, cultural, historical, or
51 archaeological resources.

1 the base, the governing board of the local government shall take the comments and analysis
2 into consideration before making a final determination on the ordinance.

3 **"§ 160D-6-2. Notice of hearing on proposed zoning map amendments.**

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

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

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

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

48 (e) Optional Communication Requirements. – When a zoning map amendment is
49 proposed, a zoning regulation may require communication by the person proposing the map
50 amendment to neighboring property owners and residents and may require the person

1 proposing the zoning map amendment to report on any communication with neighboring
2 property owners and residents.

3 **"§ 160D-6-3. Citizen comments.**

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

13 **"§ 160D-6-4. Planning board review and comment.**

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

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

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

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

50 (e) Separate Board Required. – Notwithstanding the authority to assign duties of the
51 planning board to the governing board as provided by this Chapter, the review and comment

1 required by this section shall not be assigned to the governing board and must be performed by
2 a separate board.

3 **"§ 160D-6-5. Governing board statement.**

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

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

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

24 "Article 7.

25 "Zoning Regulation.

26 **"§ 160D-7-1. Purposes.**

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

38 **"§ 160D-7-2. Grant of power.**

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

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

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

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

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

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

35 **"§ 160D-7-3. Zoning districts.**

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

- 41 (1) Conventional districts, in which a variety of uses are allowed as permitted
42 uses or uses by right and that may also include uses permitted only with a
43 special use permit.
44 (2) Conditional districts, in which site plans or individualized development
45 conditions are imposed.
46 (3) Form-based districts, or development form controls, that address the
47 physical form, mass, and density of structures, public spaces, and
48 streetscapes.
49 (4) Overlay districts, in which different requirements are imposed on certain
50 properties within one or more underlying conventional, conditional, or
51 form-based districts.

1 (5) Districts allowed by charter.

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

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

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

25 **"§ 160D-7-4. Incentives.**

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

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

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

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

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

47 **"§ 160D-7-5. Quasi-judicial zoning decisions.**

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

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

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

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

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

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

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

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

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

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

14 "Article 8.

15 "Subdivision Regulation.

16 **"§ 160D-8-1. Authority.**

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

23 **"§ 160D-8-2. Applicability.**

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

- 30 (1) The combination or recombination of portions of previously subdivided and
 31 recorded lots where the total number of lots is not increased and the resultant
 32 lots are equal to or exceed the standards of the local government as shown in
 33 its subdivision regulations.
- 34 (2) The division of land into parcels greater than 10 acres where no street
 35 right-of-way dedication is involved.
- 36 (3) The public acquisition by purchase of strips of land for the widening or
 37 opening of streets or for public transportation system corridors.
- 38 (4) The division of a tract in single ownership whose entire area is no greater
 39 than two acres into not more than three lots, where no street right-of-way
 40 dedication is involved and where the resultant lots are equal to or exceed the
 41 standards of the local government, as shown in its subdivision regulations.

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

44 **"§ 160D-8-3. Review process, filing, and recording of subdivision plats.**

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

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

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

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

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

27 **"§ 160D-8-4. Contents and requirements of regulation.**

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

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

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

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

1 developer is to pay in lieu of required street construction shall be based on the trips generated
2 from the subdivision or development. The regulation may require a combination of partial
3 payment of funds and partial dedication of constructed streets when the governing board of the
4 city determines that a combination is in the best interests of the citizens of the area to be served.

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

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

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

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

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

- 41 (1) The term "performance guarantee" shall mean any of the following forms of
42 guarantee:
- 43 a. Surety bond issued by any company authorized to do business in this
44 State.
 - 45 b. Letter of credit issued by any financial institution licensed to do
46 business in this State.
 - 47 c. Other form of guarantee that provides equivalent security to a surety
48 bond or letter of credit.
- 49 (2) The performance guarantee shall be returned or released, as appropriate, in a
50 timely manner upon the acknowledgement by the local government that the
51 improvements for which the performance guarantee is being required are

1 complete. If the improvements are not complete and the current performance
2 guarantee is expiring, the performance guarantee shall be extended, or a new
3 performance guarantee issued, for an additional period until such required
4 improvements are complete. A developer shall demonstrate reasonable,
5 good-faith progress toward completion of the required improvements that
6 are the subject of the performance guarantee or any extension. The form of
7 any extension shall remain at the election of the developer.

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

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

17 **"§ 160D-8-5. Notice of new subdivision fees and fee increases; public comment period.**

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

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

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

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

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

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

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

43 **"§ 160D-8-6. Effect of plat approval on dedications.**

44 The approval of a plat shall not be deemed to constitute or effect the acceptance by the local
45 government or public of the dedication of any street or other ground, public utility line, or other
46 public facility shown on the plat. However, any governing board may by resolution accept any
47 dedication made to the public of lands or facilities for streets, parks, public utility lines, or other
48 public purposes, when the lands or facilities are located within its planning and development
49 regulation jurisdiction. Acceptance of dedication of lands or facilities located within the
50 planning and development regulation jurisdiction but outside the corporate limits of a city shall
51 not place on the city any duty to open, operate, repair, or maintain any street, utility line, or

1 other land or facility, and a city shall in no event be held to answer in any civil action or
2 proceeding for failure to open, repair, or maintain any street located outside its corporate limits.
3 Unless a city, county, or other public entity operating a water system shall have agreed to begin
4 operation and maintenance of the water system or water system facilities within one year of the
5 time of issuance of a certificate of occupancy for the first unit of housing in the subdivision, a
6 city or county shall not, as part of its subdivision regulation applied to facilities or land outside
7 the corporate limits of a city, require dedication of water systems or facilities as a condition for
8 subdivision approval.

9 **"§ 160D-8-7. Penalties for transferring lots in unapproved subdivisions.**

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

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

- 29 (1) Incorporates as an attachment a copy of the preliminary plat referenced in
30 the contract and obligates the owner to deliver to the buyer a copy of the
31 recorded plat prior to closing and conveyance.
- 32 (2) Plainly and conspicuously notifies the prospective buyer or lessee that a final
33 subdivision plat has not been approved or recorded at the time of the
34 contract, that no governmental body will incur any obligation to the
35 prospective buyer or lessee with respect to the approval of the final
36 subdivision plat, that changes between the preliminary and final plats are
37 possible, and that the contract or lease may be terminated without breach by
38 the buyer or lessee if the final recorded plat differs in any material respect
39 from the preliminary plat.
- 40 (3) Provides that if the approved and recorded final plat does not differ in any
41 material respect from the plat referred to in the contract, the buyer or lessee
42 may not be required by the seller or lessor to close any earlier than five days
43 after the delivery of a copy of the final recorded plat.
- 44 (4) Provides that if the approved and recorded final plat differs in any material
45 respect from the preliminary plat referred to in the contract, the buyer or
46 lessee may not be required by the seller or lessor to close any earlier than 15
47 days after the delivery of the final recorded plat, during which 15-day period
48 the buyer or lessee may terminate the contract without breach or any further
49 obligation and may receive a refund of all earnest money or prepaid
50 purchase price.

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

10 **"§ 160D-8.8. Appeals of decisions on subdivision plats.**

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

12 "Article 9.

13 "Regulation of Particular Uses and Areas.

14 "Part 1. Particular Land Uses.

15 **"§ 160D-9-1. Regulation of particular uses and areas.**

16 A local government may regulate the uses and areas set forth in this Article in zoning
17 regulations pursuant to Article 7 of this Chapter, in development regulations adopted under this
18 Article, or in regulations adopted under Article 8 of Chapter 160A or Article 6 of Chapter 153A
19 of the General Statutes. This shall not be deemed to expand, diminish, or alter the scope of
20 authority granted pursuant to those Articles. In all instances, the substance of the local
21 government regulation shall be consistent with the provisions in this Article. The provisions of
22 this Chapter apply to any regulation adopted pursuant to this Article that substantially affects
23 land use and development.

24 **"§ 160D-9-2. Adult businesses.**

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

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

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

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

44 (2) Regulations on operation of sexually oriented businesses, such as limits on
45 hours of operation, open booth requirements, limitations on exterior
46 advertising and noise, age of patrons and employees, required separation of
47 patrons and performers, clothing restrictions for masseuses, and clothing
48 restrictions for servers of alcoholic beverages.

49 (3) Clothing restrictions for entertainers.

50 (4) Registration and disclosure requirements for owners and employees with a
51 criminal record other than minor traffic offenses and restrictions on

1 ownership by or employment of a person with a criminal record that includes
2 offenses reasonably related to the legal operation of sexually oriented
3 businesses.

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

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

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

20 **"§ 160D-9-3. Agricultural uses.**

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

24 Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement
25 under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or
26 incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering
27 plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in
28 G.S. 106-581.1. For purposes of this section, "when performed on the farm" in
29 G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county and any other
30 farm owned or leased to or from others by the bona fide farm operator, no matter where
31 located. For purposes of this section, the production of a nonfarm product that the Department
32 of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina"
33 product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is
34 a bona fide farm purpose. For purposes of determining whether a property is being used for
35 bona fide farm purposes, any of the following shall constitute sufficient evidence that the
36 property is being used for bona fide farm purposes:

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

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

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

10 **(c) Agricultural Areas in Municipal Extraterritorial Jurisdiction.** – Property that is
11 located in a municipality's extraterritorial planning and development regulation jurisdiction and
12 that is used for bona fide farm purposes is exempt from the municipality's zoning regulation to
13 the same extent bona fide farming activities are exempt from county zoning pursuant to this
14 section. As used in this subsection, "property" means a single tract of property or an identifiable
15 portion of a single tract. Property that ceases to be used for bona fide farm purposes shall
16 become subject to exercise of the municipality's extraterritorial planning and development
17 regulation jurisdiction under this Chapter. For purposes of complying with State or federal law,
18 property that is exempt from the exercise of municipal extraterritorial planning and
19 development regulation jurisdiction pursuant to this subsection shall be subject to the county's
20 floodplain regulation or all floodplain regulation provisions of the county's unified
21 development ordinance.

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

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

32 **"§ 160D-9-4. Airport zoning.**

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

37 **"§ 160D-9-5. Amateur radio antennas.**

38 A local government ordinance based on health, safety, or aesthetic considerations that
39 regulates the placement, screening, or height of the antennas or support structures of amateur
40 radio operators must reasonably accommodate amateur radio communications and must
41 represent the minimum practicable regulation necessary to accomplish the purpose of the local
42 government. A local government may not restrict antennas or antenna support structures of
43 amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to
44 achieve a clearly defined health, safety, or aesthetic objective of the local government.

45 **"§ 160D-9-6. Family care homes.**

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

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

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

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

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

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

17 **"§ 160D-9-7. Fence wraps.**

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

27 **"§ 160D-9-8. Fraternities and sororities.**

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

31 **"§ 160D-9-9. Manufactured homes.**

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

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

42 (c) A local government may not adopt or enforce zoning regulations or other provisions
43 which have the effect of excluding manufactured homes from the entire zoning jurisdiction.

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

49 (e) In accordance with the local government's comprehensive plan and based on local
50 housing needs, a local government may designate a manufactured home overlay district within
51 a residential district. Such overlay district may not consist of an individual lot or scattered lots

1 but shall consist of a defined area within which additional requirements or standards are placed
2 upon manufactured homes.

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

7 **"§ 160D-9-10. Modular homes.**

8 Modular homes shall comply with the design and construction standards set forth in
9 G.S. 143-139.1.

10 **"§ 160D-9-11. Outdoor advertising.**

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

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

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

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

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

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

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

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

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

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

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

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

50 (f) If the parties are unable to reach an agreement under subsection (e) of this section
51 on monetary compensation to be paid by the local government to the owner of the

1 nonconforming off-premises outdoor advertising sign for its removal and the local government
2 elects to proceed with the removal of the sign, the local government may bring an action in
3 superior court for a determination of the monetary compensation to be paid. In determining
4 monetary compensation, the court shall consider the factors set forth in subsection (e) of this
5 section. Upon payment of monetary compensation for the sign, the local government shall own
6 the sign.

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

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

13 a. The size and format of the sign.

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

18 c. The timing of the relocation.

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

21 a. The actual cost of removing the sign.

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

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

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

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

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

44 (j) If the arbitration results in a determination that the site or sites offered by the local
45 government for relocation of the nonconforming sign are not comparable to or better than the
46 existing site, and the local government elects to proceed with the removal of the sign, the
47 parties shall determine the monetary compensation under subsection (e) of this section to be
48 paid to the owner of the sign. If the parties are unable to reach an agreement regarding
49 monetary compensation within 30 days of the receipt of the arbitrators' determination and the
50 local government elects to proceed with the removal of the sign, then the local government may
51 bring an action in superior court for a determination of the monetary compensation to be paid

1 by the local government to the owner for the removal of the sign. In determining monetary
2 compensation, the court shall consider the factors set forth in subsection (e) of this section.
3 Upon payment of monetary compensation for the sign, the local government shall own the sign.

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

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

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

19 (n) The provisions of this section shall not be used to interpret, construe, alter, or
20 otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter
21 40A or Chapter 136 of the General Statutes.

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

24 **"§ 160D-9-12. Public buildings.**

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

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

31 **"§ 160D-9-13. Solar collectors.**

32 (a) Except as provided in subsection (c) of this section, no local government
33 development regulation shall prohibit, or have the effect of prohibiting, the installation of a
34 solar collector that gathers solar radiation as a substitute for traditional energy for water
35 heating, active space heating and cooling, passive heating, or generating electricity for a
36 residential property and no person shall be denied permission by a local government to install a
37 solar collector that gathers solar radiation as a substitute for traditional energy for water
38 heating, active space heating and cooling, passive heating, or generating electricity for a
39 residential property. As used in this section, the term "residential property" means property
40 where the predominant use is for residential purposes.

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

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

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

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

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

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

6 **§ 160D-9-14. Temporary health care structures.**

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

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

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

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

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

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

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

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

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

46 (e) Any person proposing to install a temporary family health care structure shall first
47 obtain a permit from the local government. The local government may charge a fee of up to one
48 hundred dollars (\$100.00) for the initial permit and an annual renewal fee of up to fifty dollars
49 (\$50.00). The local government may not withhold a permit if the applicant provides sufficient
50 proof of compliance with this section. The local government may require that the applicant
51 provide evidence of compliance with this section on an annual basis as long as the temporary

1 family health care structure remains on the property. The evidence may involve the inspection
2 by the local government of the temporary family health care structure at reasonable times
3 convenient to the caregiver, not limited to any annual compliance confirmation and annual
4 renewal of the doctor's certification.

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

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

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

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

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

25 **"§ 160D-9-15. Streets and transportation.**

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

31 (b) Transportation Corridor Official Maps. – Any local government may establish
32 official transportation corridor maps and may enact and enforce ordinances pursuant to Article
33 2E of Chapter 136 of the General Statutes.

34 **"§ 160D-9-16. Bee hives.**

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

37 **"§§ 160D-9-17 through 106D-9-19:** Reserved for future codification purposes.

38 "Part 2. Environmental Regulation.

39 **"§ 160D-9-20. Local environmental regulations.**

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

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

48 **"§ 160D-9-21. Forestry activities.**

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

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

- 1 (2) Forest management plan. – A document that defines a landowner's forest
2 management objectives and describes specific measures to be taken to
3 achieve those objectives. A forest management plan shall include
4 silvicultural practices that both ensure optimal forest productivity and
5 environmental protection of land by either commercially growing timber
6 through the establishment of forest stands or by ensuring the proper
7 regeneration of forest stands to commercial levels of production after the
8 harvest of timber.
- 9 (3) Forestland. – Land that is devoted to growing trees for the production of
10 timber, wood, and other forest products.
- 11 (4) Forestry. – The professional practice embracing the science, business, and
12 art of creating, conserving, and managing forests and forestland for the
13 sustained use and enjoyment of their resources, materials, or other forest
14 products.
- 15 (5) Forestry activity. – Any activity associated with the growing, managing,
16 harvesting, and related transportation, reforestation, or protection of trees
17 and timber, provided that such activities comply with existing State rules and
18 regulations pertaining to forestry.
- 19 (b) A local government shall not adopt or enforce any ordinance, rule, regulation, or
20 resolution that regulates either of the following:
- 21 (1) Forestry activity on forestland that is taxed on the basis of its present-use
22 value as forestland under Article 12 of Chapter 105 of the General Statutes.
- 23 (2) Forestry activity that is conducted in accordance with a forest management
24 plan that is prepared or approved by a forester registered in accordance with
25 Chapter 89B of the General Statutes.
- 26 (c) This section shall not be construed to limit, expand, or otherwise alter the authority
27 of a local government to:
- 28 (1) Regulate activity associated with development. A local government may
29 deny a building permit or refuse to approve a site or subdivision plan for
30 either a period of up to:
- 31 a. Three years after the completion of a timber harvest if the harvest
32 results in the removal of all or substantially all of the trees that were
33 protected under local government regulations governing development
34 from the tract of land for which the permit or approval is sought.
- 35 b. Five years after the completion of a timber harvest if the harvest
36 results in the removal of all or substantially all of the trees that were
37 protected under local government regulations governing development
38 from the tract of land for which the permit or approval is sought and
39 the harvest was a willful violation of the local government
40 regulations.
- 41 (2) Regulate trees pursuant to any local act of the General Assembly.
- 42 (3) Adopt ordinances that are necessary to comply with any federal or State law,
43 regulation, or rule.
- 44 (4) Exercise its planning or zoning authority under this Chapter.
- 45 (5) Regulate and protect streets.

46 **"§ 160D-9-22. Erosion and sedimentation control.**

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

51 **"§ 160D-9-23. Floodplain regulations.**

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

5 **"§ 160D-9-24. Mountain ridge protection.**

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

11 **"§ 160D-9-25. Stormwater control.**

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

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

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

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

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

43 **"§§ 160D-9-26 through 160D-9-29: Reserved for future codification purposes.**

44 "Part 3. Wireless Telecommunication Facilities.

45 **"§ 160D-9-30. Purpose and compliance with federal law.**

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

1 (b) The deployment of wireless infrastructure is critical to ensuring first responders can
2 provide for the health and safety of all residents of North Carolina and, consistent with section
3 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), create
4 a national wireless emergency communications network for use by first responders that in large
5 measure will be dependent on facilities placed on existing wireless communications support
6 structures. Therefore, it is the policy of this State to facilitate the placement of wireless
7 communications support structures in all areas of North Carolina. The following standards shall
8 apply to a local government's actions, as a regulatory body, in the regulation of the placement,
9 construction, or modification of a wireless communications facility.

10 (c) The placement, construction, or modification of wireless communications facilities
11 shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332, as amended,
12 section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. §
13 1455(a), and in accordance with the rules promulgated by the Federal Communications
14 Commission.

15 **"§ 160D-9-31. Definitions.**

16 The following definitions apply in this Part:

- 17 (1) Antenna. – Communications equipment that transmits, receives, or transmits
18 and receives electromagnetic radio signals used in the provision of all types
19 of wireless communications services.
- 20 (2) Application. – A formal request submitted to the local government to
21 construct or modify a wireless support structure or a wireless facility.
- 22 (3) Base station. – A station at a specific site authorized to communicate with
23 mobile stations, generally consisting of radio receivers, antennas, coaxial
24 cables, power supplies, and other associated electronics.
- 25 (4) Building permit. – An official administrative authorization issued by the
26 local government prior to beginning construction consistent with the
27 provisions of G.S. 160D-11-8.
- 28 (5) Collocation. – The placement or installation of wireless facilities on existing
29 structures, including electrical transmission towers, water towers, buildings,
30 and other structures capable of structurally supporting the attachment of
31 wireless facilities in compliance with applicable codes.
- 32 (6) Eligible facilities request. – A request for modification of an existing
33 wireless tower or base station that involves collocation of new transmission
34 equipment or replacement of transmission equipment but does not include a
35 substantial modification.
- 36 (7) Equipment compound. – An area surrounding or near the base of a wireless
37 support structure within which a wireless facility is located.
- 38 (8) Fall zone. – The area in which a wireless support structure may be expected
39 to fall in the event of a structural failure, as measured by engineering
40 standards.
- 41 (9) Land development regulation. – Any ordinance enacted pursuant to this
42 Chapter.
- 43 (10) Search ring. – The area within which a wireless support facility or wireless
44 facility must be located in order to meet service objectives of the wireless
45 service provider using the wireless facility or wireless support structure.
- 46 (11) Substantial modification. – The mounting of a proposed wireless facility on
47 a wireless support structure that substantially changes the physical
48 dimensions of the support structure. A mounting is presumed to be a
49 substantial modification if it meets any one or more of the criteria listed
50 below. The burden is on the local government to demonstrate that a

1 mounting that does not meet the listed criteria constitutes a substantial
2 change to the physical dimensions of the wireless support structure.

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

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

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

15 (12) Utility pole. – A structure that is designed for and used to carry lines, cables,
16 or wires for telephone, cable television, or electricity or to provide lighting.

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

20 (14) Wireless facility. – The set of equipment and network components, exclusive
21 of the underlying wireless support structure or tower, including antennas,
22 transmitters, receivers, base stations, power supplies, cabling, and associated
23 equipment necessary to provide wireless data and wireless
24 telecommunications services to a discrete geographic area.

25 (15) Wireless support structure. – A new or existing structure, such as a
26 monopole, lattice tower, or guyed tower that is designed to support or
27 capable of supporting wireless facilities. A utility pole is not a wireless
28 support structure.

29 **"§ 160D-9-32. Local authority.**

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

41 **"§ 160D-9-33. Construction of new wireless support structures or substantial**
42 **modifications of wireless support structures.**

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

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

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

50 (b) A local government's review of an application for the placement or construction of a
51 new wireless support structure or substantial modification of a wireless support structure shall

1 only address public safety, land development, or zoning issues. In reviewing an application, the
2 local government may not require information on or evaluate an applicant's business decisions
3 about its designed service, customer demand for its service, or quality of its service to or from a
4 particular area or site. A local government may not require information that concerns the
5 specific need for the wireless support structure, including if the service to be provided from the
6 wireless support structure is to add additional wireless coverage or additional wireless capacity.
7 A local government may not require proprietary, confidential, or other business information to
8 justify the need for the new wireless support structure, including propagation maps and
9 telecommunication traffic studies. In reviewing an application, the local government may
10 review the following:

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

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

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

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

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

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

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

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

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

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

16 **"§ 160D-9-34. Collocation and eligible facilities requests of wireless support structures.**

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

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

36 (c) The local government shall issue a written decision approving an eligible facilities
37 request application within 45 days of such application being deemed complete. For a
38 collocation application that is not an eligible facilities request, the local government shall issue
39 its written decision to approve or deny the application within 45 days of the application being
40 deemed complete.

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

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

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

51 **"§§ 160D-9-35 through 160D-9-39: Reserved for future codification purposes.**

"Part 4. Historic Preservation."§ 160D-9-40. Legislative findings.

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

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

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

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

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

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

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

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

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

7 **"§ 160D-9-43. Appropriations.**

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

15 **"§ 160D-9-44. Designation of historic districts.**

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

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

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

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

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

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

1 boundaries of an initial district or proposal for additional districts shall also be submitted to the
2 Department of Cultural Resources in accordance with the provisions of subdivision (2) of
3 subsection (b) of this section.

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

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

12 **"§ 160D-9-45. Designation of landmarks.**

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

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

29 **"§ 160D-9-46. Required landmark designation procedures.**

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

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

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

48 (3) The Department of Cultural Resources, acting through the State Historic
49 Preservation Officer, shall, upon request of the department or at the initiative
50 of the preservation commission, be given an opportunity to review and
51 comment upon the substance and effect of the designation of any landmark

1 pursuant to this Part. Any comments shall be provided in writing. If the
2 Department does not submit its comments or recommendation in connection
3 with any designation within 30 days following receipt by the Department of
4 the investigation and report of the preservation commission, the commission
5 and any governing board shall be relieved of any responsibility to consider
6 such comments.

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

11 (5) Following the hearings, the governing board may adopt the regulation as
12 proposed, adopt the regulation with any amendments it deems necessary, or
13 reject the proposed regulation.

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

28 (7) Upon the adoption of the landmark regulation or any amendment thereto, it
29 shall be the duty of the preservation commission to give notice thereof to the
30 tax supervisor of the county in which the property is located. The
31 designation and any recorded restrictions upon the property limiting its use
32 for preservation purposes shall be considered by the tax supervisor in
33 appraising it for tax purposes.

34 **"§ 160D-9-47. Certificate of appropriateness required.**

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

46 For purposes of this Part, "exterior features" shall include the architectural style, general
47 design, and general arrangement of the exterior of a building or other structure, including the
48 kind and texture of the building material, the size and scale of the building, and the type and
49 style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of
50 outdoor advertising signs, "exterior features" shall be construed to mean the style, material,
51 size, and location of all such signs. Such "exterior features" may, in the discretion of the local

1 governing board, include historic signs, color, and significant landscape, archaeological, and
2 natural features of the area.

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

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

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

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

37 (e) Appeals. –

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

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

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

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

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

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

18 **"§ 160D-9-48. Certain changes not prohibited.**

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

29 **"§ 160D-9-49. Delay in demolition of landmarks and buildings within historic district.**

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

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

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

1 local government or any part thereof within its area of planning and
2 development regulation jurisdiction, including public ways and areas, open
3 spaces, and public and private buildings and projects.

4 (6) To participate, in any way deemed appropriate by the governing board of the
5 local government and specified in the ordinance establishing the
6 commission, in the implementation of its plans. To this end, the governing
7 board may include in the ordinance the following powers:

8 a. To request from the proper officials of any public agency or body,
9 including agencies of the State and its political subdivisions, its plans
10 for public buildings, facilities, or projects to be located within the
11 local government's planning and development regulation jurisdiction.

12 b. To review these plans and to make recommendations regarding their
13 aesthetic suitability to the appropriate agency or to the planning or
14 governing board. All plans shall be reviewed by the commission in a
15 prompt and expeditious manner, and all recommendations of the
16 commission with regard to any public project shall be made in
17 writing. Copies of the recommendations shall be transmitted
18 promptly to the planning or governing board and to the appropriate
19 agency.

20 c. To formulate and recommend to the appropriate planning or
21 governing board the adoption or amendment of ordinances, including
22 zoning regulations, subdivision regulations, and other local
23 development regulations, that will, in the opinion of the commission,
24 serve to enhance the appearance of the city or county and
25 surrounding areas.

26 d. To direct the attention of local government officials to needed
27 enforcement of any ordinance that may in any way affect the
28 appearance of the city or county.

29 e. To seek voluntary adherence to the standards and policies of its
30 plans.

31 f. To enter, in the performance of its official duties and at reasonable
32 times, upon private lands and make examinations or surveys.

33 g. To promote public interest in and an understanding of its
34 recommendations, studies, and plans, and to that end, prepare,
35 publish, and distribute to the public such studies and reports that will,
36 in the opinion of the commission, advance the cause of improved
37 appearance.

38 h. To conduct public meetings and hearings, giving reasonable notice to
39 the public thereof.

40 **"§ 160D-9-61. Staff services; advisory council.**

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

45 **"§ 160D-9-62. Annual report.**

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

51 **"§ 160D-9-63. Receipt and expenditure of funds.**

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

7 **"§§ 160D-9-64 through 160D-9-69:** Reserved for future codification purposes.

8 "Article 10.

9 "Development Agreements.

10 **"§ 160D-10-1. Authorization.**

11 (a) The General Assembly finds the following:

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

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

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

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

44 **"§ 160D-10-2. Definitions.**

45 The following definitions apply in this Article:

- 46 (1) Development. – The planning for or carrying out of a building activity, the
47 making of a material change in the use or appearance of any structure or
48 property, or the dividing of land into two or more parcels. When appropriate
49 to the context, "development" refers to the planning for or the act of
50 developing or to the result of development. Reference to a specific operation
51 is not intended to mean that the operation or activity, when part of other

1 operations or activities, is not development. Reference to particular
2 operations is not intended to limit the generality of this item.

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

6 **"§ 160D-10-3. Approval of governing board required.**

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

11 (b) The development agreement may, by ordinance, be incorporated, in whole or in
12 part, into any development regulation adopted by the local government. A development
13 agreement may be considered concurrently with a zoning map or text amendment affecting the
14 property and development subject to the development agreement. A development agreement
15 may be concurrently considered with and incorporated by reference with a sketch plan or
16 preliminary plat required under a subdivision regulation or a site plan or other development
17 approval required under a zoning regulation. If incorporated into a conditional district, the
18 provisions of the development agreement shall be treated as a development regulation in the
19 event of the developer's bankruptcy.

20 **"§ 160D-10-4. Size and duration.**

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

24 **"§ 160D-10-5. Public hearing.**

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

31 **"§ 160D-10-6. Content and modification.**

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

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

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

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

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

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

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

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

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

30 **"§ 160D-10-7. Vesting.**

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

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

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

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

43 **"§ 160D-10-8. Breach and cure.**

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

48 (b) If the local government finds and determines that the developer has committed a
49 material breach of the agreement, the local government shall notify the developer in writing
50 setting forth with reasonable particularity the nature of the breach and the evidence supporting

1 the finding and determination and providing the developer a reasonable time in which to cure
2 the material breach.

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

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

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

15 **"§ 160D-10-9. Amendment or termination.**

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

18 **"§ 160D-10-10. Change of jurisdiction.**

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

26 (b) A local government assuming jurisdiction may modify or suspend the provisions of
27 the development agreement if the local government determines that the failure of the local
28 government to do so would place the residents of the territory subject to the development
29 agreement or the residents of the local government, or both, in a condition dangerous to their
30 health or safety, or both.

31 **"§ 160D-10-11. Recordation.**

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

38 **"§ 160D-10-12. Applicability of procedures to approve debt.**

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

43 "Article 11.

44 "Building Code Enforcement.

45 **"§ 160D-11-1. Definitions.**

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

48 (1) Building or buildings. – Includes other structures.

49 (2) Governing board or board of commissioners. – Includes the Tribal Council
50 of a federally recognized Indian tribe.

- 1 (3) Local government. – Includes a federally recognized Indian tribe, and, as to
2 such tribe, includes lands held in trust for the tribe.
3 (4) Public officer. – Includes the officer or officers who are authorized by
4 regulations adopted hereunder to exercise the powers prescribed by the
5 regulations and by this Article.

6 **"§ 160D-11-2. Building code administration.**

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

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

31 **"§ 160D-11-3. Qualifications of inspectors.**

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

42 **"§ 160D-11-4. Duties and responsibilities.**

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

- 46 (1) The construction of buildings and other structures.
47 (2) The installation of such facilities as plumbing systems, electrical systems,
48 heating systems, refrigeration systems, and air-conditioning systems.
49 (3) The maintenance of buildings and other structures in a safe, sanitary, and
50 healthful condition.
51 (4) Other matters that may be specified by the governing board.

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

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

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

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

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

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

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

41 **"§ 160D-11-5. Other arrangements for inspections.**

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

46 **"§ 160D-11-6. Conflicts of interest.**

47 Staff members, agents, or contractors responsible for building inspections shall comply
48 with G.S. 160D-1-9(c). No member of an inspection department shall be financially interested
49 or employed by a business that is financially interested in the furnishing of labor, material, or
50 appliances for the construction, alteration, or maintenance of any building within the local
51 government's planning and development regulation jurisdiction or any part or system thereof,

1 or in the making of plans or specifications therefor, unless he is the owner of the building. No
2 member of an inspection department or other individual or an employee of a company
3 contracting with a local government to conduct building inspections shall engage in any work
4 that is inconsistent with his or her duties or with the interest of the local government, as
5 determined by the local government. The local government must find a conflict of interest if
6 any of the following is the case:

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

11 (2) If the individual, company, or employee of a company contracting to
12 perform building inspections for the local government is closely related to
13 the owner, developer, contractor, or project manager of the project to be
14 inspected.

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

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

23 **"§ 160D-11-7. Failure to perform duties.**

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

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

34 **"§ 160D-11-8. Building permits.**

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

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

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

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

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

- 8 a. With respect to electric water heaters, the replacement water heater is
9 placed in the same location and is of the same or less capacity and
10 electrical rating as the original.
11 b. With respect to electrical lighting fixtures and devices, the
12 replacement is with a fixture or device having the same voltage and
13 the same or less amperage.
14 c. The work is performed by a person licensed under G.S. 87-43.
15 d. The repair or replacement installation meets the current edition of the
16 State Building Code, including the State Electrical Code.

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

28 (b) A building permit shall be in writing and shall contain a provision that the work
29 done shall comply with the State Building Code and all other applicable State and local laws.
30 Nothing in this section shall require a local government to review and approve residential
31 building plans submitted to the local government pursuant to the North Carolina Residential
32 Code, provided that the local government may review and approve such residential building
33 plans as it deems necessary. No building permits shall be issued unless the plans and
34 specifications are identified by the name and address of the author thereof, and, if the General
35 Statutes of North Carolina require that plans for certain types of work be prepared only by a
36 licensed architect or licensed engineer, no building permit shall be issued unless the plans and
37 specifications bear the North Carolina seal of a licensed architect or of a licensed engineer.
38 When any provision of the General Statutes of North Carolina or of any ordinance requires that
39 work be done by a licensed specialty contractor of any kind, no building permit for the work
40 shall be issued unless the work is to be performed by such a duly licensed contractor.

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

- 46 (1) The addition, repair or replacement of load bearing structures. However, no
47 permit is required for replacement of windows, doors, exterior siding, or the
48 pickets, railings, stair treads, and decking of porches and exterior decks.
49 (2) The addition or change in the design of plumbing. However, no permit is
50 required for replacements otherwise meeting the requirements of this
51 subsection that do not change size or capacity.

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

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

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

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

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

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

21 (g) No building permit shall be issued pursuant to subdivision (1) of subsection (a) of
22 this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than
23 for improvements to an existing single-family residential dwelling unit as defined in
24 G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory
25 building or accessory structure as defined in the North Carolina Uniform Residential Building
26 Code, the use of which is incidental to that residential dwelling unit, unless the name, physical
27 and mailing address, telephone number, facsimile number, and electronic mail address of the
28 lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in
29 the permit or in an attachment thereto. The building permit may contain the lien agent's
30 electronic mail address. The lien agent information for each permit issued pursuant to this
31 subsection shall be maintained by the inspection department in the same manner and in the
32 same location in which it maintains its record of building permits issued.

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

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

40 **"§ 160D-11-9. Expiration of building permits.**

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

47 **"§ 160D-11-10. Changes in work.**

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

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

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

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

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

(1) Appealing to the Building Code Council.

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

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

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

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

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

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

"§ 160D-11-15. Periodic inspections.

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

10 **"§ 160D-11-16. Defects in buildings to be corrected.**

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

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

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

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

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

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

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

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

45 **"§ 160D-11-18. Removing notice from condemned building.**

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

49 **"§ 160D-11-19. Action in event of failure to take corrective action.**

50 If the owner of a building or structure that has been condemned as unsafe pursuant to
51 G.S. 160D-11-17 shall fail to take prompt corrective action, the local inspector shall give

1 written notice, by certified mail to the owner's last known address or by personal service, of all
2 of the following:

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

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

22 **"§ 160D-11-20. Order to take corrective action.**

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

32 **"§ 160D-11-21. Appeal; finality of order if not appealed.**

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

39 **"§ 160D-11-22. Failure to comply with order.**

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

43 **"§ 160D-11-23. Enforcement.**

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

48 (b) Removal of Building. – In the case of a building or structure declared unsafe under
49 G.S. 160D-11-17 or an ordinance adopted pursuant to G.S. 160D-11-17, a local government
50 may, in lieu of taking action under subsection (a) of this section, cause the building or structure
51 to be removed or demolished. The amounts incurred by the local government in connection

1 with the removal or demolition shall be a lien against the real property upon which the cost was
2 incurred. The lien shall be filed, have the same priority, and be collected in the same manner as
3 liens for special assessments provided in Article 10 of Chapter 160A of the General Statutes. If
4 the building or structure is removed or demolished by the local government, the local
5 government shall sell the usable materials of the building and any personal property, fixtures,
6 or appurtenances found in or attached to the building. The local government shall credit the
7 proceeds of the sale against the cost of the removal or demolition. Any balance remaining from
8 the sale shall be deposited with the clerk of superior court of the county where the property is
9 located and shall be disbursed by the court to the person found to be entitled thereto by final
10 order or decree of the court.

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

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

21 **"§ 160D-11-24. Records and reports.**

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

29 **"§ 160D-11-25. Appeals.**

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

37 **"§ 160D-11-26. Fire limits.**

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

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

50 (c) Restrictions Within Municipal Primary Fire Limits. – Within the primary fire limits
51 of any city, as established and defined by ordinance, no frame or wooden building or structure

1 or addition thereto shall hereafter be erected, altered, repaired, or moved, either into the limits
2 or from one place to another within the limits, except upon the permit of the local inspection
3 department approved by the governing board and by the Commissioner of Insurance or his
4 designee. The governing board may make additional regulations for the prevention,
5 extinguishment, or mitigation of fires within the primary fire limits.

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

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

15 **§ 160D-11-27. Regulation authorized as to repair, closing, and demolition of**
16 **nonresidential buildings or structures; order of public officer.**

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

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

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

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

1 (e) Limitations on Orders. –

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

6 (2) An order may require the owner to remove or demolish the nonresidential
7 building or structure if the cost of repair, alteration, or improvement of the
8 building or structure would exceed fifty percent (50%) of its then current
9 value. Notwithstanding any other provision of law, if the nonresidential
10 building or structure is designated as a local historic landmark, listed in the
11 National Register of Historic Places, or located in a locally designated
12 historic district or in a historic district listed in the National Register of
13 Historic Places and the governing board determines, after a public hearing as
14 provided by ordinance, that the nonresidential building or structure is of
15 individual significance or contributes to maintaining the character of the
16 district, and the nonresidential building or structure has not been condemned
17 as unsafe, the order may require that the nonresidential building or structure
18 be vacated and closed until it is brought into compliance with the minimum
19 standards established by the governing board.

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

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

27 (1) If the owner fails to comply with an order to repair, alter, or improve or to
28 vacate and close the nonresidential building or structure, the governing
29 board may adopt an ordinance ordering the public officer to proceed to
30 effectuate the purpose of this section with respect to the particular property
31 or properties that the public officer found to be jeopardizing the health or
32 safety of its occupants or members of the general public. The property or
33 properties shall be described in the ordinance. The ordinance shall be
34 recorded in the office of the register of deeds and shall be indexed in the
35 name of the property owner or owners in the grantor index. Following
36 adoption of an ordinance, the public officer may cause the building or
37 structure to be repaired, altered, or improved or to be vacated and closed.
38 The public officer may cause to be posted on the main entrance of any
39 nonresidential building or structure so closed a placard with the following
40 words: "This building is unfit for any use; the use or occupation of this
41 building for any purpose is prohibited and unlawful." Any person who
42 occupies or knowingly allows the occupancy of a building or structure so
43 posted shall be guilty of a Class 3 misdemeanor.

44 (2) If the owner fails to comply with an order to remove or demolish the
45 nonresidential building or structure, the governing board may adopt an
46 ordinance ordering the public officer to proceed to effectuate the purpose of
47 this section with respect to the particular property or properties that the
48 public officer found to be jeopardizing the health or safety of its occupants
49 or members of the general public. No ordinance shall be adopted to require
50 demolition of a nonresidential building or structure until the owner has first
51 been given a reasonable opportunity to bring it into conformity with the

1 minimum standards established by the governing board. The property or
2 properties shall be described in the ordinance. The ordinance shall be
3 recorded in the office of the register of deeds and shall be indexed in the
4 name of the property owner or owners in the grantor index. Following
5 adoption of an ordinance, the public officer may cause the building or
6 structure to be removed or demolished.

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

19 (1) If the cost to repair the nonresidential building or structure to bring it into
20 compliance with the minimum standards is less than or equal to fifty percent
21 (50%) of its then current value, the ordinance shall require that the owner
22 either repair or demolish and remove the building or structure within 90
23 days.

24 (2) If the cost to repair the nonresidential building or structure to bring it into
25 compliance with the minimum standards exceeds fifty percent (50%) of its
26 then current value, the ordinance shall require the owner to demolish and
27 remove the building or structure within 90 days.

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

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

49 (i) Liens. –

50 (1) The amount of the cost of repairs, alterations, or improvements, or vacating
51 and closing, or removal or demolition by the public officer shall be a lien

1 against the real property upon which the cost was incurred, which lien shall
2 be filed, have the same priority, and be collected as the lien for special
3 assessment provided in Article 10 of Chapter 160A of the General Statutes.

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

9 (3) If the nonresidential building or structure is removed or demolished by the
10 public officer, he or she shall offer for sale the recoverable materials of the
11 building or structure and any personal property, fixtures, or appurtenances
12 found in or attached to the building or structure and shall credit the proceeds
13 of the sale, if any, against the cost of the removal or demolition, and any
14 balance remaining shall be deposited in the superior court by the public
15 officer, shall be secured in a manner directed by the court, and shall be
16 disbursed by the court to the persons found to be entitled thereto by final
17 order or decree of the court. Nothing in this section shall be construed to
18 impair or limit in any way the power of the governing board to define and
19 declare nuisances and to cause their removal or abatement by summary
20 proceedings or otherwise.

21 (j) Ejectment. – If any occupant fails to comply with an order to vacate a nonresidential
22 building or structure, the public officer may file a civil action in the name of the local
23 government to remove the occupant. The action to vacate shall be in the nature of summary
24 ejectment and shall be commenced by filing a complaint naming as parties-defendant any
25 person occupying the nonresidential building or structure. The clerk of superior court shall
26 issue a summons requiring the defendant to appear before a magistrate at a certain time, date,
27 and place not to exceed 10 days from the issuance of the summons to answer the complaint.
28 The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be
29 returned according to its tenor, and if on its return it appears to have been duly served and if at
30 the hearing the public officer produces a certified copy of an ordinance adopted by the
31 governing board pursuant to subsection (f) of this section to vacate the occupied nonresidential
32 building or structure, the magistrate shall enter judgment ordering that the premises be vacated
33 and all persons be removed. The judgment ordering that the nonresidential building or structure
34 be vacated shall be enforced in the same manner as the judgment for summary ejectment
35 entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the
36 magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be
37 stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential
38 building or structure who is a tenant of the owner may not be in the nature of a summary
39 ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at
40 least 30 days before the filing of the summary ejectment proceeding, that the governing board
41 has ordered the public officer to proceed to exercise his duties under subsection (f) of this
42 section to vacate and close or remove and demolish the nonresidential building or structure.

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

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

1 government to exercise its police powers to repair, close, or demolish the dwellings consistent
2 with the provisions of this Article.

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

11 **"§ 160A-12-2. Definitions.**

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

- 14 (1) Owner. – The holder of the title in fee simple and every mortgagee of record.
15 (2) Parties in interest. – All individuals, associations, and corporations who have
16 interests of record in a dwelling and any who are in possession thereof.
17 (3) Public authority. – Any housing authority or any officer who is in charge of
18 any department or branch of the government of the city, county, or State
19 relating to health, fire, building regulations, or other activities concerning
20 dwellings in the local government.
21 (4) Public officer. – The officer or officers who are authorized by ordinances
22 adopted hereunder to exercise the powers prescribed by the ordinances and
23 by this Article.

24 **"§ 160D-12-3. Ordinance authorized as to repair, closing, and demolition; order of public**
25 **officer.**

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

- 30 (1) Designation of enforcement officer. – One or more public officers shall be
31 designated to exercise the powers prescribed by the ordinance.
32 (2) Investigation, complaint, hearing. – Whenever a petition is filed with the
33 public officer by a public authority or by at least five residents of the
34 jurisdiction charging that any dwelling is unfit for human habitation or when
35 it appears to the public officer that any dwelling is unfit for human
36 habitation, the public officer shall, if a preliminary investigation discloses a
37 basis for such charges, issue and cause to be served upon the owner of and
38 parties in interest in such dwellings a complaint stating the charges in that
39 respect and containing a notice that an administrative hearing will be held
40 before the public officer, or the officer's designated agent, at a place within
41 the county in which the property is located. The hearing shall be not less
42 than 10 days nor more than 30 days after the serving of the complaint. The
43 owner and parties in interest shall be given the right to file an answer to the
44 complaint and to appear in person, or otherwise, and give testimony at the
45 place and time fixed in the complaint. The rules of evidence prevailing in
46 courts of law shall not be controlling in administrative hearings before the
47 public officer.
48 (3) Orders. – If, after notice and hearing, the public officer determines that the
49 dwelling under consideration is unfit for human habitation, the officer shall
50 state in writing findings of fact in support of that determination and shall

1 issue and cause to be served upon the owner one of the following orders, as
2 appropriate:

3 a. If the repair, alteration, or improvement of the dwelling can be made
4 at a reasonable cost in relation to the value of the dwelling, requiring
5 the owner, within the time specified, to repair, alter, or improve the
6 dwelling in order to render it fit for human habitation. The ordinance
7 may fix a certain percentage of this value as being reasonable. The
8 order may require that the property be vacated and closed only if
9 continued occupancy during the time allowed for repair will present a
10 significant threat of bodily harm, taking into account the nature of the
11 necessary repairs, alterations, or improvements; the current state of
12 the property; and any additional risks due to the presence and
13 capacity of minors under the age of 18 or occupants with physical or
14 mental disabilities. The order shall state that the failure to make
15 timely repairs as directed in the order shall make the dwelling subject
16 to the issuance of an unfit order under subdivision (4) of this section.
17 b. If the repair, alteration, or improvement of the dwelling cannot be
18 made at a reasonable cost in relation to the value of the dwelling,
19 requiring the owner, within the time specified in the order, to remove
20 or demolish such dwelling. The ordinance may fix a certain
21 percentage of this value as being reasonable. However,
22 notwithstanding any other provision of law, if the dwelling is located
23 in a historic district and the Historic District Commission determines,
24 after a public hearing as provided by ordinance, that the dwelling is
25 of particular significance or value toward maintaining the character
26 of the district, and the dwelling has not been condemned as unsafe,
27 the order may require that the dwelling be vacated and closed
28 consistent with G.S. 160D-9-49.

29 (4) Repair, closing, and posting. – If the owner fails to comply with an order to
30 repair, alter, or improve or to vacate and close the dwelling, the public
31 officer may cause the dwelling to be repaired, altered, or improved or to be
32 vacated and closed and the public officer may cause to be posted on the main
33 entrance of any dwelling so closed a placard with the following words: "This
34 building is unfit for human habitation; the use or occupation of this building
35 for human habitation is prohibited and unlawful." Occupation of a building
36 so posted shall constitute a Class 1 misdemeanor. The duties of the public
37 officer set forth in this subdivision shall not be exercised until the governing
38 board shall have by ordinance ordered the public officer to proceed to
39 effectuate the purpose of this Article with respect to the particular property
40 or properties which the public officer shall have found to be unfit for human
41 habitation and which property or properties shall be described in the
42 ordinance. This ordinance shall be recorded in the office of the register of
43 deeds in the county where the property or properties are located and shall be
44 indexed in the name of the property owner in the grantor index.

45 (5) Demolition. – If the owner fails to comply with an order to remove or
46 demolish the dwelling, the public officer may cause such dwelling to be
47 removed or demolished. The duties of the public officer set forth in this
48 subdivision shall not be exercised until the governing board shall have by
49 ordinance ordered the public officer to proceed to effectuate the purpose of
50 this Article with respect to the particular property or properties which the
51 public officer shall have found to be unfit for human habitation and which

1 property or properties shall be described in the ordinance. No such ordinance
2 shall be adopted to require demolition of a dwelling until the owner has first
3 been given a reasonable opportunity to bring it into conformity with the
4 housing code. This ordinance shall be recorded in the office of the register of
5 deeds in the county wherein the property or properties are located and shall
6 be indexed in the name of the property owner in the grantor index.

7 (6) Abandonment of Intent to Repair. – If the dwelling has been vacated and
8 closed for a period of one year pursuant to an ordinance adopted pursuant to
9 subdivision (4) of this section or after a public officer issues an order or
10 proceedings have commenced under the substandard housing regulations
11 regarding a dwelling to be repaired or vacated and closed as provided in this
12 subdivision, then the governing board may find that the owner has
13 abandoned the intent and purpose to repair, alter, or improve the dwelling in
14 order to render it fit for human habitation and that the continuation of the
15 dwelling in its vacated and closed status would be inimical to the health,
16 safety, and welfare of the local government in that the dwelling would
17 continue to deteriorate, would create a fire and safety hazard, would be a
18 threat to children and vagrants, would attract persons intent on criminal
19 activities, would cause or contribute to blight and the deterioration of
20 property values in the area, and would render unavailable property and a
21 dwelling which might otherwise have been made available to ease the
22 persistent shortage of decent and affordable housing in this State, then in
23 such circumstances, the governing board may, after the expiration of such
24 one year period, enact an ordinance and serve such ordinance on the owner,
25 setting forth the following:

26 a. If it is determined that the repair of the dwelling to render it fit for
27 human habitation can be made at a cost not exceeding fifty percent
28 (50%) of the then current value of the dwelling, the ordinance shall
29 require that the owner either repair or demolish and remove the
30 dwelling within 90 days.

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

36 This ordinance shall be recorded in the office of the register of deeds in
37 the county wherein the property or properties are located and shall be
38 indexed in the name of the property owner in the grantor index. If the owner
39 fails to comply with this ordinance, the public officer shall effectuate the
40 purpose of the ordinance.

41 (7) Liens. –

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

48 b. If the real property upon which the cost was incurred is located in an
49 incorporated city, then the amount of the cost is also a lien on any
50 other real property of the owner located within the city limits or
51 within one mile thereof except for the owner's primary residence.

1 The additional lien provided in this sub-subdivision is inferior to all
2 prior liens and shall be collected as a money judgment.

3 c. If the dwelling is removed or demolished by the public officer, the
4 local government shall sell the materials of the dwelling, and any
5 personal property, fixtures, or appurtenances found in or attached to
6 the dwelling, and shall credit the proceeds of the sale against the cost
7 of the removal or demolition and any balance remaining shall be
8 deposited in the superior court by the public officer, shall be secured
9 in a manner directed by the court, and shall be disbursed by the court
10 to the persons found to be entitled thereto by final order or decree of
11 the court. Nothing in this section shall be construed to impair or limit
12 in any way the power of the local government to define and declare
13 nuisances and to cause their removal or abatement by summary
14 proceedings or otherwise.

15 (8) Civil action. – If any occupant fails to comply with an order to vacate a
16 dwelling, the public officer may file a civil action in the name of the local
17 government to remove such occupant. The action to vacate the dwelling
18 shall be in the nature of summary ejectment and shall be commenced by
19 filing a complaint naming as defendant any person occupying such dwelling.
20 The clerk of superior court shall issue a summons requiring the defendant to
21 appear before a magistrate at a certain time, date and place not to exceed 10
22 days from the issuance of the summons to answer the complaint. The
23 summons and complaint shall be served as provided in G.S. 42-29. If the
24 summons appears to have been duly served and if at the hearing the public
25 officer produces a certified copy of an ordinance adopted by the governing
26 board pursuant to subdivision (5) of this section authorizing the officer to
27 proceed to vacate the occupied dwelling, the magistrate shall enter judgment
28 ordering that the premises be vacated and that all persons be removed. The
29 judgment ordering that the dwelling be vacated shall be enforced in the same
30 manner as the judgment for summary ejectment entered under G.S. 42-30.
31 An appeal from any judgment entered hereunder by the magistrate may be
32 taken as provided in G.S. 7A-228, and the execution of such judgment may
33 be stayed as provided in G.S. 7A-227. An action to remove an occupant of a
34 dwelling who is a tenant of the owner may not be in the nature of a summary
35 ejectment proceeding pursuant to this paragraph unless such occupant was
36 served with notice at least 30 days before the filing of the summary
37 ejectment proceeding that the governing board has ordered the public officer
38 to proceed to exercise his duties under subdivisions (4) and (5) of this
39 section to vacate and close or remove and demolish the dwelling.

40 (9) Additional notices to affordable housing organizations. – Whenever a
41 determination is made pursuant to subdivision (3) of this section that a
42 dwelling must be vacated and closed, or removed or demolished, under the
43 provisions of this section, notice of the order shall be given by first-class
44 mail to any organization involved in providing or restoring dwellings for
45 affordable housing that has filed a written request for such notices. A
46 minimum period of 45 days from the mailing of such notice shall be given
47 before removal or demolition by action of the public officer, to allow the
48 opportunity for any organization to negotiate with the owner to make repairs,
49 lease, or purchase the property for the purpose of providing affordable
50 housing. The public officer or clerk shall certify the mailing of the notices,
51 and the certification shall be conclusive in the absence of fraud. Only an

1 organization that has filed a written request for such notices may raise the
2 issue of failure to mail such notices, and the sole remedy shall be an order
3 requiring the public officer to wait 45 days before causing removal or
4 demolition.

5 **"§ 160D-12-4. Heat source required.**

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

11 (b) If a dwelling unit contains a heating system or heating appliances that meet the
12 requirements of subsection (a) of this section, the owner of the dwelling unit shall not be
13 required to install a new heating system or heating appliances, but the owner shall be required
14 to maintain the existing heating system or heating appliances in a good and safe working
15 condition. Otherwise, the owner of the dwelling unit shall install a heating system or heating
16 appliances that meet the requirements of subsection (a) of this section and shall maintain the
17 heating system or heating appliances in a good and safe working condition.

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

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

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

30 **"§ 160D-12-5. Standards.**

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

40 **"§ 160D-12-6. Service of complaints and orders.**

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

48 (b) If the identities of any owners or the whereabouts of persons are unknown and
49 cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the
50 owners are known but have refused to accept service by certified mail, and the public officer
51 makes an affidavit to that effect, then the serving of the complaint or order upon the owners or

1 other persons may be made by publication in a newspaper having general circulation in the
2 jurisdiction at least once no later than the time at which personal service would be required
3 under the provisions of this Article. When service is made by publication, a notice of the
4 pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

5 **"§ 160D-12-7. Periodic inspections.**

6 (a) Except as provided in subsection (b) of this section, the inspection department may
7 make periodic inspections only when there is reasonable cause to believe that unsafe,
8 unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or
9 structure. However, when the inspection department determines that a safety hazard exists in
10 one of the dwelling units within a multifamily building, which in the opinion of the inspector
11 poses an immediate threat to the occupant, the inspection department may inspect, in the
12 absence of a specific complaint and actual knowledge of the unsafe condition, additional
13 dwelling units in the multifamily building to determine if that same safety hazard exists. For
14 purposes of this section, the term "reasonable cause" means any of the following: (i) the
15 landlord or owner has a history of more than two verified violations of the housing ordinances
16 or codes within a 12-month period; (ii) there has been a complaint that substandard conditions
17 exist within the building or there has been a request that the building be inspected; (iii) the
18 inspection department has actual knowledge of an unsafe condition within the building; or (iv)
19 violations of the local ordinances or codes are visible from the outside of the property. In
20 conducting inspections authorized under this section, the inspection department shall not
21 discriminate between single-family and multifamily buildings or between owner-occupied and
22 tenant-occupied buildings. In exercising this power, members of the department shall have a
23 right to enter on any premises within the jurisdiction of the department at all reasonable hours
24 for the purposes of inspection or other enforcement action, upon presentation of proper
25 credentials. Nothing in this section shall be construed to prohibit periodic inspections in
26 accordance with State fire prevention code or as otherwise required by State law.

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

42 (c) In no event may a local government do any of the following: (i) adopt or enforce
43 any ordinance that would require any owner or manager of rental property to obtain any permit
44 or permission under Article 11 or Article 12 of this Chapter from the local government to lease
45 or rent residential real property or to register rental property with the local government, except
46 for those individual properties that have more than four verified violations in a rolling
47 12-month period or two or more verified violations in a rolling 30-day period, or upon the
48 property being identified within the top ten percent (10%) of properties with crime or disorder
49 problems as set forth in a local ordinance; (ii) require that an owner or manager of residential
50 rental property enroll or participate in any governmental program as a condition of obtaining a
51 certificate of occupancy; (iii) levy a special fee or tax on residential rental property that is not

1 also levied against other commercial and residential properties, unless expressly authorized by
2 general law or applicable only to an individual rental unit or property described in clause (i) of
3 this subsection and the fee does not exceed five hundred dollars (\$500.00) in any 12-month
4 period in which the unit or property is found to have verified violations; (iv) provide that any
5 violation of a rental registration ordinance is punishable as a criminal offense; or (v) require
6 any owner or manager of rental property to submit to an inspection before receiving any utility
7 service provided by the local government. For purposes of this section, the term "verified
8 violation" means all of the following:

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

11 (2) Any violations that have not been corrected by the owner or manager within
12 21 days of receipt of written notice from the local government of the
13 violations. Should the same violation occur more than two times in a
14 12-month period, the owner or manager may not have the option of
15 correcting the violation. If the housing code provides that any form of
16 prohibited tenant behavior constitutes a violation by the owner or manager
17 of the rental property, it shall be deemed a correction of the tenant-related
18 violation if the owner or manager, within 30 days of receipt of written notice
19 of the tenant-related violation, brings a summary ejectment action to have
20 the tenant evicted.

21 (d) If a property is identified by the local government as being in the top ten percent
22 (10%) of properties with crime or disorder problems, the local government shall notify the
23 landlord of any crimes, disorders, or other violations that will be counted against the property
24 to allow the landlord an opportunity to attempt to correct the problems. In addition, the local
25 government and the county sheriff's office or city's police department shall assist the landlord
26 in addressing any criminal activity, which may include testifying in court in a summary
27 ejectment action or other matter to aid in evicting a tenant who has been charged with a crime.
28 If the local government or the county sheriff's office or city's police department does not
29 cooperate in evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a
30 crime or disorder problem as set forth in the local ordinance and the property may not be
31 included in the top ten percent (10%) of properties as a result of that tenant's behavior or
32 activity.

33 (e) If the local government takes action against an individual rental unit under this
34 section, the owner of the individual rental unit may appeal the decision to the housing appeals
35 board or the zoning board of adjustment, if operating, or the planning board if created under
36 G.S. 160D-3-1, or if neither is created, the governing board. The board shall fix a reasonable
37 time for hearing appeals, shall give due notice to the owner of the individual rental unit, and
38 shall render a decision within a reasonable time. The owner may appear in person or by agent
39 or attorney. The board may reverse or affirm the action, wholly or partly, or may modify the
40 action appealed from, and may make any decision and order that in the opinion of the board
41 ought to be made in the matter.

42 **"§ 160D-12-8. Remedies.**

43 (a) An ordinance adopted pursuant to this Article may provide for a housing appeals
44 board as provided by G.S. 160D-3-6. An appeal from any decision or order of the public officer
45 is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer,
46 board, or commission of the local government. Any appeal from the public officer shall be
47 taken within 10 days from the rendering of the decision or service of the order by filing with
48 the public officer and with the housing appeals board a notice of appeal which shall specify the
49 grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public
50 officer shall forthwith transmit to the board all the papers constituting the record upon which
51 the decision appealed from was made. When an appeal is from a decision of the public officer

1 refusing to allow the person aggrieved thereby to do any act, the decision shall remain in force
2 until modified or reversed. When any appeal is from a decision of the public officer requiring
3 the person aggrieved to do any act, the appeal shall have the effect of suspending the
4 requirement until the hearing by the board, unless the public officer certifies to the board, after
5 the notice of appeal is filed with the officer, that because of facts stated in the certificate, a copy
6 of which shall be furnished the appellant, a suspension of the requirement would cause
7 imminent peril to life or property. In that case the requirement shall not be suspended except by
8 a restraining order, which may be granted for due cause shown upon not less than one day's
9 written notice to the public officer, by the board, or by a court of record upon petition made
10 pursuant to subsection (f) of this section.

11 (b) The housing appeals board shall fix a reasonable time for hearing appeals, shall give
12 due notice to the parties, and shall render its decision within a reasonable time. Any party may
13 appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or
14 may modify the decision or order appealed from, and may make any decision and order that in
15 its opinion ought to be made in the matter, and, to that end, it shall have all the powers of the
16 public officer, but the concurring vote of four members of the board shall be necessary to
17 reverse or modify any decision or order of the public officer. The board shall have power also
18 in passing upon appeals, when unnecessary hardships would result from carrying out the strict
19 letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to
20 the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and
21 substantial justice done.

22 (c) Every decision of the housing appeals board shall be subject to review by
23 proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but
24 not otherwise.

25 (d) Any person aggrieved by an order issued by the public officer or a decision rendered
26 by the housing appeals board may petition the superior court for an injunction restraining the
27 public officer from carrying out the order or decision and the court may, upon such petition,
28 issue a temporary injunction restraining the public officer pending a final disposition of the
29 cause. The petition shall be filed within 30 days after issuance of the order or rendering of the
30 decision. Hearings shall be had by the court on a petition within 20 days and shall be given
31 preference over other matters on the court's calendar. The court shall hear and determine the
32 issues raised and shall enter such final order or decree as law and justice may require. It shall
33 not be necessary to file bond in any amount before obtaining a temporary injunction under this
34 subsection.

35 (e) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or
36 used in violation of this Article or of any ordinance or code adopted under authority of this
37 Article or any valid order or decision of the public officer or board made pursuant to any
38 ordinance or code adopted under authority of this Article, the public officer or board may
39 institute any appropriate action or proceedings to prevent the unlawful erection, construction,
40 reconstruction, alteration, or use, to restrain, correct, or abate the violation, to prevent the
41 occupancy of the dwelling, or to prevent any illegal act, conduct, or use in or about the
42 premises of the dwelling.

43 **"§ 160D-12-9. Compensation to owners of condemned property.**

44 Nothing in this Article shall be construed as preventing the owner or owners of any
45 property from receiving just compensation for the taking of property by the power of eminent
46 domain under the laws of this State nor as permitting any property to be condemned or
47 destroyed except in accordance with the police power of the State.

48 **"§ 160D-12-10. Additional powers of public officer.**

49 An ordinance adopted by the governing board may authorize the public officer to exercise
50 any powers necessary or convenient to carry out and effectuate the purpose and provisions of
51 this Article, including the following powers in addition to others herein granted:

- 1 (1) To investigate the dwelling conditions in the local government's planning
2 and development regulation jurisdiction in order to determine which
3 dwellings therein are unfit for human habitations.
- 4 (2) To administer oaths, affirmations, examine witnesses, and receive evidence.
- 5 (3) To enter upon premises for the purpose of making examinations in a manner
6 that will do the least possible inconvenience to the persons in possession.
- 7 (4) To appoint and fix the duties of officers, agents, and employees necessary to
8 carry out the purposes of the ordinances.
- 9 (5) To delegate any of his functions and powers under the ordinance to other
10 officers and other agents.

11 **"§ 160D-12-11. Administration of ordinance.**

12 A local government adopting an ordinance under this Article shall, as soon as possible
13 thereafter, prepare an estimate of the annual expenses or costs to provide the equipment,
14 personnel, and supplies necessary for periodic examinations and investigations of the dwellings
15 for the purpose of determining the fitness of dwellings for human habitation and for the
16 enforcement and administration of its ordinances adopted under this Article. The local
17 government is authorized to make appropriations from its revenues necessary for this purpose
18 and may accept and apply grants or donations to assist it.

19 **"§ 160D-12-12. Supplemental nature of Article.**

20 Nothing in this Article shall be construed to abrogate or impair the powers of the courts or
21 of any department of any local government to enforce any provisions of its charter or its
22 ordinances or regulations nor to prevent or punish violations thereof. The powers conferred by
23 this Article shall be supplemental to the powers conferred by any other law in carrying out the
24 provisions of the ordinances.

25 "Article 13.

26 "Additional Authority.

27 "Part 1. Open Space Acquisition.

28 **"§ 160D-13-1. Legislative intent.**

29 It is the intent of the General Assembly to provide a means whereby any local government
30 may acquire by purchase, gift, grant, devise, lease, or otherwise, and through the expenditure of
31 public funds, the fee or any lesser interest or right in real property in order to preserve, through
32 limitation of their future use, open spaces and areas for public use and enjoyment.

33 **"§ 160D-13-2. Finding of necessity.**

34 The General Assembly finds that the rapid growth and spread of urban development in the
35 State is encroaching upon, or eliminating, many open areas and spaces of varied size and
36 character, including many having significant scenic or aesthetic values, which areas and spaces
37 if preserved and maintained in their present open state would constitute important physical,
38 social, esthetic, or economic assets to existing and impending urban development. The General
39 Assembly declares that it is necessary for sound and proper urban development and in the
40 public interest of the people of this State for any local government to expend or advance public
41 funds for, or to accept by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser
42 interest or right in real property so as to acquire, maintain, improve, protect, limit the future use
43 of, or otherwise conserve open spaces and areas within their respective jurisdictions as defined
44 by this Article.

45 The General Assembly declares that the acquisition of interests or rights in real property for
46 the preservation of open spaces and areas constitutes a public purpose for which public funds
47 may be expended or advanced.

48 **"§ 160D-13-3. Local governments authorized to acquire and reconvey real property.**

49 Any local government may acquire by purchase, gift, grant, devise, lease, or otherwise the
50 fee or any lesser interest, development right, easement, covenant, or other contractual right of
51 or to real property within its respective jurisdiction, when it finds that the acquisition is

1 necessary to achieve the purposes of this Part. Any local government may also acquire the fee
2 to any property for the purpose of conveying or leasing the property back to its original owner
3 or other person under covenants or other contractual arrangements that will limit the future use
4 of the property in accordance with the purposes of this Part, but when this is done, the property
5 may be conveyed back to its original owner but to no other person by private sale.

6 **"§ 160D-13-4. Joint action by governing bodies.**

7 A local government may enter into any agreement with any other local government for the
8 purpose of jointly exercising the authority granted by this Part.

9 **"§ 160D-13-5. Powers of governing bodies.**

10 A local government, in order to exercise the authority granted by this Part, may:

- 11 (1) Enter into and carry out contracts with the State or federal government or
12 any agencies thereof under which grants or other assistance are made to the
13 local government.
- 14 (2) Accept any assistance or funds that may be granted by the State or federal
15 government with or without a contract.
- 16 (3) Agree to and comply with any reasonable conditions imposed upon grants.
- 17 (4) Make expenditures from any funds so granted.

18 **"§ 160D-13-6. Appropriations authorized.**

19 For the purposes set forth in this Part, a local government may appropriate funds not
20 otherwise limited as to use by law.

21 **"§ 160D-13-7. Definitions.**

22 As used in this Part, the following definitions apply:

- 23 (1) Open space or open area. – Any space or area characterized by great natural
24 scenic beauty or where the existing openness, natural condition, or present
25 state of use, if retained, would enhance the present or potential value of
26 abutting or surrounding urban development or would maintain or enhance
27 the conservation of natural or scenic resources. The terms also include
28 interests or rights in real property and open space land or uses.
- 29 (2) Open space land or open space uses. – Any undeveloped or predominantly
30 undeveloped land in an urban area that has value for or is used for one or
31 more of the following purposes:
 - 32 a. Park and recreational purposes.
 - 33 b. Conservation of land and other natural resources.
 - 34 c. Historic or scenic purposes.

35 **"§§ 160D-13-8 through 160D-13-10:** Reserved for future codification purposes.

36 "Part 2. Community Development and Redevelopment.

37 **"§ 160D-13-11. Community development programs and activities.**

38 (a) A local government is authorized to engage in, to accept federal and State grants
39 and loans for, and to appropriate and expend funds for community development programs and
40 activities. In undertaking community development programs and activities, in addition to other
41 authority granted by law, a local government may engage in the following activities:

- 42 (1) Programs of assistance and financing of rehabilitation of private buildings
43 principally for the benefit of low- and moderate-income persons, or for the
44 restoration or preservation of older neighborhoods or properties, including
45 direct repair, the making of grants or loans, the subsidization of interest
46 payments on loans, and the guaranty of loans.
- 47 (2) Programs concerned with employment, economic development, crime
48 prevention, child care, health, drug abuse, education, and welfare needs of
49 persons of low and moderate income.

50 (b) A governing board may exercise directly those powers granted by law to local
51 government redevelopment commissions and those powers granted by law to local government

1 housing authorities and may do so whether or not a redevelopment commission or housing
2 authority is in existence in such local government. Any governing board may by agreement
3 undertake or carry out for another any specified community development activities. Any
4 governing board may contract with any person, association, or corporation in undertaking any
5 specified community development activities. Any county or city board of health, county board
6 of social services, or county or city board of education may by agreement undertake or carry
7 out for any governing board any specified community development activities.

8 (c) A local government undertaking community development programs or activities
9 may create one or more advisory committees to advise it and to make recommendations
10 concerning such programs or activities.

11 (d) A governing board proposing to undertake any loan guaranty or similar program for
12 rehabilitation of private buildings is authorized to submit to its voters the question whether such
13 program shall be undertaken, such referendum to be conducted pursuant to the general and
14 local laws applicable to special elections in such local government. No State or local taxes shall
15 be appropriated or expended by a county pursuant to this section for any purpose not expressly
16 authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as
17 therein provided.

18 (e) A government may receive and dispense funds from the Community Development
19 Block Grant (CDBG) Section 108 Loan Guarantee program, Subpart M, 24 C.F.R. § 570.700,
20 et seq., either through application to the North Carolina Department of Commerce or directly
21 from the federal government, in accordance with State and federal laws governing these funds.
22 Any local government that receives these funds directly from the federal government may
23 pledge current and future CDBG funds for use as loan guarantees in accordance with State and
24 federal laws governing these funds. A local government may implement the receipt, dispensing,
25 and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all
26 or a portion of those funds to a third party in accordance with applicable laws governing the
27 CDBG program.

28 A government that has pledged current or future CDBG funds for use as loan guarantees
29 prior to the enactment of this subsection is authorized to have taken such action. A pledge of
30 future CDBG funds under this subsection is not a debt or liability of the State or any political
31 subdivision of the State or a pledge of the faith and credit of the State or any political
32 subdivision of the State. The pledging of future CDBG funds under this subsection does not
33 directly, indirectly, or contingently obligate the State or any political subdivision of the State to
34 levy or to pledge any taxes.

35 (f) All program income from Economic Development Grants from the Small Cities
36 Community Development Block Grant Program may be retained by recipient cities and
37 counties in "economically distressed counties," as defined in G.S. 143B-437.01, for the
38 purposes of creating local economic development revolving loan funds. Such program income
39 derived through the use by cities of Small Cities Community Development Block Grant money
40 includes, but is not limited to, (i) payment of principal and interest on loans made by the county
41 using CDBG funds; (ii) proceeds from the lease or disposition of real property acquired with
42 CDBG funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above.
43 The local economic development revolving loan fund set up by the city shall fund only those
44 activities eligible under Title I of the federal Housing and Community Development Act of
45 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of
46 the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or
47 G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed
48 counties made prior to its expiration.

49 **"§ 160D-13-12. Acquisition and disposition of property for redevelopment.**

1 Any local government is authorized, either as a part of a community development program
2 or independently thereof, and without the necessity of compliance with the Urban
3 Redevelopment Law, to exercise the following powers:

- 4 (1) To acquire, by voluntary purchase from the owner or owners, real property
5 which meets any of the following criteria:
6 a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately
7 developed from the standpoint of sound community development and
8 growth.
9 b. Appropriate for rehabilitation or conservation activities.
10 c. Appropriate for housing construction or the economic development
11 of the community.
12 d. Appropriate for the preservation or restoration of historic sites, the
13 beautification of urban land, the conservation of open space, natural
14 resources, and scenic areas, the provision of recreational
15 opportunities, or the guidance of urban development.
16 (2) To clear, demolish, remove, or rehabilitate buildings and improvements on
17 land so acquired.
18 (3) To retain property so acquired for public purposes, or to dispose, through
19 sale, lease, or otherwise, of any property so acquired to any person, firm,
20 corporation, or governmental unit, provided the disposition of such property
21 shall be undertaken in accordance with the procedures of Article 12 of
22 Chapter 160A of the General Statutes, or the procedures of G.S. 160A-514,
23 or any applicable local act or charter provision modifying such procedures,
24 or subdivision (4) of this section.
25 (4) To sell, exchange, or otherwise transfer real property or any interest therein
26 in a community development project area to any redeveloper at private sale
27 for residential, recreational, commercial, industrial, or other uses or for
28 public use in accordance with the community development plan, subject to
29 such covenants, conditions, and restrictions as may be deemed to be in the
30 public interest or to carry out the purposes of this Article, provided that such
31 sale, exchange, or other transfer, and any agreement relating thereto, may be
32 made only after approval of the governing board and after a public hearing; a
33 notice of the public hearing shall be given once a week for two successive
34 weeks in a newspaper having general circulation in the local government's
35 planning and development jurisdiction area, the notice shall be published the
36 first time not less than 10 days nor more than 25 days preceding the public
37 hearing, and the notice shall disclose the terms of the sale, exchange, or
38 transfer. At the public hearing the appraised value of the property to be sold,
39 exchanged, or transferred shall be disclosed, and the consideration for the
40 conveyance shall not be less than the appraised value.

41 **"§ 160D-13-13. Urban Development Action Grants.**

42 Any local government is authorized, either as a part of a community development program
43 or independently thereof, to enter into contracts or agreements with any person, association, or
44 corporation to undertake and carry out specified activities in furtherance of the purposes of
45 Urban Development Action Grants authorized by the Housing and Community Development
46 Act of 1977, P.L. 95-128, or any amendment thereto which is a continuation of such grant
47 programs by whatever designation, including the authority to enter into and carry out contracts
48 or agreements to extend loans, loan subsidies, or grants to persons, associations, or corporations
49 and to dispose of real or personal property by private sale in furtherance of such contracts or
50 agreements.

1 Any enabling legislation contained in local acts which refers to "Urban Development
2 Action Grants" or the Housing and Community Development Act of 1977, P.L. 95-128, shall
3 be construed also to refer to any continuation of such grant programs by whatever designation.

4 **"§ 160D-13-14. Urban homesteading programs.**

5 A local government may establish a program of urban homesteading, in which residential
6 property of little or no value is conveyed to persons who agree to rehabilitate the property and
7 use it, for a minimum number of years, as their principal place of residence. Residential
8 property is considered of little or no value if the cost of bringing the property into compliance
9 with the local government's housing code exceeds sixty percent (60%) of the property's
10 appraised value on the county tax records. In undertaking such a program a local government
11 may:

- 12 (1) Acquire by purchase, gift, or otherwise, but not eminent domain, residential
13 property specifically for the purpose of reconveyance in the urban
14 homesteading program or may transfer to the program residential property
15 acquired for other purposes, including property purchased at a tax
16 foreclosure sale.
- 17 (2) Under procedures and standards established by the local government, convey
18 residential property by private sale under G.S. 160A-267 and for nominal
19 monetary consideration to persons who qualify as grantees.
- 20 (3) Convey property subject to the following conditions:
 - 21 a. A requirement that the grantee shall use the property as the grantee's
22 principal place of residence for a minimum number of years.
 - 23 b. A requirement that the grantee rehabilitate the property so that it
24 meets or exceeds minimum housing code standards.
 - 25 c. A requirement that the grantee maintain insurance on the property.
 - 26 d. Any other specific conditions, including, but not limited to, design
27 standards, or actions that the local government may require.
 - 28 e. A provision for the termination of the grantee's interest in the
29 property and its reversion to the local government upon the grantee's
30 failure to meet any condition so established.
- 31 (4) Subordinate the local government's interest in the property to any security
32 interest granted by the grantee to a lender of funds to purchase or rehabilitate
33 the property.

34 **"§ 160D-13-15. Downtown development projects.**

35 (a) Definition. – As used in this section, "downtown development project" or "joint
36 development project" means a capital project, in a central business district, as that district is
37 defined by the governing board, comprising one or more buildings and including both public
38 and private facilities. By way of illustration but not limitation, such a project might include a
39 single building comprising a publicly owned parking structure and publicly owned convention
40 center and a privately owned hotel or office building.

41 (b) Authorization. – If the governing board finds that it is likely to have a significant
42 effect on the revitalization of the jurisdiction, the local government may acquire, construct,
43 own, and operate or participate in the acquisition, construction, ownership, and operation of a
44 joint development project or of specific facilities within such a project. The local government
45 may enter into binding contracts with one or more private developers with respect to acquiring,
46 constructing, owning, or operating such a project. Such a contract may, among other
47 provisions, specify the following:

- 48 (1) The property interests of both the local government and the developer or
49 developers in the project, provided that the property interests of the local
50 government shall be limited to facilities for a public purpose.

1 (2) The responsibilities of the local government and the developer or developers
2 for construction of the project.

3 (3) The responsibilities of the local government and the developer or developers
4 with respect to financing the project.

5 Such a contract may be entered into before the acquisition of any real property necessary to
6 the project.

7 (c) Eligible Property. – A joint development project may be constructed on property
8 acquired by the developer or developers, on property directly acquired by the local government,
9 or on property acquired by the local government while exercising the powers, duties, and
10 responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or
11 G.S. 160D-13-11.

12 (d) Conveyance of Property Rights. – In connection with a joint development project,
13 the local government may convey interests in property owned by it, including air rights over
14 public facilities, as follows:

15 (1) If the property was acquired while the local government was exercising the
16 powers, duties, and responsibilities of a redevelopment commission, the
17 local government may convey property interests pursuant to the "Urban
18 Redevelopment Law" or any local modification thereof.

19 (2) If the property was acquired by the local government directly, the local
20 government may convey property interests pursuant to G.S. 160D-13-12,
21 and Article 12 of Chapter 160A of the General Statutes does not apply to
22 such dispositions.

23 (3) In lieu of conveying the fee interest in air rights, the local government may
24 convey a leasehold interest for a period not to exceed 99 years, using the
25 procedures of subdivision (1) or (2) of this subsection, as applicable.

26 (e) Construction. – The contract between the local government and the developer or
27 developers may provide that the developer or developers shall be responsible for construction
28 of the entire joint development project. If so, the contract shall include such provisions as the
29 governing board deems sufficient to assure that the public facility or facilities included in the
30 project meet the needs of the local government and are constructed at a reasonable price. A
31 project constructed pursuant to this subsection is not subject to Article 8 of Chapter 143 of the
32 General Statutes, provided that local government funds constitute no more than fifty percent
33 (50%) of the total costs of the joint development project. Federal funds available for loan to
34 private developers in connection with a joint development project shall not be considered local
35 government funds for purposes of this subsection.

36 (f) Operation. – The local government may contract for the operation of any public
37 facility or facilities included in a joint redevelopment project by a person, partnership, firm, or
38 corporation, public or private. Such a contract shall include provisions sufficient to assure that
39 any such facility or facilities are operated for the benefit of the citizens of the local government.

40 (g) Grant Funds. – To assist in the financing of its share of a joint development project,
41 the local government may apply for, accept, and expend grant funds from the federal or state
42 governments.

43 **"§ 160D-13-16. Low- and moderate-income housing programs.**

44 Any local government is authorized to exercise the following powers:

45 (1) To engage in and to appropriate and expend funds for residential housing
46 construction, new or rehabilitated, for sale or rental to persons and families
47 of low and moderate income. Any governing board may contract with any
48 person, association, or corporation to implement the provisions of this
49 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
5 provides affordable housing to persons of low or moderate income under
6 procedures and standards established by the local government, The local
7 government shall include as part of any such conveyance covenants or
8 conditions that assure the property will be developed by the entity for sale or
9 lease to persons of low or 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
12 local government, with G.S. 160A-267, and with any terms and conditions
13 that the 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
18 North Carolina to promote and encourage renewable energy and energy efficiency within the
19 State in order to conserve energy, promote economic competitiveness, and expand employment
20 in the State. The General Assembly also finds that a local government has an integral role in
21 furthering this purpose by promoting and encouraging renewable energy and energy efficiency
22 within the local government's territorial jurisdiction. In furtherance of this purpose, a local
23 government may establish a program to finance the purchase and installation of distributed
24 generation renewable energy sources or energy efficiency improvements that are permanently
25 affixed to residential, commercial, or other real property.

26 (b) Financing Assistance. – A local government may establish a revolving loan fund
27 and a loan loss reserve fund for the purpose of financing or assisting in the financing of the
28 purchase and installation of distributed generation renewable energy sources or energy
29 efficiency improvements that are permanently fixed to residential, commercial, or other real
30 property. A local government may establish other local government energy efficiency and
31 distributed generation renewable energy source finance programs funded through federal
32 grants. A local government may use State and federal grants and loans and its general revenue
33 for this financing. The annual interest rate charged for the use of funds from the revolving fund
34 may not exceed eight percent (8%) per annum, excluding other fees for loan application review
35 and origination. The term of any loan originated under this section may not be greater than 20
36 years.

37 (c) Definition. – As used in this Article, "renewable energy source" has the same
38 meaning as "renewable energy resource" in G.S. 62-133.8.

39 "Article 14.

40 "Judicial Review.

41 "**§ 160D-14-1. Declaratory judgments.**

42 Challenges of legislative decisions of governing boards, including the validity of
43 development regulations adopted pursuant to this Chapter, and actions authorized by
44 G.S. 160D-4-5(b) may be brought pursuant to Article 26 of Chapter 1 of the General Statutes.
45 The governmental unit making the challenged legislative decision shall be named a party to the
46 action.

47 "**§ 160D-14-2. Appeals in the nature of certiorari.**

48 (a) Applicability. – This section applies to appeals of quasi-judicial decisions of
49 decision-making boards when that appeal is in the nature of certiorari as required by this
50 Chapter.

1 (b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing
2 a petition for writ of certiorari with the superior court. The petition shall do all of the following:

- 3 (1) State the facts that demonstrate that the petitioner has standing to seek
4 review.
5 (2) Set forth allegations sufficient to give the court and parties notice of the
6 grounds upon which the petitioner contends that an error was made.
7 (3) Set forth with particularity the allegations and facts, if any, in support of
8 allegations that, as the result of an impermissible conflict as described in
9 G.S. 160D-1-9, or locally adopted conflict rules, the decision-making body
10 was not sufficiently impartial to comply with due process principles.
11 (4) Set forth the relief the petitioner seeks.

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

- 15 (1) Any person possessing any of the following criteria:
16 a. An ownership interest in the property that is the subject of the
17 decision being appealed, a leasehold interest in the property that is
18 the subject of the decision being appealed, or an interest created by
19 easement, restriction, or covenant in the property that is the subject
20 of the decision being appealed.
21 b. An option or contract to purchase the property that is the subject of
22 the decision being appealed.
23 c. An applicant before the decision-making board whose decision is
24 being appealed.
25 (2) Any other person who will suffer special damages as the result of the
26 decision being appealed.
27 (3) An incorporated or unincorporated association to which owners or lessees of
28 property in a designated area belong by virtue of their owning or leasing
29 property in that area, or an association otherwise organized to protect and
30 foster the interest of the particular neighborhood or local area, so long as at
31 least one of the members of the association would have standing as an
32 individual to challenge the decision being appealed, and the association was
33 not created in response to the particular development or issue that is the
34 subject of the appeal.
35 (4) A local government whose decision-making board has made a decision that
36 the governing board believes improperly grants a variance from or is
37 otherwise inconsistent with the proper interpretation of a development
38 regulation adopted by the governing board.

39 (d) Respondent. – The respondent named in the petition shall be the local government
40 whose decision-making board made the decision that is being appealed, except that if the
41 petitioner is a local government that has filed a petition pursuant to subdivision (4) of
42 subsection (c) of this section, then the respondent shall be the decision-making board. If the
43 petitioner is not the applicant before the decision-making board whose decision is being
44 appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may
45 name as a respondent any person with an ownership or leasehold interest in the property that is
46 the subject of the decision being appealed who participated in the hearing, or was an applicant,
47 before the decision-making board.

48 (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition
49 and a proposed writ of certiorari to the clerk of superior court of the county in which the matter
50 arose. The writ shall direct the respondent local government or the respondent decision-making
51 board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4)

1 of subsection (c) of this section, to prepare and certify to the court the record of proceedings
2 below within a specified date. The writ shall also direct that the petitioner shall serve the
3 petition and the writ upon each respondent named therein in the manner provided for service of
4 a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a
5 decision-making board, the petition and the writ shall be served upon the chair of that
6 decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event
7 the chair of a decision-making board cannot be found. No summons shall be issued. The clerk
8 shall issue the writ without notice to the respondent or respondents if the petition has been
9 properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the
10 court.

11 Upon the filing of a petition for writ of certiorari, a party may request a stay of the
12 execution or enforcement of the decision of the quasi-judicial board pending superior court
13 review. The court may grant a stay in its discretion and on such conditions which properly
14 provide for the security of the adverse party. A stay granted in favor of a city or county shall
15 not require a bond or other security.

16 (f) Response to the Petition. – The respondent may, but need not, file a response to the
17 petition, except that, if the respondent contends for the first time that any petitioner lacks
18 standing to bring the appeal, that contention must be set forth in a response served on all
19 petitioners at least 30 days prior to the hearing on the petition. If it is not served within that
20 time period, the matter may be continued to allow the petitioners time to respond.

21 (g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to
22 intervene as a petitioner or respondent in an action initiated under this section with the
23 following exceptions:

24 (1) Any person described in subdivision (1) of subsection (c) of this section
25 shall have standing to intervene and shall be allowed to intervene as a matter
26 of right.

27 (2) Any person, other than one described in subdivision (1) of subsection (c) of
28 this section, who seeks to intervene as a petitioner must demonstrate that the
29 person would have had standing to challenge the decision being appealed in
30 accordance with subdivisions (2) through (4) of subsection (c) of this
31 section.

32 (3) Any person, other than one described in subdivision (1) of subsection (c) of
33 this section, who seeks to intervene as a respondent must demonstrate that
34 the person would have had standing to file a petition in accordance with
35 subdivisions (2) through (4) of subsection (c) of this section if the
36 decision-making board had made a decision that is consistent with the relief
37 sought by the petitioner.

38 (h) The Record. – The record shall consist of the decision and all documents and
39 exhibits submitted to the decision-making board whose decision is being appealed, together
40 with the minutes of the meeting or meetings at which the decision being appealed was
41 considered. Upon request of any party, the record shall also contain an audio or videotape of
42 the meeting or meetings at which the decision being appealed was considered if such a
43 recording was made. Any party may also include in the record a transcript of the proceedings,
44 which shall be prepared at the cost of the party choosing to include it. The parties may agree
45 that matters unnecessary to the court's decision be deleted from the record or that matters other
46 than those specified herein be included. The record shall be bound and paginated or otherwise
47 organized for the convenience of the parties and the court. A copy of the record shall be served
48 by the local government respondent, or the respondent decision-making board, upon all
49 petitioners within three days after it is filed with the court.

50 (i) Hearing on the Record. – The court shall hear and decide all issues raised by the
51 petition by reviewing the record submitted in accordance with subsection (h) of this section.

1 The court may, in its discretion, allow the record to be supplemented with affidavits, testimony
2 of witnesses, or documentary or other evidence if, and to the extent that, the record is not
3 adequate to allow an appropriate determination of the following issues:

- 4 (1) Whether a petitioner or intervenor has standing.
- 5 (2) Whether, as a result of impermissible conflict as described in G.S. 160D-1-9
6 or locally adopted conflict rules, the decision-making body was not
7 sufficiently impartial to comply with due process principles.
- 8 (3) Whether the decision-making body erred for the reasons set forth in
9 sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

10 (j) Scope of Review. –

- 11 (1) When reviewing the decision under the provisions of this section, the court
12 shall ensure that the rights of petitioners have not been prejudiced because
13 the decision-making body's findings, inferences, conclusions, or decisions
14 were:

- 15 a. In violation of constitutional provisions, including those protecting
16 procedural due process rights.
- 17 b. In excess of the statutory authority conferred upon the local
18 government or the authority conferred upon the decision-making
19 board by ordinance.
- 20 c. Inconsistent with applicable procedures specified by statute or
21 ordinance.
- 22 d. Affected by other error of law.
- 23 e. Unsupported by competent, material, and substantial evidence in
24 view of the entire record.
- 25 f. Arbitrary or capricious.

- 26 (2) When the issue before the court is whether the decision-making board erred
27 in interpreting an ordinance, the court shall review that issue de novo. The
28 court shall consider the interpretation of the decision-making board, but is
29 not bound by that interpretation, and may freely substitute its judgment as
30 appropriate.

- 31 (3) The term "competent evidence," as used in this subsection, shall not preclude
32 reliance by the decision-making board on evidence that would not be
33 admissible under the rules of evidence as applied in the trial division of the
34 General Court of Justice if (i) the evidence was admitted without objection
35 or (ii) the evidence appears to be sufficiently trustworthy and was admitted
36 under such circumstances that it was reasonable for the decision-making
37 board to rely upon it. The term "competent evidence," as used in this
38 subsection, shall not be deemed to include the opinion testimony of lay
39 witnesses as to any of the following:

- 40 a. The use of property in a particular way affects the value of other
41 property.
- 42 b. The increase in vehicular traffic resulting from a proposed
43 development poses a danger to the public safety.
- 44 c. Matters about which only expert testimony would generally be
45 admissible under the rules of evidence.

46 (k) Decision of the Court. – Following its review of the decision-making board in
47 accordance with subsection (j) of this section, the court may affirm the decision, reverse the
48 decision and remand the case with appropriate instructions, or remand the case for further
49 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
50 determine what relief should be granted to the petitioners:

- 1 (1) If the court concludes that the error committed by the decision-making board
2 is procedural only, the court may remand the case for further proceedings to
3 correct the procedural error.
- 4 (2) If the court concludes that the decision-making board has erred by failing to
5 make findings of fact such that the court cannot properly perform its
6 function, then the court may remand the case with appropriate instructions so
7 long as the record contains substantial competent evidence that could
8 support the decision below with appropriate findings of fact. However,
9 findings of fact are not necessary when the record sufficiently reveals the
10 basis for the decision below or when the material facts are undisputed and
11 the case presents only an issue of law.
- 12 (3) If the court concludes that the decision by the decision-making board is not
13 supported by competent, material, and substantial evidence in the record or
14 is based upon an error of law, then the court may remand the case with an
15 order that directs the decision-making board to take whatever action should
16 have been taken had the error not been committed or to take such other
17 action as is necessary to correct the error. Specifically:
- 18 a. If the court concludes that a permit was wrongfully denied because
19 the denial was not based on competent, material, and substantial
20 evidence or was otherwise based on an error of law, the court may
21 remand with instructions that the permit be issued, subject to
22 reasonable and appropriate conditions.
- 23 b. If the court concludes that a permit was wrongfully issued because
24 the issuance was not based on competent, material, and substantial
25 evidence or was otherwise based on an error of law, the court may
26 remand with instructions that the permit be revoked.
- 27 (l) Effect of Appeal and Ancillary Injunctive Relief. –
- 28 (1) If a development approval is appealed, the applicant shall have the right to
29 commence work while the appeal is pending. However, if the development
30 approval is reversed by a final decision of any court of competent
31 jurisdiction, the applicant shall not be deemed to have gained any vested
32 rights on the basis of actions taken prior to or during the pendency of the
33 appeal and must proceed as if no development approval had been granted. If
34 work is commenced prior to or during the pendency of an appeal, the time
35 periods for the duration of the development approval are not tolled during
36 the pendency of the appeal.
- 37 (2) Upon motion of a party to a proceeding under this section, and under
38 appropriate circumstances, the court may issue an injunctive order requiring
39 any other party to that proceeding to take certain action or refrain from
40 taking action that is consistent with the court's decision on the merits of the
41 appeal.
- 42 (m) Joinder. – A declaratory judgment brought under G.S. 160D-14-1 or other civil
43 action relating to the decision at issue may be joined with the petition for writ of certiorari and
44 decided in the same proceeding.
- 45 **§ 160D-14-3. Appeals of decisions on subdivision plats.**
- 46 (a) When a subdivision regulation adopted under this Chapter provides that the decision
47 whether to approve or deny a preliminary or final subdivision plat is quasi-judicial, then that
48 decision of the board shall be subject to review by the superior court by proceedings in the
49 nature of certiorari. The provisions of G.S. 160D-4-6 and this section shall apply to those
50 appeals.

1 **(b)** When a subdivision regulation adopted under this Chapter provides that the decision
 2 whether to approve or deny a preliminary or final subdivision plat is administrative, then that
 3 decision of the board shall be subject to review by filing an action in superior court seeking
 4 appropriate declaratory or equitable relief within 30 days from receipt of the written notice of
 5 the decision, which shall be made as provided in G.S. 160D-4-3(b).

6 **(c)** For purposes of this section, a subdivision regulation shall be deemed to authorize a
 7 quasi-judicial decision if the decision-making entity under G.S. 160D-8-3(c) is authorized to
 8 decide whether to approve or deny the plat based not only upon whether the application
 9 complies with the specific requirements set forth in the regulation but also on whether the
 10 application complies with one or more generally stated standards requiring a discretionary
 11 decision to be made.

12 **"§ 160D-14-4. Other civil actions.**

13 Except as expressly stated, this Article does not limit the availability of civil actions
 14 otherwise authorized by law or alter the times in which they may be brought.

15 **"§ 160D-14-5. Statutes of limitation.**

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

20 **(b)** Text Adoption or Amendment. – Except as otherwise provided in subsection (a) of
 21 this section, an action challenging the validity of a development regulation adopted under this
 22 Chapter or other applicable law shall be brought within one year of the accrual of such action.
 23 Such an action accrues when the party bringing such action first has standing to challenge the
 24 ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process
 25 shall be brought within three years after the adoption of the ordinance.

26 **(c)** Enforcement Defense. – Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1
 27 shall bar a party in an action involving the enforcement of a development regulation from
 28 raising as a defense to such enforcement action the invalidity of the ordinance. Nothing in this
 29 section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an
 30 order, requirement, decision, or determination made by an administrative official contending
 31 that such party is in violation of a zoning or unified development ordinance from raising in the
 32 judicial appeal the invalidity of such ordinance as a defense to such order, requirement,
 33 decision, or determination. A party in an enforcement action or appeal may not assert the
 34 invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the
 35 defense is formally raised within three years of the adoption of the challenged ordinance.

36 **(d)** Quasi-Judicial Decisions. – Unless specifically provided otherwise, a petition for
 37 review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of
 38 30 days after the decision is effective or after a written copy thereof is given in accordance with
 39 G.S. 160D-4-6(j). When first-class mail is used to deliver notice, three days shall be added to
 40 the time to file the petition.

41 **(e)** Others. – Except as provided by this section, the statutes of limitations shall be as
 42 provided in Subchapter II of Article 2 of Chapter 1 of the General Statutes."

43 **SECTION 4.1.** G.S. 1-54 reads as rewritten:

44 **"§ 1-54. One year.**

45 Within one year an action or proceeding –

46 ...

- 47 (10) Actions contesting the validity of any zoning or unified development
 48 ordinance or any provision thereof adopted under ~~Part 3 of Article 18 of~~
 49 ~~Chapter 153A or Part 3 of Article 19 of Chapter 160A~~ Chapter 160D of the
 50 General Statutes or other applicable law, other than an ordinance adopting or
 51 amending a zoning map or approving a special use, conditional use, or

1 ~~conditional zoning district rezoning request. map.~~ Such an action accrues
2 when the party bringing such action first has standing to challenge the
3 ordinance; provided that, a challenge to an ordinance on the basis of an
4 alleged defect in the adoption process shall be brought within three years
5 after the adoption of the ordinance.

6 "

7 **SECTION 4.2.** G.S. 1-54.1 reads as rewritten:

8 "**§ 1-54.1. Two months.**

9 Within two months an action contesting the validity of any ordinance adopting or amending
10 a zoning map ~~or approving a special use, conditional use, conditional zoning district rezoning~~
11 ~~request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article~~
12 ~~19 of Chapter 160A of the General Statutes or other applicable law.~~ Article 7 of Chapter 160D
13 of the General Statutes. Such an action accrues upon adoption of such ordinance or amendment.
14 As used herein, the term two months shall be calculated as 60 days."

15 **SECTION 4.3.** G.S. 63-31(a) reads as rewritten:

16 "**§ 63-31. Adoption of airport zoning regulations.**

17 (a) Every political subdivision may adopt, administer, and enforce, under the police
18 power ~~and in the manner and upon the conditions hereinafter prescribed, or as a land~~
19 development regulation under Chapter 160D of the General Statutes, airport zoning regulations,
20 which regulations shall divide the area surrounding any airport within the jurisdiction of said
21 political subdivision into zones, and, within such zones, specify the land uses permitted, and
22 regulate and restrict the height to which structures and trees may be erected or allowed to grow.
23 In adopting or revising any such zoning regulations, the political subdivision shall consider,
24 among other things, the character of the flying operations expected to be conducted at the
25 airport, the nature of the terrain, the height of existing structures and trees above the level of the
26 airport, the possibility of lowering or removing existing obstructions, and the views of the
27 agency of the federal government charged with the fostering of civil aeronautics, as to the aerial
28 approaches necessary to safe flying operations at the airport."

29 **SECTION 4.4.** G.S. 63-32(b) reads as rewritten:

30 "**§ 63-32. Permits, new structures, etc., and variances.**

31 ...

32 (b) Variances. – Any person desiring to erect any structures, or increase the height of
33 any structure, or permit the growth of any tree, or otherwise use his property, in violation of
34 airport zoning regulations adopted under this Article, may apply to the board of appeals, as
35 provided in G.S. 63-33, subsection (c), for a variance from the zoning regulations in question.
36 Such variances ~~shall be allowed where a literal application or enforcement of the regulations~~
37 ~~would result in practical difficulty or unnecessary hardship and the relief granted would not be~~
38 ~~contrary to the public interest but do substantial justice and shall be considered pursuant to~~
39 G.S. 160D-7-5(d) and be in accordance with the spirit of the regulations and this Article."

40 **SECTION 4.5.** G.S. 63-33 reads as rewritten:

41 "**§ 63-33. Procedure.**

42 (a) Adoption of Zoning Regulations. – No airport zoning regulations shall be adopted,
43 amended, or changed under this Article except by action of the legislative body of the political
44 subdivision in question, or the joint board provided for in G.S. 63-31, subsection (c), ~~after a~~
45 ~~public hearing in relation thereto, at which parties in interest and citizens shall have an~~
46 ~~opportunity to be heard. At least 10 days' notice of the hearing shall be published in an official~~
47 ~~paper, or a paper of general circulation, in the political subdivision or subdivisions in which the~~
48 ~~airport is located.~~ following the procedures set for adoption of development regulations in
49 Article 6 of Chapter 160D of the General Statutes.

50 ...

1 (c) Administration of Airport Zoning Regulations – Board of Appeals. – Airport zoning
2 regulations adopted under this Article shall provide for a board of appeals to have and exercise
3 the following powers:

- 4 (1) To hear and decide appeals from any order, requirement, decision, or
5 determination made by the administrative agency in the enforcement of this
6 ~~Article or of any ordinance adopted pursuant thereto; Article.~~
7 (2) To hear and decide special ~~exceptions to the terms of the ordinance~~ use
8 permits upon which such board may be required to pass under such
9 ~~ordinance; ordinance.~~
10 (3) To hear and decide specific ~~variances under G.S. 63-32, subsection~~
11 ~~(b); variances.~~

12 ~~Where a zoning board of appeals or adjustment already exists, it may be appointed as the~~
13 ~~board of appeals. Otherwise, the board of appeals shall consist of five members, each to be~~
14 ~~appointed for a term of three years and to be removable for cause by the appointing authority~~
15 ~~upon written charges and after public hearing. G.S. 160D-4-5 and G.S. 160D-4-6 shall be~~
16 ~~applicable to appeals, special use permits, and variance petitions made pursuant to this section.~~

17 ~~The board shall adopt rules in accordance with the provisions of any ordinance adopted~~
18 ~~under this Article. Meetings of the board shall be held at the call of the chairman and at such~~
19 ~~other times as the board may determine. The chairman, or in his absence the acting chairman,~~
20 ~~may administer oaths and compel the attendance of witnesses. All meetings of the board shall~~
21 ~~be public. The board shall keep minutes of its proceedings, showing the vote of each member~~
22 ~~upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records~~
23 ~~of its examinations and other official actions, all of which shall immediately be filed in the~~
24 ~~office of the board and shall be a public record.~~

25 ~~Appeals to the board may be taken by any person aggrieved, or by any officer, department,~~
26 ~~board, or bureau of the political subdivision affected, by any decision of the administrative~~
27 ~~agency. An appeal must be taken within a reasonable time, as provided by the rules of the~~
28 ~~board, by filing with the agency from which the appeal is taken and with the board, a notice of~~
29 ~~appeal specifying the grounds thereof. The agency from which the appeal is taken shall~~
30 ~~forthwith transmit to the board all the papers constituting the record upon which the action~~
31 ~~appealed from was taken.~~

32 ~~An appeal shall stay all proceedings in furtherance of the action appealed from, unless the~~
33 ~~agency from which the appeal is taken certifies to the board, after the notice of appeal has been~~
34 ~~filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion,~~
35 ~~cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise~~
36 ~~than by a restraining order which may be granted by the board or by a court of record on~~
37 ~~application on notice to the agency from which the appeal is taken and on due cause shown.~~

38 ~~The board shall fix a reasonable time for the hearing of the appeal, give public notice and~~
39 ~~due notice to the parties in interest, and decide the same within a reasonable time. Upon the~~
40 ~~hearing any party may appear in person or by agent or by attorney.~~

41 ~~The board may, in conformity with the provisions of this Article, reverse or affirm, wholly~~
42 ~~or partly, or modify, the order, requirement, decision or determination appealed from and may~~
43 ~~make such order, requirement, decision or determination as ought to be made, and to that end~~
44 ~~shall have all the powers of the administrative agency from which the appeal is taken.~~

45 ~~The concurring vote of a majority of the members of the board shall be sufficient to reverse~~
46 ~~any order, requirement, decision, or determination of the administrative agency, or to decide in~~
47 ~~favor of the applicant on any matter upon which it is required to pass under any such ordinance,~~
48 ~~or to effect any variation in such ordinance."~~

49 **SECTION 4.6.** G.S. 63-34 reads as rewritten:

50 **"§ 63-34. Judicial review.**

1 (a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or
2 any officer, department, board, or bureau of the political subdivision, may present to the
3 superior court a verified petition setting forth that the decision is illegal, in whole or in part, and
4 specifying the grounds of the illegality. Such petition shall be presented to the court within 30
5 days after the decision is filed in the office of the board. Such petition shall comply with the
6 provisions of G.S. 160A-393.

7 (b) The allowance of the writ shall not stay proceedings upon the decision appealed
8 from, but the court may, on application, on notice to the board and on due cause shown, grant a
9 restraining order.

10 (c) The board of appeals shall not be required to return the original papers acted upon
11 by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions
12 thereof as may be called for by the writ. The return shall concisely set forth such other facts as
13 may be pertinent and material to show the grounds of the decision appealed from and shall be
14 verified.

15 (d) Repealed by Session Laws 2009-421, s. 3, effective January 1, 2010.

16 (e) Costs shall not be allowed against the board of appeals unless it appears to the court
17 that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed
18 from.

19 G.S. 160D-14-1 shall be applicable to judicial review of administrative and quasi-judicial
20 decisions made pursuant to this Article."

21 **SECTION 4.7.** G.S. 63-35 reads as rewritten:

22 "**§ 63-35. Enforcement and remedies.**

23 Each violation of this Article or of any regulations, order, or ruling promulgated or made
24 pursuant to this Article, shall constitute a Class 3 misdemeanor, and each day a violation
25 continues to exist shall constitute a separate offense. In addition, the political subdivision
26 within which the property is located may institute in any court of competent jurisdiction, an
27 action to prevent, restrain, correct or abate any violation of this Article, or of airport zoning
28 regulations adopted under this Article, or of any order or ruling made in connection with their
29 administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of
30 injunction (which may be mandatory) or otherwise, as may be proper under all the facts and
31 circumstances of the case, in order fully to effectuate the purposes of this Article and of the
32 regulations adopted and orders and rulings made pursuant thereto.G.S. 160D-4-4 shall be
33 applicable to ordinances adopted pursuant to this Article."

34 **SECTION 4.8.** G.S. 143-215.57 reads as rewritten:

35 "**§ 143-215.57. Procedures in issuing permits.**

36 ...

37 (b) In prescribing standards and requirements for the issuance of permits under this Part
38 and in issuing permits, local governments shall proceed as in the case of an ordinance for the
39 better government of the county or city as the case may be. A city may exercise the powers
40 granted in this Part not only within its corporate boundaries but also within the area of its
41 extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any
42 place within the county that is outside the zoning jurisdiction of a city in the county. If a city
43 does not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction,
44 the county may exercise the powers granted in this Part in the city's extraterritorial zoning
45 jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose
46 governing body, by resolution, agrees to the regulation. The governing body of a city may,
47 upon one year's written notice, withdraw its approval of the county regulations, and those
48 regulations shall have no further effect within the city's jurisdiction.Local government
49 jurisdiction for these ordinances shall be as specified in Article 2 of Chapter 160D of the
50 General Statutes. Article 4 of Chapter 160D of the General Statutes shall apply to the
51 administration, enforcement, and appeals regarding these ordinances.

1 (e) ~~The local governing body is hereby empowered to adopt regulations it may deem~~
2 ~~necessary concerning the form, time, and manner of submission of applications for permits~~
3 ~~under this Part. These regulations may provide for the issuance of permits under this Part by the~~
4 ~~local governing body or by an agency designated by the local governing body, as prescribed by~~
5 ~~the governing body. Every final decision granting or denying a permit under this Part shall be~~
6 ~~subject to review by the superior court of the county, with the right of jury trial at the election~~
7 ~~of the party seeking review. The time and manner of election of a jury trial shall be governed~~
8 ~~by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an~~
9 ~~appeal, no action shall be taken that would be unlawful in the absence of a permit issued under~~
10 ~~this Part."~~

11 **SECTION 4.9.** G.S. 143-215.58 reads as rewritten:

12 **"§ 143-215.58. Violations and penalties.**

13 ...

14 (a1) A local government may use all of the remedies available for the enforcement of
15 ordinances under Chapters ~~453A and 160A~~153A, 160A, and 160D of the General Statutes to
16 enforce an ordinance adopted pursuant to this Part.

17 (b) Failure to remove any artificial obstruction or enlargement or replacement thereof,
18 that violates this Part or any ordinance adopted (or the provision of any permit issued) under
19 the authority of this Part, shall constitute a separate violation of this Part for each day that the
20 failure continues after written notice from the county board of commissioners or governing
21 body board of a city.

22 (c) In addition to or in lieu of other remedies, the county board of commissioners or
23 governing body board of a city may institute any appropriate action or proceeding to restrain or
24 prevent any violation of this Part or of any ordinance adopted (or of the provisions of any
25 permit issued) under the authority of this Part, or to require any person, firm or corporation that
26 has committed a violation to remove a violating obstruction or restore the conditions existing
27 before the placement of the obstruction."

28 **SECTION 4.10.** G.S. 130A-55(17) reads as rewritten:

29 **"§ 130A-55. Corporate powers.**

30 A sanitary district board shall be a body politic and corporate and may sue and be sued in
31 matters relating to the sanitary district. Notwithstanding any limitation in the petition under
32 G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may
33 exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary
34 district board shall have the following powers:

35 ...

36 (17) For the purpose of promoting and protecting the public health, safety and the
37 general welfare of the State, a sanitary district board is authorized to
38 establish as zoning units any portions of the sanitary district not under the
39 control of the United States or this State or any agency or instrumentality of
40 either, in accordance with the following:

41 ...

42 b. When a zoning area is established within a sanitary district, the
43 sanitary district board as to the zoning area shall have all rights,
44 privileges, powers and duties granted to ~~municipal corporations~~
45 ~~under Part 3, Article 19, Chapter 160A~~ local governments under
46 Article 7 of Chapter 160D of the General Statutes. However, the
47 sanitary district board shall not be required to appoint any zoning
48 commission or board of adjustment. If neither a zoning commission
49 nor board of adjustment is appointed, the sanitary district board shall
50 have all rights.

51"

SECTION 4.11. G.S. 143-214.5(d) reads as rewritten:

"(d) Mandatory Local Programs. – The Department shall assist local governments to develop water supply watershed protection programs that comply with this section. Local government compliance programs shall include an implementing local ordinance and shall provide for maintenance, inspection, and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model local water supply watershed management and protection ordinance. The model management and protection ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, and (iii) a combination of both (i) and (ii). Local governments shall administer and enforce the minimum management requirements. Every local government that has within its jurisdiction all or a portion of a water supply watershed shall submit a local water supply watershed management and protection ordinance to the Commission for approval. Local governments may adopt such ordinances pursuant to their general police power, power to regulate the subdivision of land, zoning power, or any combination of such powers. In adopting a local ordinance that imposes water supply watershed management requirements that are more stringent than those adopted by the Commission, a county-local government must comply with the notice provisions of G.S. 153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384. Article 6 of Chapter 160D of the General Statutes. This section shall not be construed to affect the validity of any local ordinance adopted for the protection of water supply watersheds prior to completion of the review of the ordinance by the Commission or prior to the assumption by the Commission of responsibility for a local water supply watershed protection program. Local governments may create or designate agencies to administer and enforce such programs. The Commission shall approve a local program only if it determines that the requirements of the program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this section."

SECTION 4.12. G.S. 113A-208 reads as rewritten:**"§ 113A-208. Regulation of mountain ridge construction by counties and cities.**

(a) Any county or city may adopt, effective not later than January 1, 1984, and may enforce an ordinance that regulates the construction of tall buildings or structures on protected mountain ridges by any person. The ordinance may provide for the issuance of permits to construct tall buildings on protected mountain ridges, the conditioning of such permits, and the denial of permits for such construction. Any ordinance adopted hereunder shall be based upon studies of the mountain ridges within the county, a statement of objectives to be sought by the ordinance, and plans for achieving these objectives. Any such county ordinance shall apply countywide except as otherwise provided in G.S. 160A-360, Article 2 of Chapter 160D of the General Statutes and any such city ordinance shall apply citywide, to construction of tall buildings on protected mountain ridges within the city or county, as the case may be.

A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an ordinance eliminating the requirement for an elevation of 3,000 feet, as permitted by G.S. 113A-206(6).

(b) Under the ordinance, permits shall be denied if a permit application (and shall be revoked if a project) fails to provide for:

...

(4) Adequate consideration to protecting the natural beauty of the mountains, as determined by the local governing body-board.

...

(f) Any county or city that adopts an ordinance pursuant to this section ~~must hold a public hearing before adopting the ordinance upon the question of adopting the ordinance or of allowing the construction of tall buildings on protected mountain ridges to be governed by G.S.~~

1 ~~113A-209. The public hearing required by this section shall be held upon at least 10 days'~~
2 ~~notice in a newspaper of general circulation in the unit adopting the ordinance. Testimony at~~
3 ~~the hearing shall be recorded and any and all exhibits shall be preserved within the custody of~~
4 ~~the governing body. The testimony and evidence shall be made available for inspection and~~
5 ~~scrutiny by any person.~~ shall follow the procedures of Article 6 of Chapter 160D of the General
6 Statutes.

7 ~~(g) Any resident of a county or city that adopted an ordinance pursuant to this section,~~
8 ~~or of an adjoining county, may bring a civil action against the ordinance adopting unit,~~
9 ~~contesting the ordinance as not meeting the requirements of this section. If the ordinance is~~
10 ~~found not to meet all of the requirements of this section, the county or city shall be enjoined~~
11 ~~from enforcing the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this~~
12 ~~Article authorizes the State of North Carolina or any of its agencies to bring a civil action to~~
13 ~~contest an ordinance, or for a violation of this Article or of an ordinance adopted pursuant to~~
14 ~~this Article."~~

15 **SECTION 4.13.** G.S. 113A-211(a) reads as rewritten:

16 "(a) Violations of this Article shall be subject to the same criminal sanctions, civil
17 penalties and equitable remedies as ~~violations of county ordinances under G.S.~~
18 ~~153A-123.~~ provided by G.S. 160D-4-4."

19 **SECTION 4.14.** G.S. 160A-75 reads as rewritten:

20 **"§ 160A-75. Voting.**

21 No member shall be excused from voting except upon matters involving the consideration
22 of the member's own financial interest or official conduct or on matters on which the member is
23 prohibited from voting under ~~G.S. 14-234, 160A-381(d), or 160A-388(e)(2).~~ G.S. 14-234 or
24 G.S. 160D-1-9. In all other cases except votes taken under ~~G.S. 160A-385,~~ G.S. 160D-6-1, a
25 failure to vote by a member who is physically present in the council chamber, or who has
26 withdrawn without being excused by a majority vote of the remaining members present, shall
27 be recorded as an affirmative vote. The question of the compensation and allowances of
28 members of the council is not a matter involving a member's own financial interest or official
29 conduct.

30 An affirmative vote equal to a majority of all the members of the council not excused from
31 voting on the question in issue, including the mayor's vote in case of an equal division, shall be
32 required to adopt an ordinance, take any action having the effect of an ordinance, authorize or
33 commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of
34 the city. In addition, no ordinance nor any action having the effect of any ordinance may be
35 finally adopted on the date on which it is introduced except by an affirmative vote equal to or
36 greater than two thirds of all the actual membership of the council, excluding vacant seats and
37 not including the mayor unless the mayor has the right to vote on all questions before the
38 council. For purposes of this section, an ordinance shall be deemed to have been introduced on
39 the date the subject matter is first voted on by the council."

40 **SECTION 5.1.** G.S. 153A-102.1 is repealed.

41 **SECTION 5.2.** G.S. 160A-4.1 is repealed

42 **SECTION 5.3.** G.S. 160A-181.1 is repealed.

43 **SECTION 5.4.** G.S. 153A-143 is repealed.

44 **SECTION 5.5.** G.S. 160A-199 is repealed.

45 **SECTION 5.6.** G.S. 153A-144 is repealed.

46 **SECTION 5.7.** G.S. 160A-201 is repealed.

47 **SECTION 5.8.** G.S. 153A-452 is repealed

48 **SECTION 5.9.** G.S. 153A-455 is repealed.

49 **SECTION 6.** Article 23 of Chapter 153A of the General Statutes is amended by
50 adding the following new sections to read:

51 **"§ 153A-458. Submission of statement concerning improvements.**

1 A county may by ordinance require that when a property owner improves property at a cost
2 of more than two thousand five hundred dollars (\$2,500) but less than five thousand dollars
3 (\$5,000), the property owner must, within 14 days after the completion of the work, submit to
4 the county assessor a statement setting forth the nature of the improvement and the total cost
5 thereof.

6 **"§ 153A-459. Authorization to provide grants.**

7 A county may provide grants to unaffiliated qualified private providers of high-speed
8 Internet access service, as that term is defined in G.S. 160A-340(4), for the purpose of
9 expanding service in unserved areas for economic development in the county. The grants shall
10 be awarded on a technology neutral basis, shall be open to qualified applicants, and may
11 require matching funds by the private provider. A county shall seek and consider request for
12 proposals from qualified private providers within the county prior to awarding a broadband
13 grant and shall use reasonable means to ensure that potential applicants are made aware of the
14 grant, including, at a minimum, compliance with the notice procedures set forth in
15 G.S. 160A-340.6(c). The county shall use only unrestricted general fund revenue for the grants.
16 For the purposes of this section, a qualified private provider is a private provider of high-speed
17 Internet access service in the State prior to the issuance of the grant proposal. Nothing in this
18 section authorizes a county to provide high-speed Internet broadband service."

19 **SECTION 7.** If any provision of this act or its application is held invalid, the
20 invalidity does not affect other provisions or applications of this act that can be given effect
21 without the invalid provisions or application, and to this end, the provisions of this act are
22 severable.

23 **SECTION 8.1.** Any otherwise valid permit or development approval made prior to
24 January 1, 2019, shall not be invalid based on inconsistency with the provisions of this act. The
25 validity of any plan adopted prior to January 1, 2019, is not affected by a failure to comply the
26 procedural requirements of G.S. 160D-5-1(b).

27 **SECTION 8.2.** Any special use district or conditional use district zoning district
28 that is valid and in effect as of January 1, 2019, shall be deemed a conditional zoning district
29 consistent with the terms of this act and the special or conditional use permits issued
30 concurrently with establishment of those districts shall be valid as specified in Section 8.1 of
31 this act. Any valid "conditional use permit" issued prior to January 1, 2019, shall be deemed a
32 "special use permit" consistent with the provisions of this act.

33 **SECTION 8.3.** Any special use district or conditional use district zoning district
34 that is valid and in effect as of January 1, 2019, shall be deemed a conditional zoning district
35 consistent with the terms of this act and the special or conditional use permits issued
36 concurrently with establishment of those districts shall be valid as specified in Section 8.1 of
37 this act. Any valid "conditional use permit" issued prior to January 1, 2019, shall be deemed a
38 "special use permit" consistent with the provisions of this act.

39 **SECTION 9.** This act becomes effective January 1, 2019, and applies to local
40 government development regulation decisions made on or after that date. This act clarifies and
41 restates the intent of existing law and applies to ordinances adopted before, on, and after the
42 effective date.