

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 419
Judiciary Committee Substitute Adopted 6/7/17
Finance Committee Substitute Adopted 6/27/17

Short Title: Planning/Development Changes.

(Public)

Sponsors:

Referred to:

March 29, 2017

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27 **SECTION 1.** Article 18 of Chapter 153A of the General Statutes is repealed.

28 **SECTION 2.** Article 19 of Chapter 160A of the General Statutes is repealed.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



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

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

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

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

18 **§ 160D-1-2. Definitions.**

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

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

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

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

1 (34) Zoning map amendment or rezoning. – An amendment to a zoning
2 regulation for the purpose of changing the zoning district that is applied to a
3 specified property or properties. The term also includes (i) the initial
4 application of zoning when land is added to the territorial jurisdiction of a
5 local government that has previously adopted zoning regulations and (ii) the
6 application of an overlay zoning district or a conditional zoning district. The
7 term does not include (i) the initial adoption of a zoning map by a local
8 government, (ii) the repeal of a zoning map and readoption of a new zoning
9 map for the entire planning and development regulation jurisdiction, or (iii)
10 updating the zoning map to incorporate amendments to the names of zoning
11 districts made by zoning text amendments where there are no changes in the
12 boundaries of the zoning district or land uses permitted in the district.

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

15 **"§ 160D-1-3. Unified development ordinance.**

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

23 **"§ 160D-1-4. Development approvals run with the land.**

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

27 **"§ 160D-1-5. Maps.**

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

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

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

47 **"§ 160D-1-6. Refund of illegal fees.**

48 If a local government is found to have illegally imposed a tax, fee, or monetary contribution
49 for development or a development approval not specifically authorized by law, the local
50 government shall return the tax, fee, or monetary contribution plus interest of six percent (6%)

1 per annum to the person who made the payment or as directed by a court if the person making
2 the payment is no longer in existence.

3 **"§ 160D-1-7. Moratoria.**

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

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

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

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

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

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

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

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

46 (e) Limit on Renewal or Extension. – No moratorium may be subsequently renewed or
47 extended for any additional period unless the local government shall have taken all reasonable
48 and feasible steps proposed to be taken in its ordinance establishing the moratorium to address
49 the problems or conditions leading to imposition of the moratorium and unless new facts and
50 conditions warrant an extension. Any ordinance renewing or extending a development
51 moratorium must include, at the time of adoption, the findings set forth in subdivisions (1)

1 through (4) of subsection (d) of this section, including what new facts or conditions warrant the
2 extension.

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

10 **"§ 160D-1-8. Vested rights and permit choice.**

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

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

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

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

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

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

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

- 1 a. Duration. – A vested right for a site-specific vesting plan shall
2 remain vested for a period of two years. This vesting shall not be
3 extended by any amendments or modifications to a site-specific
4 vesting plan unless expressly provided by the local government. A
5 local government may provide that rights regarding a site-specific
6 vesting plan shall be vested for a period exceeding two years, but not
7 exceeding five years, if warranted by the size and phasing of
8 development, the level of investment, the need for the development,
9 economic cycles, and market conditions, or other considerations.
10 This determination shall be in the discretion of the local government
11 and shall be made following the process specified for the particular
12 form of a site-specific vesting plan involved in accordance with
13 sub-subdivision c. of this subdivision.
- 14 b. Relation to building permits. – A right vested as provided in this
15 subsection shall terminate at the end of the applicable vesting period
16 with respect to buildings and uses for which no valid building permit
17 applications have been filed. Upon issuance of a building permit, the
18 provisions of G.S.160D-11-9 and G.S. 160D-11-13 shall apply,
19 except that the permit shall not expire or be revoked because of the
20 running of time while a vested right under this subsection exists.
- 21 c. Requirements for site-specific vesting plans. – For the purposes of
22 this section a "site-specific vesting plan" means a plan submitted to a
23 local government pursuant to this section describing with reasonable
24 certainty the type and intensity of use for a specific parcel or parcels
25 of property. The plan may be in the form of, but not be limited to,
26 any of the following plans or approvals: a planned unit development
27 plan, a subdivision plat, a site plan, a preliminary or general
28 development plan, a special use permit, a conditional zoning, or any
29 other development approval as may be used by a local government.
30 Unless otherwise expressly provided by the local government, the
31 plan shall include the approximate boundaries of the site; significant
32 topographical and other natural features effecting development of the
33 site; the approximate location on the site of the proposed buildings,
34 structures, and other improvements; the approximate dimensions,
35 including height, of the proposed buildings and other structures; and
36 the approximate location of all existing and proposed infrastructure
37 on the site, including water, sewer, roads, and pedestrian walkways.
38 What constitutes a site-specific vesting plan shall be finally
39 determined by the local government pursuant to an ordinance and the
40 document that triggers vesting shall be so identified at the time of its
41 approval. At a minimum, the regulation shall designate a vesting
42 point earlier than the issuance of a building permit. In the event a
43 local government fails to adopt an ordinance setting forth what
44 constitutes a site-specific vesting plan, any development approval
45 shall be considered to be a site-specific vesting plan. A variance shall
46 not constitute a site-specific vesting plan and approval of a
47 site-specific vesting plan with the condition that a variance be
48 obtained shall not confer a vested right unless and until the necessary
49 variance is obtained. If a sketch plan or other document fails to
50 describe with reasonable certainty the type and intensity of use for a

1 specified parcel or parcels of property, it may not constitute a
2 site-specific vesting plan.

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

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

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

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

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

48 (1) A vested right, once established as provided for by subdivision (3) or (4) of
49 subsection (d) of this section, precludes any zoning action by a local
50 government that would change, alter, impair, prevent, diminish, or otherwise

1 delay the development or use of the property as set forth in an approved
2 vested right, except when any of the following conditions are present:

3 a. The written consent of the affected landowner.

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

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

17 d. Findings made, after notice and an evidentiary hearing, that the
18 landowner or his representative intentionally supplied inaccurate
19 information or made material misrepresentations that made a
20 difference in the approval by the local government of the vested
21 right.

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

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

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

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

50 **§ 160D-1-9. Conflicts of interest.**

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

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

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

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

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

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

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

42 **"§ 160D-1-10. Chapter construction.**

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

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

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

49 **"§ 160D-1-11. Effect on prior laws.**

50 (a) The enactment of this Chapter shall not require the readoption of any local
51 government ordinance enacted pursuant to laws that were in effect before the effective date of

1 this Chapter and are restated or revised herein. The provisions of this Chapter shall not affect
2 any act heretofore done, any liability incurred, any right accrued or vested, or any suit or
3 prosecution begun or cause of action accrued as of the effective date of this Chapter. The
4 enactment of this Chapter shall not be deemed to amend the geographic area within which local
5 government development regulations adopted prior to January 1, 2019, are effective.

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

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

16 "Article 2.

17 "Planning and Development Regulation Jurisdiction.

18 **"§ 160D-2-1. Planning and development regulation jurisdiction.**

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

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

25 **"§ 160D-2-2. Municipal extraterritorial jurisdiction.**

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

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

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

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

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

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

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

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

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

- 1 (1) To prepare, review, maintain, monitor, and periodically update and
2 recommend to the governing board a comprehensive plan, and such other
3 plans as deemed appropriate, and conduct ongoing related research, data
4 collection, mapping, and analysis.
- 5 (2) To facilitate and coordinate citizen engagement and participation in the
6 planning process.
- 7 (3) To develop and recommend policies, ordinances, development regulations,
8 administrative procedures, and other means for carrying out plans in a
9 coordinated and efficient manner.
- 10 (4) To advise the governing board concerning the implementation of plans,
11 including, but not limited to, review and comment on all zoning text and
12 map amendments as required by G.S. 160D-6-4.
- 13 (5) To exercise any functions in the administration and enforcement of various
14 means for carrying out plans that the governing board may direct.
- 15 (6) To provide a preliminary forum for review of quasi-judicial decisions,
16 provided that no part of the forum or recommendation may be used as a
17 basis for the deciding board.
- 18 (7) To perform any other related duties that the governing board may direct.

19 **"§ 160D-3-2. Boards of adjustment.**

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

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

39 **"§ 160D-3-3. Historic preservation commission.**

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

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

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

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

18 **"§ 160D-3-4. Appearance commission.**

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

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

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

39 **"§ 160D-3-5. Housing appeals board.**

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

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

47 **"§ 160D-3-6. Other advisory boards.**

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

51 **"§ 160D-3-7. Extraterritorial representation on boards.**

1 commission, or staffing arrangement authorized by this Article to any or all aspects of those
2 ordinances. The provisions of this Article also apply to any other local ordinance that
3 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 is a conflict between the provisions of this
6 Article and other Articles, the more specific provision shall control. This Article does not
7 expand, diminish, or alter the scope of authority for development regulations authorized by this
8 Chapter.

9 **"§ 160D-4-2. Administrative staff.**

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

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

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

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

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

50 (d) Financial Support. – The local government may appropriate for the support of the
51 staff any funds that it deems necessary. It shall have power to fix reasonable fees for support,

1 administration, and implementation of programs authorized by this Chapter and all such fees
2 shall be used for no other purposes.

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

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

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

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

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

34 (c) Duration of Development Approval. – Unless a different period is specified by this
35 Chapter or other specific applicable law or a different period is provided by a quasi-judicial
36 development approval, a development agreement, or a local ordinance, a development approval
37 issued pursuant to this Chapter shall expire one year after the date of issuance if the work
38 authorized by the development approval has not been substantially commenced. Local
39 development regulations may provide for development approvals of shorter duration for
40 temporary land uses, special events, temporary signs, and similar development. Unless
41 provided otherwise by this Chapter or other specific applicable law or a longer period is
42 provided by local ordinance, if after commencement the work or activity is discontinued for a
43 period of 12 months after commencement, the development approval shall immediately expire.
44 The time periods set out in this subsection shall be tolled during the pendency of any appeal.
45 No work or activity authorized by any development approval that has expired shall thereafter
46 be performed until a new development approval has been secured.

47 (d) Changes. – After a development approval has been issued, no deviations from the
48 terms of the application or the development approval shall be made until written approval of
49 proposed changes or deviations has been obtained. A local government may define by
50 ordinance minor modifications to development approvals that can be exempted or
51 administratively approved. The local government shall follow the same development review

1 and approval process required for issuance of the development approval in the review and
2 approval of any major modification of that approval.

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

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

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

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

33 **"§ 160D-4-4. Enforcement.**

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

47 (b) Stop Work Orders. – Whenever any work or activity subject to regulation pursuant
48 to this Chapter or other applicable local development regulation or any State law enforced by
49 the local government is undertaken in substantial violation of any State or local law, or in a
50 manner that endangers life or property, staff may order the specific part of the work or activity
51 that is in violation or presents such a hazard to be immediately stopped. The order shall be in

1 writing, directed to the person doing the work or activity, and shall state the specific work or
2 activity to be stopped, the reasons therefor, and the conditions under which the work or activity
3 may be resumed. A copy of the order shall be delivered to the holder of the development
4 approval and to the owner of the property involved (if that person is not the holder of the
5 development approval) by personal delivery, electronic delivery, or first-class mail. The person
6 or persons delivering the stop work order shall certify to the local government that the order
7 was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as
8 provided by G.S. 160D-11-12 and G.S. 160D-12-8, a stop work order may be appealed
9 pursuant to G.S. 160D-4-5. No further work or activity shall take place in violation of a stop
10 work order pending a ruling on the appeal. Violation of a stop work order shall constitute a
11 Class 1 misdemeanor.

12 (c) Remedies. –

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

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

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

48 **"§ 160D-4-5. Appeals of administrative decisions.**

49 (a) Appeals. – Except as provided in subsection (c) of this section, appeals of decisions
50 made by the staff under this Chapter shall be made to the board of adjustment unless a different
51 board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this

1 Chapter. If this function of the board of adjustment is assigned to any other board pursuant to
2 G.S. 160D-3-2(b), that board shall comply with all of the procedures and processes applicable
3 to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and
4 sedimentation control regulation, a stormwater control regulation, or a provision of the housing
5 code shall not be made to the board of adjustment unless required by a local government
6 ordinance or code provision.

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

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

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

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

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

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

44 **"§ 160D-4-6. Quasi-judicial procedure.**

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

48 (b) Notice of Hearing. – Notice of evidentiary hearings conducted pursuant to this
49 Chapter shall be mailed to the person or entity whose appeal, application, or request is the
50 subject of the hearing; to the owner of the property that is the subject of the hearing if the
51 owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of

1 land that is the subject of the hearing; and to any other persons entitled to receive notice as
2 provided by the local development regulation. In the absence of evidence to the contrary, the
3 local government may rely on the county tax listing to determine owners of property entitled to
4 mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25
5 days, prior to the date of the hearing. Within that same time period, the local government shall
6 also prominently post a notice of the hearing on the site that is the subject of the hearing or on
7 an adjacent street or highway right-of-way.

8 (c) Administrative Materials. – The administrator or staff to the board shall transmit to
9 the board all applications, reports, and written materials relevant to the matter being considered.
10 The administrative materials may be distributed to the members of the board prior to the
11 hearing if at the same time they are distributed to the board a copy is also provided to the
12 appellant or applicant and to the landowner if that person is not the appellant or applicant. The
13 administrative materials shall become a part of the hearing record. The administrative materials
14 may be provided in written or electronic form. Objections to inclusion or exclusion of
15 administrative materials may be made before or during the hearing. Rulings on unresolved
16 objections shall be made by the board at the hearing.

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

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

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

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

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

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

1 services, including plans and policies for provision of and financing for
2 public infrastructure.

3 (5) Housing with a range of types and affordability to accommodate persons and
4 households of all types and income levels.

5 (6) Recreation and open spaces.

6 (7) Mitigation of natural hazards such as flooding, winds, wildfires, and
7 unstable lands.

8 (8) Protection of the environment and natural resources, including agricultural
9 resources, mineral resources, and water and air quality.

10 (9) Protection of significant architectural, scenic, cultural, historical, or
11 archaeological resources.

12 (10) Analysis and evaluation of implementation measures, including regulations,
13 public investments, and educational programs.

14 (c) Adoption and Effect of Plans. – Plans shall be adopted by the governing board with
15 the advice and consultation of the planning board. Adoption and amendment of a
16 comprehensive plan is a legislative decision and shall follow the process mandated for zoning
17 text amendments set by G.S. 160D-6-1. Plans adopted under this Chapter may be undertaken
18 and adopted as part of or in conjunction with plans required under other statutes, including, but
19 not limited to, the plans required by G.S. 113A-110. Plans adopted under this Chapter shall be
20 advisory in nature without independent regulatory effect. Plans adopted pursuant to this section
21 shall be considered by the planning board and governing board when considering proposed
22 amendments to zoning regulations as required by G.S. 160D-6-4 and G.S. 160D-6-5.

23 **"§ 160D-5-2. Grants, contracts, and technical assistance.**

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

31 (b) Contracts. – Any local government may enter into and carry out contracts with any
32 other city, county, or regional council, planning agency, or private consultant under which it
33 agrees to furnish technical planning assistance to the other local government or planning
34 agency. Any local government may enter into and carry out contracts with any other city,
35 county, or regional council or planning agency under which it agrees to pay the other local
36 government for technical planning assistance.

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

41 **"§ 160D-5-3. Coordination of planning.**

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

45 "Article 6.

46 "Development Regulation.

47 **"§ 160D-6-1. Procedure for adopting, amending, or repealing development regulations.**

48 (a) Hearing with Published Notice. – Before adopting, amending, or repealing any
49 ordinance or development regulation authorized by this Chapter, the governing board shall hold
50 a legislative hearing. A notice of the hearing shall be given once a week for two successive
51 calendar weeks in a newspaper having general circulation in the area. The notice shall be

1 published the first time not less than 10 days nor more than 25 days before the date scheduled
2 for the hearing. In computing such period, the day of publication is not to be included but the
3 day of the hearing shall be included.

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

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

15 **"§ 160D-6-2. Notice of hearing on proposed zoning map amendments.**

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

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

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

49 (d) Actual Notice. – Except for a government-initiated zoning map amendment, when
50 an application is filed to request a zoning map amendment and that application is not made by
51 the landowner or authorized agent, the applicant shall certify to the local government that the

1 owner of the parcel of land as shown on the county tax listing has received actual notice of the
2 proposed amendment and a copy of the notice of the hearing. Actual notice shall be provided in
3 any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be
4 achieved by personal delivery, certified mail, or by a designated delivery service authorized
5 pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with
6 G.S. 1A-1, Rule 4(j1). The person or persons required to provide notice shall certify to the local
7 government that actual notice has been provided, and such certificate shall be deemed
8 conclusive in the absence of fraud.

9 (e) Optional Communication Requirements. – When a zoning map amendment is
10 proposed, a zoning regulation may require communication by the person proposing the map
11 amendment to neighboring property owners and residents and may require the person
12 proposing the zoning map amendment to report on any communication with neighboring
13 property owners and residents.

14 **"§ 160D-6-3. Citizen comments.**

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

24 **"§ 160D-6-4. Planning board review and comment.**

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

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

43 (c) Review of Other Ordinances and Actions. – Any development regulation other than
44 a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to
45 the planning board for review and comment. Any development regulation other than a zoning
46 regulation may provide that future proposed amendments of that ordinance be submitted to the
47 planning board for review and comment. Any other action proposed to be taken pursuant to this
48 Chapter may be referred to the planning board for review and comment.

49 (d) Plan Consistency. – When conducting a review of proposed zoning text or map
50 amendments pursuant to this section, the planning board shall advise and comment on whether
51 the proposed action is consistent with any comprehensive plan that has been adopted and any

1 other officially adopted plan that is applicable. The planning board shall provide a written
2 recommendation to the governing board that addresses plan consistency and other matters as
3 deemed appropriate by the planning board, but a comment by the planning board that a
4 proposed amendment is inconsistent with the comprehensive plan shall not preclude
5 consideration or approval of the proposed amendment by the governing board. If a zoning map
6 amendment qualifies as a "large-scale rezoning" under G.S. 160D-6-2(b), the planning board
7 statement describing plan consistency may address the overall rezoning and describe how the
8 analysis and polices in the relevant adopted plans were considered in the recommendation
9 made.

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

14 **"§ 160D-6-5. Governing board statement.**

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

23 (b) **Additional Reasonableness Statement for Rezonings.** – When adopting or rejecting
24 any petition for a zoning map amendment, a statement analyzing the reasonableness of the
25 proposed rezoning shall be approved by the governing board. This statement of reasonableness
26 may consider, among other factors, (i) the size, physical conditions, and other attributes of the
27 tract; (ii) the benefits and detriment to the landowner, the neighbors, and the surrounding
28 community; and (iii) the relationship between the current actual and permissible development
29 on the tract and adjoining areas and the development that would be permissible under the
30 proposed amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under
31 G.S. 160D-6-2(b), the governing board statement on reasonableness may address the overall
32 rezoning.

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

35 "Article 7.

36 "Zoning Regulation.

37 **"§ 160D-7-1. Purposes.**

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

49 **"§ 160D-7-2. Grant of power.**

50 (a) **A Local Government May Adopt Zoning Regulations.** – A zoning regulation may
51 regulate and restrict the height, number of stories, and size of buildings and other structures; the

percentage of lots that may be occupied; the size of yards, courts, and other open spaces; the density of population; the location and use of buildings, structures, and land. A local government may regulate development, including floating homes, over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12. A zoning regulation shall provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. Where appropriate, a zoning regulation may include requirements that street and utility rights-of-way be dedicated to the public, that provision be made of recreational space and facilities, and that performance guarantees be provided, all to the same extent and with the same limitations as provided for in G.S. 160D-8-4.

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

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

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

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

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

§ 160D-7-3. Zoning districts.

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

- 1 (1) Conventional districts, in which a variety of uses are allowed as permitted
2 uses or uses by right and that may also include uses permitted only with a
3 special use permit.
4 (2) Conditional districts, in which site plans or individualized development
5 conditions are imposed.
6 (3) Form-based districts, or development form controls, that address the
7 physical form, mass, and density of structures, public spaces, and
8 streetscapes.
9 (4) Overlay districts, in which different requirements are imposed on certain
10 properties within one or more underlying conventional, conditional, or
11 form-based districts.
12 (5) Districts allowed by charter.

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

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

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

36 **"§ 160D-7-4. Incentives.**

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

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

- 1 (1) Leadership in Energy and Environmental Design (LEED) certification or
2 higher rating under certification standards adopted by the U.S. Green
3 Building Council.
4 (2) A One Globe or higher rating under the Green Globes program standards
5 adopted by the Green Building Initiative.
6 (3) A certification or rating by another nationally recognized certification or
7 rating system that is equivalent or greater than those listed in subdivisions
8 (1) and (2) of this subsection.

9 **"§ 160D-7-5. Quasi-judicial zoning decisions.**

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

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

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

28 The regulation may provide that defined minor modifications to special use permits that do
29 not involve a change in uses permitted or the density of overall development permitted may be
30 reviewed and approved administratively. Any other modification or revocation of a special use
31 permit shall follow the same process for approval as is applicable to the approval of a special
32 use permit. If multiple parcels of land are subject to a special use permit, the owners of
33 individual parcels may apply for permit modification so long as the modification would not
34 result in other properties failing to meet the terms of the special use permit or regulations. Any
35 modifications approved shall only be applicable to those properties whose owners apply for the
36 modification. The regulation may require that special uses permits be recorded with the register
37 of deeds.

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

- 41 (1) Unnecessary hardship would result from the strict application of the
42 regulation. It shall not be necessary to demonstrate that, in the absence of the
43 variance, no reasonable use can be made of the property.
44 (2) The hardship results from conditions that are peculiar to the property, such
45 as location, size, or topography. Hardships resulting from personal
46 circumstances, as well as hardships resulting from conditions that are
47 common to the neighborhood or the general public, may not be the basis for
48 granting a variance. A variance may be granted when necessary and
49 appropriate to make a reasonable accommodation under the Federal Fair
50 Housing Act for a person with a disability.

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

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

7 **§ 160D-8-3. Review process, filing, and recording of subdivision plats.**

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

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

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

16 (2) The county health director or local public utility, as appropriate, as to
17 proposed water or sewerage systems.

18 (3) Any other agency or official designated by the governing board.

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

21 (1) The governing board.

22 (2) The governing board on recommendation of a designated body.

23 (3) A designated planning board, technical review committee of local
24 government staff members, or other designated body or staff person.

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

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

40 **§ 160D-8-4. Contents and requirements of regulation.**

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

47 (b) Plats. – The regulation may require a plat be prepared, approved, and recorded
48 pursuant to the provisions of the regulation whenever any subdivision of land takes place. The
49 regulation may include requirements that plats show sufficient data to determine readily and
50 reproduce accurately on the ground the location, bearing, and length of every street and alley
51 line, lot line, easement boundary line, and other property boundaries, including the radius and

1 other data for curved property lines, to an appropriate accuracy and in conformance with good
2 surveying practice.

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

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

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

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

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

48 (g) Performance Guarantees. – To assure compliance with these and other development
49 regulation requirements, the regulation may provide for performance guarantees to assure
50 successful completion of required improvements at the time the plat is recorded as provided in

1 subsection (b) of this section. For any specific development, the type of performance guarantee
2 shall be at the election of the person required to give the performance guarantee.

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

- 5 (1) The term "performance guarantee" shall mean any of the following forms of
6 guarantee:
- 7 a. Surety bond issued by any company authorized to do business in this
8 State.
- 9 b. Letter of credit issued by any financial institution licensed to do
10 business in this State.
- 11 c. Other form of guarantee that provides equivalent security to a surety
12 bond or letter of credit.
- 13 (2) The performance guarantee shall be returned or released, as appropriate, in a
14 timely manner upon the acknowledgement by the local government that the
15 improvements for which the performance guarantee is being required are
16 complete. If the improvements are not complete and the current performance
17 guarantee is expiring, the performance guarantee shall be extended, or a new
18 performance guarantee issued, for an additional period until such required
19 improvements are complete. A developer shall demonstrate reasonable,
20 good-faith progress toward completion of the required improvements that
21 are the subject of the performance guarantee or any extension. The form of
22 any extension shall remain at the election of the developer.
- 23 (3) The amount of the performance guarantee shall not exceed one hundred
24 twenty-five percent (125%) of the reasonably estimated cost of completion
25 at the time the performance guarantee is issued. Any extension of the
26 performance guarantee necessary to complete required improvements shall
27 not exceed one hundred twenty-five percent (125%) of the reasonably
28 estimated cost of completion of the remaining incomplete improvements still
29 outstanding at the time the extension is obtained.
- 30 (4) The performance guarantee shall only be used for completion of the required
31 improvements and not for repairs or maintenance after completion.

32 **§ 160D-8-5. Notice of new subdivision fees and fee increases; public comment period.**

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

- 39 (1) Notice of the meeting in a prominent location on a Web site managed or
40 maintained by the local government.
- 41 (2) Notice of the meeting in a prominent physical location, including, but not
42 limited to, any government building, library, or courthouse within the
43 planning and development regulation jurisdiction of the local government.
- 44 (3) Notice of the meeting by electronic mail or other reasonable means to a list
45 of interested parties that is created by the local government for the purpose
46 of notification as required by this section.

47 If a city does not maintain its own Web site, it may employ the notice option provided by
48 subdivision (1) of this subsection by submitting a request to a county or counties in which the
49 city is located to post such notice in a prominent location on a Web site that is maintained by
50 the county or counties. Any city that elects to provide such notice shall make its request to the

1 county or counties at least 15 days prior to the date of the first meeting where the imposition of
2 or increase in the fees or charges is on the agenda for consideration.

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

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

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

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

25 **"§ 160D-8-7. Penalties for transferring lots in unapproved subdivisions.**

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

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

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

48 (2) Plainly and conspicuously notifies the prospective buyer or lessee that a final
49 subdivision plat has not been approved or recorded at the time of the
50 contract, that no governmental body will incur any obligation to the
51 prospective buyer or lessee with respect to the approval of the final

1 subdivision plat, that changes between the preliminary and final plats are
2 possible, and that the contract or lease may be terminated without breach by
3 the buyer or lessee if the final recorded plat differs in any material respect
4 from the preliminary plat.

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

9 (4) Provides that if the approved and recorded final plat differs in any material
10 respect from the preliminary plat referred to in the contract, the buyer or
11 lessee may not be required by the seller or lessor to close any earlier than 15
12 days after the delivery of the final recorded plat, during which 15-day period
13 the buyer or lessee may terminate the contract without breach or any further
14 obligation and may receive a refund of all earnest money or prepaid
15 purchase price.

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

25 **"§ 160D-8-8. Appeals of decisions on subdivision plats.**

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

27 "Article 9.

28 "Regulation of Particular Uses and Areas.

29 "Part 1. Particular Land Uses.

30 **"§ 160D-9-1. Regulation of particular uses and areas.**

31 A local government may regulate the uses and areas set forth in this Article in zoning
32 regulations pursuant to Article 7 of this Chapter, in development regulations adopted under this
33 Article, or in regulations adopted under Article 8 of Chapter 160A or Article 6 of Chapter 153A
34 of the General Statutes. This shall not be deemed to expand, diminish, or alter the scope of
35 authority granted pursuant to those Articles. In all instances, the substance of the local
36 government regulation shall be consistent with the provisions in this Article. The provisions of
37 this Chapter apply to any regulation adopted pursuant to this Article that substantially affects
38 land use and development.

39 **"§ 160D-9-2. Adult businesses.**

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

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

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

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

8 (2) Regulations on operation of sexually oriented businesses, such as limits on
9 hours of operation, open booth requirements, limitations on exterior
10 advertising and noise, age of patrons and employees, required separation of
11 patrons and performers, clothing restrictions for masseuses, and clothing
12 restrictions for servers of alcoholic beverages.

13 (3) Clothing restrictions for entertainers.

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

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

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

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

35 **"§ 160D-9-3. Agricultural uses.**

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

39 Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement
40 under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or
41 incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering
42 plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in
43 G.S. 106-581.1. For purposes of this section, "when performed on the farm" in
44 G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county and any other
45 farm owned or leased to or from others by the bona fide farm operator, no matter where
46 located. For purposes of this section, the production of a nonfarm product that the Department
47 of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina"
48 product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is
49 a bona fide farm purpose. For purposes of determining whether a property is being used for
50 bona fide farm purposes, any of the following shall constitute sufficient evidence that the
51 property is being used for bona fide farm purposes:

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

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

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

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

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

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

46 **"§ 160D-9-4. Airport zoning.**

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

51 **"§ 160D-9-5. Amateur radio antennas.**

1 A local government ordinance based on health, safety, or aesthetic considerations that
2 regulates the placement, screening, or height of the antennas or support structures of amateur
3 radio operators must reasonably accommodate amateur radio communications and must
4 represent the minimum practicable regulation necessary to accomplish the purpose of the local
5 government. A local government may not restrict antennas or antenna support structures of
6 amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to
7 achieve a clearly defined health, safety, or aesthetic objective of the local government.

8 **"§ 160D-9-6. Family care homes.**

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

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

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

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

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

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

31 **"§ 160D-9-7. Fence wraps.**

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

41 **"§ 160D-9-8. Fraternities and sororities.**

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

45 **"§ 160D-9-9. Manufactured homes.**

46 (a) The General Assembly finds that manufactured housing offers affordable housing
47 opportunities for low- and moderate-income residents of this State who could not otherwise
48 afford to own their own home. The General Assembly further finds that some local
49 governments have adopted zoning regulations, which severely restrict the placement of
50 manufactured homes. It is the intent of the General Assembly in enacting this section that local
51 governments reexamine their land-use practices to assure compliance with applicable statutes

1 and case law and consider allocating more residential land area for manufactured homes based
2 upon local housing needs.

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

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

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

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

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

22 **"§ 160D-9-10. Modular homes.**

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

25 **"§ 160D-9-11. Outdoor advertising.**

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

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

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

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

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

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

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

50 (4) The removal is required for opening, widening, extending, or improving
51 streets or sidewalks, or for establishing, extending, enlarging, or improving

1 any of the public enterprises listed in G.S. 160A-311, and the local
2 government allows the off-premises outdoor advertising to be relocated to a
3 comparable location.

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

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

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

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

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

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

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

28 a. The size and format of the sign.

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

33 c. The timing of the relocation.

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

36 a. The actual cost of removing the sign.

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

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

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

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

49 (i) If a local government has offered to enter into an agreement to relocate a
50 nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section
51 and within 120 days after the initial notice by the local government the parties have not been

1 able to agree that the site or sites offered by the local government for relocation of the sign are
2 reasonably comparable to or better than the existing site, the parties shall enter into binding
3 arbitration to resolve their disagreements. Unless a different method of arbitration is agreed
4 upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party
5 shall select one arbitrator, and the two arbitrators chosen by the parties shall select the third
6 member of the panel. The American Arbitration Association rules shall apply to the arbitration
7 unless the parties agree otherwise.

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

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

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

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

34 (n) The provisions of this section shall not be used to interpret, construe, alter, or
35 otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter
36 40A or Chapter 136 of the General Statutes.

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

39 **"§ 160D-9-12. Public buildings.**

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

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

46 **"§ 160D-9-13. Solar collectors.**

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

1 solar collector that gathers solar radiation as a substitute for traditional energy for water
2 heating, active space heating and cooling, passive heating, or generating electricity for a
3 residential property. As used in this section, the term "residential property" means property
4 where the predominant use is for residential purposes.

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

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

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

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

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

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

21 **"§ 160D-9-14. Temporary health care structures.**

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

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

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

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

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

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

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

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

1 care structure is placed on the property of the residence of the individual and is used to provide
2 care for the mentally or physically impaired person.

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

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

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

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

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

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

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

40 **"§ 160D-9-15. Streets and transportation.**

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

46 (b) Transportation Corridor Official Maps. – Any local government may establish
47 official transportation corridor maps and may enact and enforce ordinances pursuant to Article
48 2E of Chapter 136 of the General Statutes.

49 **"§ 160D-9-16. Bee hives.**

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

1 "§§ 160D-9-17 through 160D-9-19: Reserved for future codification purposes.

2 "Part 2. Environmental Regulation.

3 "§ 160D-9-20. Local environmental regulations.

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

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

12 "§ 160D-9-21. Forestry activities.

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

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

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

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

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

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

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

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

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

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

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

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

50 b. Five years after the completion of a timber harvest if the harvest
51 results in the removal of all or substantially all of the trees that were

1 protected under local government regulations governing development
2 from the tract of land for which the permit or approval is sought and
3 the harvest was a willful violation of the local government
4 regulations.

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

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

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

9 (5) Regulate and protect streets.

10 **"§ 160D-9-22. Erosion and sedimentation control.**

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

15 **"§ 160D-9-23. Floodplain regulations.**

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

20 **"§ 160D-9-24. Mountain ridge protection.**

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

26 **"§ 160D-9-25. Stormwater control.**

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

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

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

43 (d) A local government that holds an NPDES permit issued pursuant to G.S. 143-214.7
44 may adopt a regulation, applicable within its planning and development regulation jurisdiction,
45 to establish the stormwater control program necessary for the local government to comply with
46 the permit. A local government may adopt a regulation that bans illicit discharges within its
47 planning and development regulation jurisdiction. A local government may adopt a regulation,
48 applicable within its planning and development regulation jurisdiction, that requires (i) deed
49 restrictions and protective covenants to ensure that each project, including the stormwater
50 management system, will be maintained so as to protect water quality and control water

1 quantity and (ii) financial arrangements to ensure that adequate funds are available for the
2 maintenance and replacement costs of the project.

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

8 "§§ 160D-9-26 through 160D-9-29: Reserved for future codification purposes.

9 "Part 3. Wireless Telecommunication Facilities.

10 "§ 160D-9-30. Purpose and compliance with federal law.

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

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

25 (c) The placement, construction, or modification of wireless communications facilities
26 shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332, as amended,
27 section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. §
28 1455(a), and in accordance with the rules promulgated by the Federal Communications
29 Commission.

30 "§ 160D-9-31. Definitions.

31 The following definitions apply in this Part:

- 32 (1) Antenna. – Communications equipment that transmits, receives, or transmits
33 and receives electromagnetic radio signals used in the provision of all types
34 of wireless communications services.
- 35 (2) Application. – A formal request submitted to the local government to
36 construct or modify a wireless support structure or a wireless facility.
- 37 (3) Base station. – A station at a specific site authorized to communicate with
38 mobile stations, generally consisting of radio receivers, antennas, coaxial
39 cables, power supplies, and other associated electronics.
- 40 (4) Building permit. – An official administrative authorization issued by the
41 local government prior to beginning construction consistent with the
42 provisions of G.S. 160D-11-8.
- 43 (5) Collocation. – The placement or installation of wireless facilities on existing
44 structures, including electrical transmission towers, water towers, buildings,
45 and other structures capable of structurally supporting the attachment of
46 wireless facilities in compliance with applicable codes.
- 47 (6) Eligible facilities request. – A request for modification of an existing
48 wireless tower or base station that involves collocation of new transmission
49 equipment or replacement of transmission equipment but does not include a
50 substantial modification.

- 1 (7) Equipment compound. – An area surrounding or near the base of a wireless
2 support structure within which a wireless facility is located.
- 3 (8) Fall zone. – The area in which a wireless support structure may be expected
4 to fall in the event of a structural failure, as measured by engineering
5 standards.
- 6 (9) Land development regulation. – Any ordinance enacted pursuant to this
7 Chapter.
- 8 (10) Search ring. – The area within which a wireless support facility or wireless
9 facility must be located in order to meet service objectives of the wireless
10 service provider using the wireless facility or wireless support structure.
- 11 (11) Substantial modification. – The mounting of a proposed wireless facility on
12 a wireless support structure that substantially changes the physical
13 dimensions of the support structure. A mounting is presumed to be a
14 substantial modification if it meets any one or more of the criteria listed
15 below. The burden is on the local government to demonstrate that a
16 mounting that does not meet the listed criteria constitutes a substantial
17 change to the physical dimensions of the wireless support structure.
- 18 a. Increasing the existing vertical height of the structure by the greater
19 of (i) more than ten percent (10%) or (ii) the height of one additional
20 antenna array with separation from the nearest existing antenna not to
21 exceed 20 feet.
- 22 b. Except where necessary to shelter the antenna from inclement
23 weather or to connect the antenna to the tower via cable, adding an
24 appurtenance to the body of a wireless support structure that
25 protrudes horizontally from the edge of the wireless support structure
26 the greater of (i) more than 20 feet or (ii) more than the width of the
27 wireless support structure at the level of the appurtenance.
- 28 c. Increasing the square footage of the existing equipment compound
29 by more than 2,500 square feet.
- 30 (12) Utility pole. – A structure that is designed for and used to carry lines, cables,
31 or wires for telephone, cable television, or electricity or to provide lighting.
- 32 (13) Water tower. – A water storage tank, a standpipe, or an elevated tank
33 situated on a support structure originally constructed for use as a reservoir or
34 facility to store or deliver water.
- 35 (14) Wireless facility. – The set of equipment and network components, exclusive
36 of the underlying wireless support structure or tower, including antennas,
37 transmitters, receivers, base stations, power supplies, cabling, and associated
38 equipment necessary to provide wireless data and wireless
39 telecommunications services to a discrete geographic area.
- 40 (15) Wireless support structure. – A new or existing structure, such as a
41 monopole, lattice tower, or guyed tower that is designed to support or
42 capable of supporting wireless facilities. A utility pole is not a wireless
43 support structure.

44 **"§ 160D-9-32. Local authority.**

45 A local government may plan for and regulate the siting or modification of wireless support
46 structures and wireless facilities in accordance with land development regulations and in
47 conformity with this Part. Except as expressly stated, nothing in this Part shall limit a local
48 government from regulating applications to construct, modify, or maintain wireless support
49 structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support
50 structure based on consideration of land use, public safety, and zoning considerations,
51 including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local

1 building code requirements, consistent with the provisions of federal law provided in
2 G.S. 160D-9-30. For purposes of this Part, public safety includes, without limitation, federal,
3 State, and local safety regulations but does not include requirements relating to radio frequency
4 emissions of wireless facilities.

5 **"§ 160D-9-33. Construction of new wireless support structures or substantial**
6 **modifications of wireless support structures.**

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

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

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

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

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

29 (2) Information or materials directly related to an identified public safety, land
30 development, or zoning issue including evidence that no existing or
31 previously approved wireless support structure can reasonably be used for
32 the wireless facility placement instead of the construction of a new wireless
33 support structure that residential, historic, and designated scenic areas cannot
34 be served from outside the area or that the proposed height of a new wireless
35 support structure or initial wireless facility placement or a proposed height
36 increase of a substantially modified wireless support structure or
37 replacement wireless support structure is necessary to provide the applicant's
38 designed service.

39 (3) A local government may require applicants for new wireless facilities to
40 evaluate the reasonable feasibility of collocating new antennas and
41 equipment on an existing wireless support structure or structures within the
42 applicant's search ring. Collocation on an existing wireless support structure
43 is not reasonably feasible if collocation is technically or commercially
44 impractical or the owner of the existing wireless support structure is
45 unwilling to enter into a contract for such use at fair market value. Local
46 governments may require information necessary to determine whether
47 collocation on existing wireless support structures is reasonably feasible.

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

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

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

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

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

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

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

31 **"§ 160D-9-34. Collocation and eligible facilities requests of wireless support structures.**

32 (a) Pursuant to section 6409 of the Middle Class Tax Relief and Job Creation Act of
33 2012, 47 U.S.C. § 1455(a), a local government may not deny and shall approve any eligible
34 facilities request as provided in this section. Nothing in this Part requires an application and
35 approval for routine maintenance or limits the performance of routine maintenance on wireless
36 support structures and facilities, including in-kind replacement of wireless facilities. Routine
37 maintenance includes activities associated with regular and general upkeep of transmission
38 equipment, including the replacement of existing wireless facilities with facilities of the same
39 size. A local government may require an application for collocation or an eligible facilities
40 request.

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

1 (c) The local government shall issue a written decision approving an eligible facilities
2 request application within 45 days of such application being deemed complete. For a
3 collocation application that is not an eligible facilities request, the local government shall issue
4 its written decision to approve or deny the application within 45 days of the application being
5 deemed complete.

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

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

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

16 **"§§ 160D-9-35 through 160D-9-39: Reserved for future codification purposes.**

17 "Part 4. Historic Preservation.

18 **"§ 160D-9-40. Legislative findings.**

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

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

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

30 **"§ 160D-9-41. Historic preservation commission.**

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

34 **"§ 160D-9-42. Powers of the historic preservation commission.**

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

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

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

42 (3) Acquire by any lawful means the fee or any lesser included interest,
43 including options to purchase, to properties within established districts or to
44 any such properties designated as landmarks to hold, manage, preserve,
45 restore, and improve such properties, and to exchange or dispose of the
46 property by public or private sale, lease or otherwise, subject to covenants or
47 other legally binding restrictions which will secure appropriate rights of
48 public access and promote the preservation of the property.

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

- 1 (5) Recommend to the governing board that designation of any area as a historic
2 district or part thereof, or designation of any building, structure, site, area, or
3 object as a landmark, be revoked or removed for cause.
- 4 (6) Conduct an educational program regarding historic properties and districts
5 within its jurisdiction.
- 6 (7) Cooperate with the State, federal, and local governments in pursuance of the
7 purposes of this Part. The governing board or the commission, when
8 authorized by the governing board, may contract with the State, or the
9 United States of America, or any agency of either, or with any other
10 organization provided the terms are not inconsistent with State or federal
11 law.
- 12 (8) Enter, solely in performance of its official duties and only at reasonable
13 times, upon private lands for examination or survey thereof. However, no
14 member, employee, or agent of the commission may enter any private
15 building or structure without the express consent of the owner or occupant
16 thereof.
- 17 (9) Prepare and recommend the official adoption of a preservation element as
18 part of the local government's comprehensive plan.
- 19 (10) Review and act upon proposals for alterations, demolitions, or new
20 construction within historic districts, or for the alteration or demolition of
21 designated landmarks, pursuant to this Part.
- 22 (11) Negotiate at any time with the owner of a building, structure, site, area, or
23 object for its acquisition or its preservation, when such action is reasonably
24 necessary or appropriate.

25 **"§ 160D-9-43. Appropriations.**

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

33 **"§ 160D-9-44. Designation of historic districts.**

34 (a) Any local government may, as part of a zoning regulation adopted pursuant to
35 Article 7 of this Chapter or as a development regulation enacted or amended pursuant to Article
36 6 of this Chapter, designate and from time to time amend one or more historic districts within
37 the area subject to the regulation. Historic districts established pursuant to this Part shall consist
38 of areas which are deemed to be of special significance in terms of their history, prehistory,
39 architecture, and/or culture and to possess integrity of design, setting, materials, feeling, and
40 association.

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

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

- 49 (1) An investigation and report describing the significance of the buildings,
50 structures, features, sites, or surroundings included in any such proposed

1 district and a description of the boundaries of such district has been
2 prepared.

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

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

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

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

31 **"§ 160D-9-45. Designation of landmarks.**

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

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

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

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

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

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

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

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

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

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

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

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

1 for preservation purposes shall be considered by the tax supervisor in
2 appraising it for tax purposes.

3 **"§ 160D-9-47. Certificate of appropriateness required.**

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

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

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

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

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

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

7 (e) Appeals. –

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

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

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

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

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

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

38 **"§ 160D-9-48. Certain changes not prohibited.**

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

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

50 (a) An application for a certificate of appropriateness authorizing the relocation,
51 demolition, or destruction of a designated landmark or a building, structure, or site within the

1 district may not be denied, except as provided in subsection (c) of this section. However, the
2 effective date of such a certificate may be delayed for a period of up to 365 days from the date
3 of approval. The maximum period of delay authorized by this section shall be reduced by the
4 preservation commission where it finds that the owner would suffer extreme hardship or be
5 permanently deprived of all beneficial use of or return from such property by virtue of the
6 delay. During such period, the preservation commission shall negotiate with the owner and
7 with any other parties in an effort to find a means of preserving the building or site. If the
8 preservation commission finds that a building or site within a district has no special
9 significance or value toward maintaining the character of the district, it shall waive all or part
10 of such period and authorize earlier demolition or removal.

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

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

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

27 **"§ 160D-9-50. Demolition by neglect to contributing structures outside local historic**
28 **districts.**

29 Notwithstanding G.S. 160D-9-49 or any other provision of law, the governing board may
30 apply its demolition-by-neglect regulations to contributing structures located outside the local
31 historic district within an adjacent central business district. The governing board may modify
32 and revise its demolition by neglect regulations as necessary to implement this section and to
33 further its intent. This section is applicable to any local government provided such local
34 government (i) has designated portions of the central business district and its adjacent historic
35 district as an Urban Progress Zone as defined in G.S. 143B-437.09 and (ii) is recognized by the
36 State Historic Preservation Office and the U.S. Department of the Interior as a Certified Local
37 Government in accordance with the National Historic Preservation Act of 1966, as amended by
38 16 U.S.C. § 470, et seq., and the applicable federal regulations 36 C.F.R. Part 61, but is located
39 in a county that has not received the same certification.

40 **"§ 160D-9-51. Conflict with other laws.**

41 Whenever any regulation adopted pursuant to this Part requires a longer waiting period or
42 imposes other higher standards with respect to a designated historic landmark or district than
43 are established under any other statute, charter provision, or regulation, this Part shall govern.
44 Whenever the provisions of any other statute, charter provision, ordinance, or regulation
45 require a longer waiting period or impose other higher standards than are established under this
46 Part, such other statute, charter provision, ordinance or regulation shall govern.

47 **"§§ 160D-9-52 through 160D-9-59: Reserved for future codification purposes.**

48 "Part 5. Community Appearance Commissions.

49 **"§ 160D-9-60. Powers and duties of commission.**

50 A community appearance commission shall make careful study of the visual problems and
51 needs of the local government within its planning and development regulation jurisdiction and

1 shall make any plans and carry out any programs that will, in accordance with the provisions of
2 this Part, enhance and improve the visual quality and aesthetic characteristics of the local
3 government. To this end, the governing board may confer upon the appearance commission the
4 following powers and duties:

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

- 1 f. To enter, in the performance of its official duties and at reasonable
2 times, upon private lands and make examinations or surveys.
3 g. To promote public interest in and an understanding of its
4 recommendations, studies, and plans, and to that end, prepare,
5 publish, and distribute to the public such studies and reports that will,
6 in the opinion of the commission, advance the cause of improved
7 appearance.
8 h. To conduct public meetings and hearings, giving reasonable notice to
9 the public thereof.

10 **"§ 160D-9-61. Staff services; advisory council.**

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

15 **"§ 160D-9-62. Annual report.**

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

21 **"§ 160D-9-63. Receipt and expenditure of funds.**

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

28 **"§§ 160D-9-64 through 160D-9-69:** Reserved for future codification purposes.

29 "Article 10.

30 "Development Agreements.

31 **"§ 160D-10-1. Authorization.**

32 (a) The General Assembly finds the following:

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

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

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

11 **(d)** Development authorized by a development agreement shall comply with all
12 applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws
13 affecting the development of property, including laws governing permitted uses of the property,
14 density, intensity, design, and improvements.

15 **"§ 160D-10-2. Definitions.**

16 The following definitions apply in this Article:

17 **(1)** Development. – The planning for or carrying out of a building activity, the
18 making of a material change in the use or appearance of any structure or
19 property, or the dividing of land into two or more parcels. When appropriate
20 to the context, "development" refers to the planning for or the act of
21 developing or to the result of development. Reference to a specific operation
22 is not intended to mean that the operation or activity, when part of other
23 operations or activities, is not development. Reference to particular
24 operations is not intended to limit the generality of this item.

25 **(2)** Public facilities. – The major capital improvements, including, but not
26 limited to, transportation, sanitary sewer, solid waste, drainage, potable
27 water, educational, parks and recreational, and health systems and facilities.

28 **"§ 160D-10-3. Approval of governing board required.**

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

33 **(b)** The development agreement may, by ordinance, be incorporated, in whole or in
34 part, into any development regulation adopted by the local government. A development
35 agreement may be considered concurrently with a zoning map or text amendment affecting the
36 property and development subject to the development agreement. A development agreement
37 may be concurrently considered with and incorporated by reference with a sketch plan or
38 preliminary plat required under a subdivision regulation or a site plan or other development
39 approval required under a zoning regulation. If incorporated into a conditional district, the
40 provisions of the development agreement shall be treated as a development regulation in the
41 event of the developer's bankruptcy.

42 **"§ 160D-10-4. Size and duration.**

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

46 **"§ 160D-10-5. Public hearing.**

47 Before entering into a development agreement, a local government shall conduct a
48 legislative hearing on the proposed agreement. The notice provisions of G.S. 160D-6-2
49 applicable to zoning map amendments shall be followed for this hearing. The notice for the
50 public hearing must specify the location of the property subject to the development agreement,

1 the development uses proposed on the property, and a place where a copy of the proposed
2 development agreement can be obtained.

3 **"§ 160D-10-6. Content and modification.**

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

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

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

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

12 (4) A description of public facilities that will serve the development, including
13 who provides the facilities, the date any new public facilities, if needed, will
14 be constructed, and a schedule to assure public facilities are available
15 concurrent with the impacts of the development. In the event that the
16 development agreement provides that the local government shall provide
17 certain public facilities, the development agreement shall provide that the
18 delivery date of such public facilities will be tied to successful performance
19 by the developer in implementing the proposed development, such as
20 meeting defined completion percentages or other performance standards.

21 (5) A description, where appropriate, of any reservation or dedication of land for
22 public purposes and any provisions agreed to by the developer that exceed
23 existing laws related to protection of environmentally sensitive property.

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

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

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

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

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

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

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

3 **"§ 160D-10-7. Vesting.**

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

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

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

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

16 **"§ 160D-10-8. Breach and cure.**

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

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

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

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

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

38 **"§ 160D-10-9. Amendment or termination.**

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

41 **"§ 160D-10-10. Change of jurisdiction.**

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

49 (b) A local government assuming jurisdiction may modify or suspend the provisions of
50 the development agreement if the local government determines that the failure of the local
51 government to do so would place the residents of the territory subject to the development

1 agreement or the residents of the local government, or both, in a condition dangerous to their
2 health or safety, or both.

3 **"§ 160D-10-11. Recordation.**

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

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

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

15 "Article 11.

16 "Building Code Enforcement.

17 **"§ 160D-11-1. Definitions.**

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

- 20 (1) Building or buildings. – Includes other structures.
21 (2) Governing board or board of commissioners. – Includes the Tribal Council
22 of a federally recognized Indian tribe.
23 (3) Local government. – Includes a federally recognized Indian tribe, and, as to
24 such tribe, includes lands held in trust for the tribe.
25 (4) Public officer. – Includes the officer or officers who are authorized by
26 regulations adopted hereunder to exercise the powers prescribed by the
27 regulations and by this Article.

28 **"§ 160D-11-2. Building code administration.**

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

41 In the event that any local government fails to provide inspection services or ceases to
42 provide such services, the Commissioner of Insurance shall arrange for the provision of such
43 services, either through personnel employed by the department or through an arrangement with
44 other units of government. In either event, the Commissioner shall have and may exercise
45 within the local government's planning and development regulation jurisdiction all powers
46 made available to the governing board with respect to building inspection under this Article and
47 Part 1 of Article 20 of Chapter 160A of the General Statutes. Whenever the Commissioner has
48 intervened in this manner, the local government may assume provision of inspection services
49 only after giving the Commissioner two years' written notice of its intention to do so; provided,
50 however, that the Commissioner may waive this requirement or permit assumption at an earlier

1 date upon finding that such earlier assumption will not unduly interfere with arrangements
2 made for the provision of those services.

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

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

14 **"§ 160D-11-4. Duties and responsibilities.**

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

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

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

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

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

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

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

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

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

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

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

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

13 **"§ 160D-11-5. Other arrangements for inspections.**

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

18 **"§ 160D-11-6. Conflicts of interest.**

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

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

34 (2) If the individual, company, or employee of a company contracting to
35 perform building inspections for the local government is closely related to
36 the owner, developer, contractor, or project manager of the project to be
37 inspected.

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

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

46 **"§ 160D-11-7. Failure to perform duties.**

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

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

6 **"§ 160D-11-8. Building permits.**

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

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

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

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

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

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

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

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

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

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

1 **(b)** A building permit shall be in writing and shall contain a provision that the work
2 done shall comply with the State Building Code and all other applicable State and local laws.
3 Nothing in this section shall require a local government to review and approve residential
4 building plans submitted to the local government pursuant to the North Carolina Residential
5 Code, provided that the local government may review and approve such residential building
6 plans as it deems necessary. No building permits shall be issued unless the plans and
7 specifications are identified by the name and address of the author thereof, and, if the General
8 Statutes of North Carolina require that plans for certain types of work be prepared only by a
9 licensed architect or licensed engineer, no building permit shall be issued unless the plans and
10 specifications bear the North Carolina seal of a licensed architect or of a licensed engineer.
11 When any provision of the General Statutes of North Carolina or of any ordinance requires that
12 work be done by a licensed specialty contractor of any kind, no building permit for the work
13 shall be issued unless the work is to be performed by such a duly licensed contractor.

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

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

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

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

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

30 **(5)** The addition (excluding replacement) of roofing.

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

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

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

45 **(g)** No building permit shall be issued pursuant to subdivision (1) of subsection (a) of
46 this section where the cost of the work is thirty thousand dollars (\$30,000) or more, other than
47 for improvements to an existing single-family residential dwelling unit as defined in
48 G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory
49 building or accessory structure as defined in the North Carolina Uniform Residential Building
50 Code, the use of which is incidental to that residential dwelling unit, unless the name, physical
51 and mailing address, telephone number, facsimile number, and electronic mail address of the

1 lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in
2 the permit or in an attachment thereto. The building permit may contain the lien agent's
3 electronic mail address. The lien agent information for each permit issued pursuant to this
4 subsection shall be maintained by the inspection department in the same manner and in the
5 same location in which it maintains its record of building permits issued.

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

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

13 **"§ 160D-11-9. Expiration of building permits.**

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

20 **"§ 160D-11-10. Changes in work.**

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

25 **"§ 160D-11-11. Inspections of work in progress.**

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

36 **"§ 160D-11-12. Appeals of stop orders.**

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

49 (1) Appealing to the Building Code Council.

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

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

3 **"§ 160D-11-13. Revocation of building permits.**

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

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

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

24 **"§ 160D-11-15. Periodic inspections.**

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

34 **"§ 160D-11-16. Defects in buildings to be corrected.**

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

41 **"§ 160D-11-17. Unsafe buildings condemned.**

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

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

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

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

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

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

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

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

22 **"§ 160D-11-19. Action in event of failure to take corrective action.**

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

27 (1) That the building or structure is in a condition that appears to meet one or
28 more of the following conditions:

29 a. Constitutes a fire or safety hazard.

30 b. Is dangerous to life, health, or other property.

31 c. Is likely to cause or contribute to blight, disease, vagrancy, or danger
32 to children.

33 d. Has a tendency to attract persons intent on criminal activities or other
34 activities which would constitute a public nuisance.

35 (2) That an administrative hearing will be held before the inspector at a
36 designated place and time, not later than 10 days after the date of the notice,
37 at which time the owner shall be entitled to be heard in person or by counsel
38 and to present arguments and evidence pertaining to the matter.

39 (3) That following the hearing, the inspector may issue such order to repair,
40 close, vacate, or demolish the building or structure as appears appropriate.

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

46 **"§ 160D-11-20. Order to take corrective action.**

47 If, upon a hearing held pursuant to the notice prescribed in G.S. 160D-11-19, the inspector
48 shall find that the building or structure is in a condition that constitutes a fire or safety hazard or
49 renders it dangerous to life, health, or other property, the inspector shall make an order in
50 writing, directed to the owner of such building or structure, requiring the owner to remedy the
51 defective conditions by repairing, closing, vacating, or demolishing the building or structure or

1 taking other necessary steps, within such period, not less than 60 days, as the inspector may
2 prescribe, provided that where the inspector finds that there is imminent danger to life or other
3 property, the inspector may order that corrective action be taken in such lesser period as may be
4 feasible.

5 **"§ 160D-11-21. Appeal; finality of order if not appealed.**

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

12 **"§ 160D-11-22. Failure to comply with order.**

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

16 **"§ 160D-11-23. Enforcement.**

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

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

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

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

45 **"§ 160D-11-24. Records and reports.**

46 The inspection department shall keep complete and accurate records in convenient form of
47 all applications received, permits issued, inspections and reinspections made, defects found,
48 certificates of compliance or occupancy granted, and all other work and activities of the
49 department. These records shall be kept in the manner and for the periods prescribed by the
50 Department of Natural and Cultural Resources. Periodic reports shall be submitted to the

1 governing board and to the Commissioner of Insurance as they shall by ordinance, rule, or
2 regulation require.

3 **"§ 160D-11-25. Appeals.**

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

11 **"§ 160D-11-26. Fire limits.**

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

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

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

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

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

40 **"§ 160D-11-27. Regulation authorized as to repair, closing, and demolition of**
41 **nonresidential buildings or structures; order of public officer.**

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

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

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

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

26 (e) Limitations on Orders. –

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

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

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

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

1 (1) If the owner fails to comply with an order to repair, alter, or improve or to
2 vacate and close the nonresidential building or structure, the governing
3 board may adopt an ordinance ordering the public officer to proceed to
4 effectuate the purpose of this section with respect to the particular property
5 or properties that the public officer found to be jeopardizing the health or
6 safety of its occupants or members of the general public. The property or
7 properties shall be described in the ordinance. The ordinance shall be
8 recorded in the office of the register of deeds and shall be indexed in the
9 name of the property owner or owners in the grantor index. Following
10 adoption of an ordinance, the public officer may cause the building or
11 structure to be repaired, altered, or improved or to be vacated and closed.
12 The public officer may cause to be posted on the main entrance of any
13 nonresidential building or structure so closed a placard with the following
14 words: "This building is unfit for any use; the use or occupation of this
15 building for any purpose is prohibited and unlawful." Any person who
16 occupies or knowingly allows the occupancy of a building or structure so
17 posted shall be guilty of a Class 3 misdemeanor.

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

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

44 (1) If the cost to repair the nonresidential building or structure to bring it into
45 compliance with the minimum standards is less than or equal to fifty percent
46 (50%) of its then current value, the ordinance shall require that the owner
47 either repair or demolish and remove the building or structure within 90
48 days.

49 (2) If the cost to repair the nonresidential building or structure to bring it into
50 compliance with the minimum standards exceeds fifty percent (50%) of its

1 then current value, the ordinance shall require the owner to demolish and
2 remove the building or structure within 90 days.

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

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

24 (i) Liens. –

25 (1) The amount of the cost of repairs, alterations, or improvements, or vacating
26 and closing, or removal or demolition by the public officer shall be a lien
27 against the real property upon which the cost was incurred, which lien shall
28 be filed, have the same priority, and be collected as the lien for special
29 assessment provided in Article 10 of Chapter 160A of the General Statutes.

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

35 (3) If the nonresidential building or structure is removed or demolished by the
36 public officer, he or she shall offer for sale the recoverable materials of the
37 building or structure and any personal property, fixtures, or appurtenances
38 found in or attached to the building or structure and shall credit the proceeds
39 of the sale, if any, against the cost of the removal or demolition, and any
40 balance remaining shall be deposited in the superior court by the public
41 officer, shall be secured in a manner directed by the court, and shall be
42 disbursed by the court to the persons found to be entitled thereto by final
43 order or decree of the court. Nothing in this section shall be construed to
44 impair or limit in any way the power of the governing board to define and
45 declare nuisances and to cause their removal or abatement by summary
46 proceedings or otherwise.

47 (j) Ejectment. – If any occupant fails to comply with an order to vacate a nonresidential
48 building or structure, the public officer may file a civil action in the name of the local
49 government to remove the occupant. The action to vacate shall be in the nature of summary
50 ejectment and shall be commenced by filing a complaint naming as parties-defendant any
51 person occupying the nonresidential building or structure. The clerk of superior court shall

1 issue a summons requiring the defendant to appear before a magistrate at a certain time, date,
2 and place not to exceed 10 days from the issuance of the summons to answer the complaint.
3 The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be
4 returned according to its tenor, and if on its return it appears to have been duly served and if at
5 the hearing the public officer produces a certified copy of an ordinance adopted by the
6 governing board pursuant to subsection (f) of this section to vacate the occupied nonresidential
7 building or structure, the magistrate shall enter judgment ordering that the premises be vacated
8 and all persons be removed. The judgment ordering that the nonresidential building or structure
9 be vacated shall be enforced in the same manner as the judgment for summary ejection
10 entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the
11 magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be
12 stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential
13 building or structure who is a tenant of the owner may not be in the nature of a summary
14 ejection proceeding pursuant to this subsection unless the occupant was served with notice, at
15 least 30 days before the filing of the summary ejection proceeding, that the governing board
16 has ordered the public officer to proceed to exercise his duties under subsection (f) of this
17 section to vacate and close or remove and demolish the nonresidential building or structure.

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

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

27 (1) To investigate nonresidential buildings and structures in the local
28 government's planning and development regulation jurisdiction to determine
29 whether they have been properly maintained in compliance with the
30 minimum standards so that the safety or health of the occupants or members
31 of the general public are not jeopardized.

32 (2) To administer oaths, affirmations, examine witnesses, and receive evidence.

33 (3) To enter upon premises pursuant to subsection (b) of this section for the
34 purpose of making examinations in a manner that will do the least possible
35 inconvenience to the persons in possession.

36 (4) To appoint and fix the duties of officers, agents, and employees necessary to
37 carry out the purposes of the ordinances adopted by the governing board.

38 (5) To delegate any of his or her functions and powers under the ordinance to
39 other officers and agents.

40 (m) Appeals. – The governing board may provide that appeals may be taken from any
41 decision or order of the public officer to the local government's housing appeals board or board
42 of adjustment. Any person aggrieved by a decision or order of the public officer shall have the
43 remedies provided in G.S. 160D-12-8.

44 (n) Funding. – The governing board is authorized to make appropriations from its
45 revenues necessary to carry out the purposes of this section and may accept and apply grants or
46 donations to assist in carrying out the provisions of the ordinances adopted by the governing
47 board.

48 (o) No Effect on Just Compensation for Taking by Eminent Domain. – Nothing in this
49 section shall be construed as preventing the owner or owners of any property from receiving
50 just compensation for the taking of property by the power of eminent domain under the laws of

1 this State nor as permitting any property to be condemned or destroyed except in accordance
2 with the police power of the State.

3 (p) Definitions. – As used in this section, the following definitions apply:

4 (1) Parties in interest. – All individuals, associations, and corporations who have
5 interests of record in a nonresidential building or structure and any who are
6 in possession thereof.

7 (2) Vacant industrial warehouse. – Any building or structure designed for the
8 storage of goods or equipment in connection with manufacturing processes,
9 which has not been used for that purpose for at least one year and has not
10 been converted to another use.

11 (3) Vacant manufacturing facility. – Any building or structure previously used
12 for the lawful production or manufacturing of goods, which has not been
13 used for that purpose for at least one year and has not been converted to
14 another use.

15 "Article 12.

16 "Minimum Housing Codes.

17 "**§ 160D-12-1. Authorization.**

18 (a) Occupied Dwellings. – The existence and occupation of dwellings that are unfit for
19 human habitation are inimical to the welfare and dangerous and injurious to the health and
20 safety of the people of this State. A public necessity exists for the repair, closing, or demolition
21 of such dwellings. Whenever any local government finds that there exists in the planning and
22 development regulation jurisdiction dwellings that are unfit for human habitation due to
23 dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of
24 ventilation, light or sanitary facilities, or other conditions rendering the dwellings unsafe or
25 unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to
26 the welfare of the residents of the local government, power is conferred upon the local
27 government to exercise its police powers to repair, close, or demolish the dwellings consistent
28 with the provisions of this Article.

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

37 "**§ 160D-12-2. Definitions.**

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

40 (1) Owner. – The holder of the title in fee simple and every mortgagee of record.

41 (2) Parties in interest. – All individuals, associations, and corporations who have
42 interests of record in a dwelling and any who are in possession thereof.

43 (3) Public authority. – Any housing authority or any officer who is in charge of
44 any department or branch of the government of the city, county, or State
45 relating to health, fire, building regulations, or other activities concerning
46 dwellings in the local government.

47 (4) Public officer. – The officer or officers who are authorized by ordinances
48 adopted hereunder to exercise the powers prescribed by the ordinances and
49 by this Article.

50 "**§ 160D-12-3. Ordinance authorized as to repair, closing, and demolition; order of public**
51 **officer.**

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

5 (1) Designation of enforcement officer. – One or more public officers shall be
6 designated to exercise the powers prescribed by the ordinance.

7 (2) Investigation, complaint, hearing. – Whenever a petition is filed with the
8 public officer by a public authority or by at least five residents of the
9 jurisdiction charging that any dwelling is unfit for human habitation or when
10 it appears to the public officer that any dwelling is unfit for human
11 habitation, the public officer shall, if a preliminary investigation discloses a
12 basis for such charges, issue and cause to be served upon the owner of and
13 parties in interest in such dwellings a complaint stating the charges in that
14 respect and containing a notice that an administrative hearing will be held
15 before the public officer, or the officer's designated agent, at a place within
16 the county in which the property is located. The hearing shall be not less
17 than 10 days nor more than 30 days after the serving of the complaint. The
18 owner and parties in interest shall be given the right to file an answer to the
19 complaint and to appear in person, or otherwise, and give testimony at the
20 place and time fixed in the complaint. The rules of evidence prevailing in
21 courts of law shall not be controlling in administrative hearings before the
22 public officer.

23 (3) Orders. – If, after notice and hearing, the public officer determines that the
24 dwelling under consideration is unfit for human habitation, the officer shall
25 state in writing findings of fact in support of that determination and shall
26 issue and cause to be served upon the owner one of the following orders, as
27 appropriate:

28 a. If the repair, alteration, or improvement of the dwelling can be made
29 at a reasonable cost in relation to the value of the dwelling, requiring
30 the owner, within the time specified, to repair, alter, or improve the
31 dwelling in order to render it fit for human habitation. The ordinance
32 may fix a certain percentage of this value as being reasonable. The
33 order may require that the property be vacated and closed only if
34 continued occupancy during the time allowed for repair will present a
35 significant threat of bodily harm, taking into account the nature of the
36 necessary repairs, alterations, or improvements; the current state of
37 the property; and any additional risks due to the presence and
38 capacity of minors under the age of 18 or occupants with physical or
39 mental disabilities. The order shall state that the failure to make
40 timely repairs as directed in the order shall make the dwelling subject
41 to the issuance of an unfit order under subdivision (4) of this section.

42 b. If the repair, alteration, or improvement of the dwelling cannot be
43 made at a reasonable cost in relation to the value of the dwelling,
44 requiring the owner, within the time specified in the order, to remove
45 or demolish such dwelling. The ordinance may fix a certain
46 percentage of this value as being reasonable. However,
47 notwithstanding any other provision of law, if the dwelling is located
48 in a historic district and the Historic District Commission determines,
49 after a public hearing as provided by ordinance, that the dwelling is
50 of particular significance or value toward maintaining the character
51 of the district, and the dwelling has not been condemned as unsafe,

1 the order may require that the dwelling be vacated and closed
2 consistent with G.S. 160D-9-49.

3 (4) Repair, closing, and posting. – If the owner fails to comply with an order to
4 repair, alter, or improve or to vacate and close the dwelling, the public
5 officer may cause the dwelling to be repaired, altered, or improved or to be
6 vacated and closed and the public officer may cause to be posted on the main
7 entrance of any dwelling so closed a placard with the following words: "This
8 building is unfit for human habitation; the use or occupation of this building
9 for human habitation is prohibited and unlawful." Occupation of a building
10 so posted shall constitute a Class 1 misdemeanor. The duties of the public
11 officer set forth in this subdivision shall not be exercised until the governing
12 board shall have by ordinance ordered the public officer to proceed to
13 effectuate the purpose of this Article with respect to the particular property
14 or properties which the public officer shall have found to be unfit for human
15 habitation and which property or properties shall be described in the
16 ordinance. This ordinance shall be recorded in the office of the register of
17 deeds in the county where the property or properties are located and shall be
18 indexed in the name of the property owner in the grantor index.

19 (5) Demolition. – If the owner fails to comply with an order to remove or
20 demolish the dwelling, the public officer may cause such dwelling to be
21 removed or demolished. The duties of the public officer set forth in this
22 subdivision shall not be exercised until the governing board shall have by
23 ordinance ordered the public officer to proceed to effectuate the purpose of
24 this Article with respect to the particular property or properties which the
25 public officer shall have found to be unfit for human habitation and which
26 property or properties shall be described in the ordinance. No such ordinance
27 shall be adopted to require demolition of a dwelling until the owner has first
28 been given a reasonable opportunity to bring it into conformity with the
29 housing code. This ordinance shall be recorded in the office of the register of
30 deeds in the county wherein the property or properties are located and shall
31 be indexed in the name of the property owner in the grantor index.

32 (6) Abandonment of Intent to Repair. – If the dwelling has been vacated and
33 closed for a period of one year pursuant to an ordinance adopted pursuant to
34 subdivision (4) of this section or after a public officer issues an order or
35 proceedings have commenced under the substandard housing regulations
36 regarding a dwelling to be repaired or vacated and closed as provided in this
37 subdivision, then the governing board may find that the owner has
38 abandoned the intent and purpose to repair, alter, or improve the dwelling in
39 order to render it fit for human habitation and that the continuation of the
40 dwelling in its vacated and closed status would be inimical to the health,
41 safety, and welfare of the local government in that the dwelling would
42 continue to deteriorate, would create a fire and safety hazard, would be a
43 threat to children and vagrants, would attract persons intent on criminal
44 activities, would cause or contribute to blight and the deterioration of
45 property values in the area, and would render unavailable property and a
46 dwelling which might otherwise have been made available to ease the
47 persistent shortage of decent and affordable housing in this State, then in
48 such circumstances, the governing board may, after the expiration of such
49 one year period, enact an ordinance and serve such ordinance on the owner,
50 setting forth the following:

1 a. If it is determined that the repair of the dwelling to render it fit for
2 human habitation can be made at a cost not exceeding fifty percent
3 (50%) of the then current value of the dwelling, the ordinance shall
4 require that the owner either repair or demolish and remove the
5 dwelling within 90 days.

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

11 This ordinance shall be recorded in the office of the register of deeds in
12 the county wherein the property or properties are located and shall be
13 indexed in the name of the property owner in the grantor index. If the owner
14 fails to comply with this ordinance, the public officer shall effectuate the
15 purpose of the ordinance.

16 (7) Liens. –

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

23 b. If the real property upon which the cost was incurred is located in an
24 incorporated city, then the amount of the cost is also a lien on any
25 other real property of the owner located within the city limits or
26 within one mile thereof except for the owner's primary residence.
27 The additional lien provided in this sub-subdivision is inferior to all
28 prior liens and shall be collected as a money judgment.

29 c. If the dwelling is removed or demolished by the public officer, the
30 local government shall sell the materials of the dwelling, and any
31 personal property, fixtures, or appurtenances found in or attached to
32 the dwelling, and shall credit the proceeds of the sale against the cost
33 of the removal or demolition and any balance remaining shall be
34 deposited in the superior court by the public officer, shall be secured
35 in a manner directed by the court, and shall be disbursed by the court
36 to the persons found to be entitled thereto by final order or decree of
37 the court. Nothing in this section shall be construed to impair or limit
38 in any way the power of the local government to define and declare
39 nuisances and to cause their removal or abatement by summary
40 proceedings or otherwise.

41 (8) Civil action. – If any occupant fails to comply with an order to vacate a
42 dwelling, the public officer may file a civil action in the name of the local
43 government to remove such occupant. The action to vacate the dwelling
44 shall be in the nature of summary ejectment and shall be commenced by
45 filing a complaint naming as defendant any person occupying such dwelling.
46 The clerk of superior court shall issue a summons requiring the defendant to
47 appear before a magistrate at a certain time, date and place not to exceed 10
48 days from the issuance of the summons to answer the complaint. The
49 summons and complaint shall be served as provided in G.S. 42-29. If the
50 summons appears to have been duly served and if at the hearing the public
51 officer produces a certified copy of an ordinance adopted by the governing

1 board pursuant to subdivision (5) of this section authorizing the officer to
2 proceed to vacate the occupied dwelling, the magistrate shall enter judgment
3 ordering that the premises be vacated and that all persons be removed. The
4 judgment ordering that the dwelling be vacated shall be enforced in the same
5 manner as the judgment for summary ejectment entered under G.S. 42-30.
6 An appeal from any judgment entered hereunder by the magistrate may be
7 taken as provided in G.S. 7A-228, and the execution of such judgment may
8 be stayed as provided in G.S. 7A-227. An action to remove an occupant of a
9 dwelling who is a tenant of the owner may not be in the nature of a summary
10 ejectment proceeding pursuant to this paragraph unless such occupant was
11 served with notice at least 30 days before the filing of the summary
12 ejectment proceeding that the governing board has ordered the public officer
13 to proceed to exercise his duties under subdivisions (4) and (5) of this
14 section to vacate and close or remove and demolish the dwelling.

15 (9) Additional notices to affordable housing organizations. – Whenever a
16 determination is made pursuant to subdivision (3) of this section that a
17 dwelling must be vacated and closed, or removed or demolished, under the
18 provisions of this section, notice of the order shall be given by first-class
19 mail to any organization involved in providing or restoring dwellings for
20 affordable housing that has filed a written request for such notices. A
21 minimum period of 45 days from the mailing of such notice shall be given
22 before removal or demolition by action of the public officer, to allow the
23 opportunity for any organization to negotiate with the owner to make repairs,
24 lease, or purchase the property for the purpose of providing affordable
25 housing. The public officer or clerk shall certify the mailing of the notices,
26 and the certification shall be conclusive in the absence of fraud. Only an
27 organization that has filed a written request for such notices may raise the
28 issue of failure to mail such notices, and the sole remedy shall be an order
29 requiring the public officer to wait 45 days before causing removal or
30 demolition.

31 **§ 160D-12-4. Heat source required.**

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

37 (b) If a dwelling unit contains a heating system or heating appliances that meet the
38 requirements of subsection (a) of this section, the owner of the dwelling unit shall not be
39 required to install a new heating system or heating appliances, but the owner shall be required
40 to maintain the existing heating system or heating appliances in a good and safe working
41 condition. Otherwise, the owner of the dwelling unit shall install a heating system or heating
42 appliances that meet the requirements of subsection (a) of this section and shall maintain the
43 heating system or heating appliances in a good and safe working condition.

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

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

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

5 **"§ 160D-12-5. Standards.**

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

15 **"§ 160D-12-6. Service of complaints and orders.**

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

23 (b) If the identities of any owners or the whereabouts of persons are unknown and
24 cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the
25 owners are known but have refused to accept service by certified mail, and the public officer
26 makes an affidavit to that effect, then the serving of the complaint or order upon the owners or
27 other persons may be made by publication in a newspaper having general circulation in the
28 jurisdiction at least once no later than the time at which personal service would be required
29 under the provisions of this Article. When service is made by publication, a notice of the
30 pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

31 **"§ 160D-12-7. Periodic inspections.**

32 (a) Except as provided in subsection (b) of this section, the inspection department may
33 make periodic inspections only when there is reasonable cause to believe that unsafe,
34 unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or
35 structure. However, when the inspection department determines that a safety hazard exists in
36 one of the dwelling units within a multifamily building, which in the opinion of the inspector
37 poses an immediate threat to the occupant, the inspection department may inspect, in the
38 absence of a specific complaint and actual knowledge of the unsafe condition, additional
39 dwelling units in the multifamily building to determine if that same safety hazard exists. For
40 purposes of this section, the term "reasonable cause" means any of the following: (i) the
41 landlord or owner has a history of more than two verified violations of the housing ordinances
42 or codes within a 12-month period; (ii) there has been a complaint that substandard conditions
43 exist within the building or there has been a request that the building be inspected; (iii) the
44 inspection department has actual knowledge of an unsafe condition within the building; or (iv)
45 violations of the local ordinances or codes are visible from the outside of the property. In
46 conducting inspections authorized under this section, the inspection department shall not
47 discriminate between single-family and multifamily buildings or between owner-occupied and
48 tenant-occupied buildings. In exercising this power, members of the department shall have a
49 right to enter on any premises within the jurisdiction of the department at all reasonable hours
50 for the purposes of inspection or other enforcement action, upon presentation of proper

1 credentials. Nothing in this section shall be construed to prohibit periodic inspections in
2 accordance with State fire prevention code or as otherwise required by State law.

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

18 (c) In no event may a local government do any of the following: (i) adopt or enforce
19 any ordinance that would require any owner or manager of rental property to obtain any permit
20 or permission under Article 11 or Article 12 of this Chapter from the local government to lease
21 or rent residential real property or to register rental property with the local government, except
22 for those individual properties that have more than four verified violations in a rolling
23 12-month period or two or more verified violations in a rolling 30-day period, or upon the
24 property being identified within the top ten percent (10%) of properties with crime or disorder
25 problems as set forth in a local ordinance; (ii) require that an owner or manager of residential
26 rental property enroll or participate in any governmental program as a condition of obtaining a
27 certificate of occupancy; (iii) levy a special fee or tax on residential rental property that is not
28 also levied against other commercial and residential properties, unless expressly authorized by
29 general law or applicable only to an individual rental unit or property described in clause (i) of
30 this subsection and the fee does not exceed five hundred dollars (\$500.00) in any 12-month
31 period in which the unit or property is found to have verified violations; (iv) provide that any
32 violation of a rental registration ordinance is punishable as a criminal offense; or (v) require
33 any owner or manager of rental property to submit to an inspection before receiving any utility
34 service provided by the local government. For purposes of this section, the term "verified
35 violation" means all of the following:

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

38 (2) Any violations that have not been corrected by the owner or manager within
39 21 days of receipt of written notice from the local government of the
40 violations. Should the same violation occur more than two times in a
41 12-month period, the owner or manager may not have the option of
42 correcting the violation. If the housing code provides that any form of
43 prohibited tenant behavior constitutes a violation by the owner or manager
44 of the rental property, it shall be deemed a correction of the tenant-related
45 violation if the owner or manager, within 30 days of receipt of written notice
46 of the tenant-related violation, brings a summary ejection action to have
47 the tenant evicted.

48 (d) If a property is identified by the local government as being in the top ten percent
49 (10%) of properties with crime or disorder problems, the local government shall notify the
50 landlord of any crimes, disorders, or other violations that will be counted against the property
51 to allow the landlord an opportunity to attempt to correct the problems. In addition, the local

1 government and the county sheriff's office or city's police department shall assist the landlord
2 in addressing any criminal activity, which may include testifying in court in a summary
3 ejectment action or other matter to aid in evicting a tenant who has been charged with a crime.
4 If the local government or the county sheriff's office or city's police department does not
5 cooperate in evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a
6 crime or disorder problem as set forth in the local ordinance and the property may not be
7 included in the top ten percent (10%) of properties as a result of that tenant's behavior or
8 activity.

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

18 **"§ 160D-12-8. Remedies.**

19 (a) An ordinance adopted pursuant to this Article may provide for a housing appeals
20 board as provided by G.S. 160D-3-6. An appeal from any decision or order of the public officer
21 is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer,
22 board, or commission of the local government. Any appeal from the public officer shall be
23 taken within 10 days from the rendering of the decision or service of the order by filing with
24 the public officer and with the housing appeals board a notice of appeal which shall specify the
25 grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public
26 officer shall forthwith transmit to the board all the papers constituting the record upon which
27 the decision appealed from was made. When an appeal is from a decision of the public officer
28 refusing to allow the person aggrieved thereby to do any act, the decision shall remain in force
29 until modified or reversed. When any appeal is from a decision of the public officer requiring
30 the person aggrieved to do any act, the appeal shall have the effect of suspending the
31 requirement until the hearing by the board, unless the public officer certifies to the board, after
32 the notice of appeal is filed with the officer, that because of facts stated in the certificate, a copy
33 of which shall be furnished the appellant, a suspension of the requirement would cause
34 imminent peril to life or property. In that case the requirement shall not be suspended except by
35 a restraining order, which may be granted for due cause shown upon not less than one day's
36 written notice to the public officer, by the board, or by a court of record upon petition made
37 pursuant to subsection (f) of this section.

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

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

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

11 (e) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or
12 used in violation of this Article or of any ordinance or code adopted under authority of this
13 Article or any valid order or decision of the public officer or board made pursuant to any
14 ordinance or code adopted under authority of this Article, the public officer or board may
15 institute any appropriate action or proceedings to prevent the unlawful erection, construction,
16 reconstruction, alteration, or use, to restrain, correct, or abate the violation, to prevent the
17 occupancy of the dwelling, or to prevent any illegal act, conduct, or use in or about the
18 premises of the dwelling.

19 **"§ 160D-12-9. Compensation to owners of condemned property.**

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

24 **"§ 160D-12-10. Additional powers of public officer.**

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

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

38 **"§ 160D-12-11. Administration of ordinance.**

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

46 **"§ 160D-12-12. Supplemental nature of Article.**

47 Nothing in this Article shall be construed to abrogate or impair the powers of the courts or
48 of any department of any local government to enforce any provisions of its charter or its
49 ordinances or regulations nor to prevent or punish violations thereof. The powers conferred by
50 this Article shall be supplemental to the powers conferred by any other law in carrying out the
51 provisions of the ordinances.

"Article 13."Additional Authority."Part 1. Open Space Acquisition.**"§ 160D-13-1. Legislative intent.**

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

"§ 160D-13-2. Finding of necessity.

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

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

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

Any local government may acquire by purchase, gift, grant, devise, lease, or otherwise the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any local government may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale.

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

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

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

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

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

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

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

"§ 160D-13-7. Definitions.

As used in this Part, the following definitions apply:

- (1) Open space or open area. – Any space or area characterized by great natural scenic beauty or where the existing openness, natural condition, or present

1 state of use, if retained, would enhance the present or potential value of
2 abutting or surrounding urban development or would maintain or enhance
3 the conservation of natural or scenic resources. The terms also include
4 interests or rights in real property and open space land or uses.

5 (2) Open space land or open space uses. – Any undeveloped or predominantly
6 undeveloped land in an urban area that has value for or is used for one or
7 more of the following purposes:

8 a. Park and recreational purposes.

9 b. Conservation of land and other natural resources.

10 c. Historic or scenic purposes.

11 **§§ 160D-13-8 through 160D-13-10: Reserved for future codification purposes.**

12 "Part 2. Community Development and Redevelopment.

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

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

18 (1) Programs of assistance and financing of rehabilitation of private buildings
19 principally for the benefit of low- and moderate-income persons, or for the
20 restoration or preservation of older neighborhoods or properties, including
21 direct repair, the making of grants or loans, the subsidization of interest
22 payments on loans, and the guaranty of loans.

23 (2) Programs concerned with employment, economic development, crime
24 prevention, child care, health, drug abuse, education, and welfare needs of
25 persons of low and moderate income.

26 (b) A governing board may exercise directly those powers granted by law to local
27 government redevelopment commissions and those powers granted by law to local government
28 housing authorities and may do so whether or not a redevelopment commission or housing
29 authority is in existence in such local government. Any governing board may by agreement
30 undertake or carry out for another any specified community development activities. Any
31 governing board may contract with any person, association, or corporation in undertaking any
32 specified community development activities. Any county or city board of health, county board
33 of social services, or county or city board of education may by agreement undertake or carry
34 out for any governing board any specified community development activities.

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

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

45 (e) A government may receive and dispense funds from the Community Development
46 Block Grant (CDBG) Section 108 Loan Guarantee program, Subpart M, 24 C.F.R. § 570.700,
47 et seq., either through application to the North Carolina Department of Commerce or directly
48 from the federal government, in accordance with State and federal laws governing these funds.
49 Any local government that receives these funds directly from the federal government may
50 pledge current and future CDBG funds for use as loan guarantees in accordance with State and
51 federal laws governing these funds. A local government may implement the receipt, dispensing,

1 and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all
2 or a portion of those funds to a third party in accordance with applicable laws governing the
3 CDBG program.

4 A government that has pledged current or future CDBG funds for use as loan guarantees
5 prior to the enactment of this subsection is authorized to have taken such action. A pledge of
6 future CDBG funds under this subsection is not a debt or liability of the State or any political
7 subdivision of the State or a pledge of the faith and credit of the State or any political
8 subdivision of the State. The pledging of future CDBG funds under this subsection does not
9 directly, indirectly, or contingently obligate the State or any political subdivision of the State to
10 levy or to pledge any taxes.

11 (f) All program income from Economic Development Grants from the Small Cities
12 Community Development Block Grant Program may be retained by recipient cities and
13 counties in "economically distressed counties," as defined in G.S. 143B-437.01, for the
14 purposes of creating local economic development revolving loan funds. Such program income
15 derived through the use by cities of Small Cities Community Development Block Grant money
16 includes, but is not limited to, (i) payment of principal and interest on loans made by the county
17 using CDBG funds; (ii) proceeds from the lease or disposition of real property acquired with
18 CDBG funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above.
19 The local economic development revolving loan fund set up by the city shall fund only those
20 activities eligible under Title I of the federal Housing and Community Development Act of
21 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of
22 the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or
23 G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed
24 counties made prior to its expiration.

25 **"§ 160D-13-12. Acquisition and disposition of property for redevelopment.**

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

- 29 (1) To acquire, by voluntary purchase from the owner or owners, real property
30 which meets any of the following criteria:
31 a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately
32 developed from the standpoint of sound community development and
33 growth.
34 b. Appropriate for rehabilitation or conservation activities.
35 c. Appropriate for housing construction or the economic development
36 of the community.
37 d. Appropriate for the preservation or restoration of historic sites, the
38 beautification of urban land, the conservation of open space, natural
39 resources, and scenic areas, the provision of recreational
40 opportunities, or the guidance of urban development.
41 (2) To clear, demolish, remove, or rehabilitate buildings and improvements on
42 land so acquired.
43 (3) To retain property so acquired for public purposes, or to dispose, through
44 sale, lease, or otherwise, of any property so acquired to any person, firm,
45 corporation, or governmental unit, provided the disposition of such property
46 shall be undertaken in accordance with the procedures of Article 12 of
47 Chapter 160A of the General Statutes, or the procedures of G.S. 160A-514,
48 or any applicable local act or charter provision modifying such procedures,
49 or subdivision (4) of this section.
50 (4) To sell, exchange, or otherwise transfer real property or any interest therein
51 in a community development project area to any redeveloper at private sale

1 for residential, recreational, commercial, industrial, or other uses or for
2 public use in accordance with the community development plan, subject to
3 such covenants, conditions, and restrictions as may be deemed to be in the
4 public interest or to carry out the purposes of this Article, provided that such
5 sale, exchange, or other transfer, and any agreement relating thereto, may be
6 made only after approval of the governing board and after a public hearing; a
7 notice of the public hearing shall be given once a week for two successive
8 weeks in a newspaper having general circulation in the local government's
9 planning and development jurisdiction area, the notice shall be published the
10 first time not less than 10 days nor more than 25 days preceding the public
11 hearing, and the notice shall disclose the terms of the sale, exchange, or
12 transfer. At the public hearing the appraised value of the property to be sold,
13 exchanged, or transferred shall be disclosed, and the consideration for the
14 conveyance shall not be less than the appraised value.

15 **"§ 160D-13-13. Urban Development Action Grants.**

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

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

28 **"§ 160D-13-14. Urban homesteading programs.**

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

- 36 (1) Acquire by purchase, gift, or otherwise, but not eminent domain, residential
37 property specifically for the purpose of reconveyance in the urban
38 homesteading program or may transfer to the program residential property
39 acquired for other purposes, including property purchased at a tax
40 foreclosure sale.
- 41 (2) Under procedures and standards established by the local government, convey
42 residential property by private sale under G.S. 160A-267 and for nominal
43 monetary consideration to persons who qualify as grantees.
- 44 (3) Convey property subject to the following conditions:
- 45 a. A requirement that the grantee shall use the property as the grantee's
46 principal place of residence for a minimum number of years.
- 47 b. A requirement that the grantee rehabilitate the property so that it
48 meets or exceeds minimum housing code standards.
- 49 c. A requirement that the grantee maintain insurance on the property.
- 50 d. Any other specific conditions, including, but not limited to, design
51 standards, or actions that the local government may require.

1 e. A provision for the termination of the grantee's interest in the
2 property and its reversion to the local government upon the grantee's
3 failure to meet any condition so established.

4 (4) Subordinate the local government's interest in the property to any security
5 interest granted by the grantee to a lender of funds to purchase or rehabilitate
6 the property.

7 **"§ 160D-13-15. Downtown development projects.**

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

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

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

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

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

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

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

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

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

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

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

49 (e) Construction. – The contract between the local government and the developer or
50 developers may provide that the developer or developers shall be responsible for construction
51 of the entire joint development project. If so, the contract shall include such provisions as the

1 governing board deems sufficient to assure that the public facility or facilities included in the
2 project meet the needs of the local government and are constructed at a reasonable price. A
3 project constructed pursuant to this subsection is not subject to Article 8 of Chapter 143 of the
4 General Statutes, provided that local government funds constitute no more than fifty percent
5 (50%) of the total costs of the joint development project. Federal funds available for loan to
6 private developers in connection with a joint development project shall not be considered local
7 government funds for purposes of this subsection.

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

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

15 **"§ 160D-13-16. Low- and moderate-income housing programs.**

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

17 (1) To engage in and to appropriate and expend funds for residential housing
18 construction, new or rehabilitated, for sale or rental to persons and families
19 of low and moderate income. Any governing board may contract with any
20 person, association, or corporation to implement the provisions of this
21 subdivision.

22 (2) To acquire real property by voluntary purchase from the owners to be
23 developed by the local government or to be used by the local government to
24 provide affordable housing to persons of low and moderate income.

25 (3) To convey property by private sale to any public or private entity that
26 provides affordable housing to persons of low or moderate income under
27 procedures and standards established by the local government. The local
28 government shall include as part of any such conveyance covenants or
29 conditions that assure the property will be developed by the entity for sale or
30 lease to persons of low or moderate income.

31 (4) To convey residential property by private sale to persons of low or moderate
32 income, in accordance with procedures and standards established by the
33 local government, with G.S. 160A-267, and with any terms and conditions
34 that the governing board may determine.

35 **"§§ 160D-13-17 through 160D-13-19:** Reserved for future codification purposes.

36 "Part 3. Miscellaneous.

37 **"§ 160D-13-20. Program to finance energy improvements.**

38 (a) Purpose. – The General Assembly finds it is in the best interest of the citizens of
39 North Carolina to promote and encourage renewable energy and energy efficiency within the
40 State in order to conserve energy, promote economic competitiveness, and expand employment
41 in the State. The General Assembly also finds that a local government has an integral role in
42 furthering this purpose by promoting and encouraging renewable energy and energy efficiency
43 within the local government's territorial jurisdiction. In furtherance of this purpose, a local
44 government may establish a program to finance the purchase and installation of distributed
45 generation renewable energy sources or energy efficiency improvements that are permanently
46 affixed to residential, commercial, or other real property.

47 (b) Financing Assistance. – A local government may establish a revolving loan fund
48 and a loan loss reserve fund for the purpose of financing or assisting in the financing of the
49 purchase and installation of distributed generation renewable energy sources or energy
50 efficiency improvements that are permanently fixed to residential, commercial, or other real
51 property. A local government may establish other local government energy efficiency and

1 distributed generation renewable energy source finance programs funded through federal
2 grants. A local government may use State and federal grants and loans and its general revenue
3 for this financing. The annual interest rate charged for the use of funds from the revolving fund
4 may not exceed eight percent (8%) per annum, excluding other fees for loan application review
5 and origination. The term of any loan originated under this section may not be greater than 20
6 years.

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

9 "Article 14.

10 "Judicial Review.

11 **"§ 160D-14-1. Declaratory judgments.**

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

17 **"§ 160D-14-2. Appeals in the nature of certiorari.**

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

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

23 (1) State the facts that demonstrate that the petitioner has standing to seek
24 review.

25 (2) Set forth allegations sufficient to give the court and parties notice of the
26 grounds upon which the petitioner contends that an error was made.

27 (3) Set forth with particularity the allegations and facts, if any, in support of
28 allegations that, as the result of an impermissible conflict as described in
29 G.S. 160D-1-9, or locally adopted conflict rules, the decision-making body
30 was not sufficiently impartial to comply with due process principles.

31 (4) Set forth the relief the petitioner seeks.

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

35 (1) Any person possessing any of the following criteria:

36 a. An ownership interest in the property that is the subject of the
37 decision being appealed, a leasehold interest in the property that is
38 the subject of the decision being appealed, or an interest created by
39 easement, restriction, or covenant in the property that is the subject
40 of the decision being appealed.

41 b. An option or contract to purchase the property that is the subject of
42 the decision being appealed.

43 c. An applicant before the decision-making board whose decision is
44 being appealed.

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

47 (3) An incorporated or unincorporated association to which owners or lessees of
48 property in a designated area belong by virtue of their owning or leasing
49 property in that area, or an association otherwise organized to protect and
50 foster the interest of the particular neighborhood or local area, so long as at
51 least one of the members of the association would have standing as an

1 individual to challenge the decision being appealed, and the association was
2 not created in response to the particular development or issue that is the
3 subject of the appeal.

4 (4) A local government whose decision-making board has made a decision that
5 the governing board believes improperly grants a variance from or is
6 otherwise inconsistent with the proper interpretation of a development
7 regulation adopted by the governing board.

8 (d) Respondent. – The respondent named in the petition shall be the local government
9 whose decision-making board made the decision that is being appealed, except that if the
10 petitioner is a local government that has filed a petition pursuant to subdivision (4) of
11 subsection (c) of this section, then the respondent shall be the decision-making board. If the
12 petitioner is not the applicant before the decision-making board whose decision is being
13 appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may
14 name as a respondent any person with an ownership or leasehold interest in the property that is
15 the subject of the decision being appealed who participated in the hearing, or was an applicant,
16 before the decision-making board.

17 (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition
18 and a proposed writ of certiorari to the clerk of superior court of the county in which the matter
19 arose. The writ shall direct the respondent local government or the respondent decision-making
20 board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4)
21 of subsection (c) of this section, to prepare and certify to the court the record of proceedings
22 below within a specified date. The writ shall also direct that the petitioner shall serve the
23 petition and the writ upon each respondent named therein in the manner provided for service of
24 a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a
25 decision-making board, the petition and the writ shall be served upon the chair of that
26 decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event
27 the chair of a decision-making board cannot be found. No summons shall be issued. The clerk
28 shall issue the writ without notice to the respondent or respondents if the petition has been
29 properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the
30 court.

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

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

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

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

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

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

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

19 (i) Hearing on the Record. – The court shall hear and decide all issues raised by the
20 petition by reviewing the record submitted in accordance with subsection (h) of this section.
21 The court may, in its discretion, allow the record to be supplemented with affidavits, testimony
22 of witnesses, or documentary or other evidence if, and to the extent that, the record is not
23 adequate to allow an appropriate determination of the following issues:

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

25 (2) Whether, as a result of impermissible conflict as described in G.S. 160D-1-9
26 or locally adopted conflict rules, the decision-making body was not
27 sufficiently impartial to comply with due process principles.

28 (3) Whether the decision-making body erred for the reasons set forth in
29 sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

30 (j) Scope of Review. –

31 (1) When reviewing the decision under the provisions of this section, the court
32 shall ensure that the rights of petitioners have not been prejudiced because
33 the decision-making body's findings, inferences, conclusions, or decisions
34 were:

35 a. In violation of constitutional provisions, including those protecting
36 procedural due process rights.

37 b. In excess of the statutory authority conferred upon the local
38 government or the authority conferred upon the decision-making
39 board by ordinance.

40 c. Inconsistent with applicable procedures specified by statute or
41 ordinance.

42 d. Affected by other error of law.

43 e. Unsupported by competent, material, and substantial evidence in
44 view of the entire record.

45 f. Arbitrary or capricious.

46 (2) When the issue before the court is whether the decision-making board erred
47 in interpreting an ordinance, the court shall review that issue de novo. The
48 court shall consider the interpretation of the decision-making board, but is
49 not bound by that interpretation, and may freely substitute its judgment as
50 appropriate.

1 (3) The term "competent evidence," as used in this subsection, shall not preclude
2 reliance by the decision-making board on evidence that would not be
3 admissible under the rules of evidence as applied in the trial division of the
4 General Court of Justice if (i) the evidence was admitted without objection
5 or (ii) the evidence appears to be sufficiently trustworthy and was admitted
6 under such circumstances that it was reasonable for the decision-making
7 board to rely upon it. The term "competent evidence," as used in this
8 subsection, shall not be deemed to include the opinion testimony of lay
9 witnesses as to any of the following:

- 10 a. The use of property in a particular way affects the value of other
11 property.
12 b. The increase in vehicular traffic resulting from a proposed
13 development poses a danger to the public safety.
14 c. Matters about which only expert testimony would generally be
15 admissible under the rules of evidence.

16 (k) Decision of the Court. – Following its review of the decision-making board in
17 accordance with subsection (j) of this section, the court may affirm the decision, reverse the
18 decision and remand the case with appropriate instructions, or remand the case for further
19 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
20 determine what relief should be granted to the petitioners:

21 (1) If the court concludes that the error committed by the decision-making board
22 is procedural only, the court may remand the case for further proceedings to
23 correct the procedural error.

24 (2) If the court concludes that the decision-making board has erred by failing to
25 make findings of fact such that the court cannot properly perform its
26 function, then the court may remand the case with appropriate instructions so
27 long as the record contains substantial competent evidence that could
28 support the decision below with appropriate findings of fact. However,
29 findings of fact are not necessary when the record sufficiently reveals the
30 basis for the decision below or when the material facts are undisputed and
31 the case presents only an issue of law.

32 (3) If the court concludes that the decision by the decision-making board is not
33 supported by competent, material, and substantial evidence in the record or
34 is based upon an error of law, then the court may remand the case with an
35 order that directs the decision-making board to take whatever action should
36 have been taken had the error not been committed or to take such other
37 action as is necessary to correct the error. Specifically:

38 a. If the court concludes that a permit was wrongfully denied because
39 the denial was not based on competent, material, and substantial
40 evidence or was otherwise based on an error of law, the court may
41 remand with instructions that the permit be issued, subject to
42 reasonable and appropriate conditions.

43 b. If the court concludes that a permit was wrongfully issued because
44 the issuance was not based on competent, material, and substantial
45 evidence or was otherwise based on an error of law, the court may
46 remand with instructions that the permit be revoked.

47 (l) Effect of Appeal and Ancillary Injunctive Relief. –

48 (1) If a development approval is appealed, the applicant shall have the right to
49 commence work while the appeal is pending. However, if the development
50 approval is reversed by a final decision of any court of competent
51 jurisdiction, the applicant shall not be deemed to have gained any vested

1 rights on the basis of actions taken prior to or during the pendency of the
2 appeal and must proceed as if no development approval had been granted.

3 (2) Upon motion of a party to a proceeding under this section, and under
4 appropriate circumstances, the court may issue an injunctive order requiring
5 any other party to that proceeding to take certain action or refrain from
6 taking action that is consistent with the court's decision on the merits of the
7 appeal.

8 (m) Joinder. – A declaratory judgment brought under G.S. 160D-14-1 or other civil
9 action relating to the decision at issue may be joined with the petition for writ of certiorari and
10 decided in the same proceeding.

11 **"§ 160D-14-3. Appeals of decisions on subdivision plats.**

12 (a) When a subdivision regulation adopted under this Chapter provides that the decision
13 whether to approve or deny a preliminary or final subdivision plat is quasi-judicial, then that
14 decision of the board shall be subject to review by the superior court by proceedings in the
15 nature of certiorari. The provisions of G.S. 160D-4-6 and this section shall apply to those
16 appeals.

17 (b) When a subdivision regulation adopted under this Chapter provides that the decision
18 whether to approve or deny a preliminary or final subdivision plat is administrative, then that
19 decision of the board shall be subject to review by filing an action in superior court seeking
20 appropriate declaratory or equitable relief within 30 days from receipt of the written notice of
21 the decision, which shall be made as provided in G.S. 160D-4-3(b).

22 (c) For purposes of this section, a subdivision regulation shall be deemed to authorize a
23 quasi-judicial decision if the decision-making entity under G.S. 160D-8-3(c) is authorized to
24 decide whether to approve or deny the plat based not only upon whether the application
25 complies with the specific requirements set forth in the regulation but also on whether the
26 application complies with one or more generally stated standards requiring a discretionary
27 decision to be made.

28 **"§ 160D-14-4. Other civil actions.**

29 Except as expressly stated, this Article does not limit the availability of civil actions
30 otherwise authorized by law or alter the times in which they may be brought.

31 **"§ 160D-14-5. Statutes of limitation.**

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

36 (b) Text Adoption or Amendment. – Except as otherwise provided in subsection (a) of
37 this section, an action challenging the validity of a development regulation adopted under this
38 Chapter or other applicable law shall be brought within one year of the accrual of such action.
39 Such an action accrues when the party bringing such action first has standing to challenge the
40 ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process
41 shall be brought within three years after the adoption of the ordinance.

42 (c) Enforcement Defense. – Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1
43 shall bar a party in an action involving the enforcement of a development regulation from
44 raising as a defense to such enforcement action the invalidity of the ordinance. Nothing in this
45 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
46 order, requirement, decision, or determination made by an administrative official contending
47 that such party is in violation of a zoning or unified development ordinance from raising in the
48 judicial appeal the invalidity of such ordinance as a defense to such order, requirement,
49 decision, or determination. A party in an enforcement action or appeal may not assert the
50 invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the
51 defense is formally raised within three years of the adoption of the challenged ordinance.

1 (d) Quasi-Judicial Decisions. – Unless specifically provided otherwise, a petition for
 2 review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of
 3 30 days after the decision is effective or after a written copy thereof is given in accordance with
 4 G.S. 160D-4-6(j). When first-class mail is used to deliver notice, three days shall be added to
 5 the time to file the petition.

6 (e) Others. – Except as provided by this section, the statutes of limitations shall be as
 7 provided in Subchapter II of Article 2 of Chapter 1 of the General Statutes."

8 **SECTION 4.1.** G.S. 1-54 reads as rewritten:

9 "**§ 1-54. One year.**

10 Within one year an action or proceeding –

11 ...

12 (10) Actions contesting the validity of any zoning or unified development
 13 ordinance or any provision thereof adopted under ~~Part 3 of Article 18 of~~
 14 ~~Chapter 153A or Part 3 of Article 19 of Chapter 160A Chapter 160D~~ of the
 15 General Statutes or other applicable law, other than an ordinance adopting or
 16 amending a zoning map ~~or approving a special use, conditional use, or~~
 17 ~~conditional zoning district rezoning request. map.~~ Such an action accrues
 18 when the party bringing such action first has standing to challenge the
 19 ordinance; provided that, a challenge to an ordinance on the basis of an
 20 alleged defect in the adoption process shall be brought within three years
 21 after the adoption of the ordinance.

22 "

23 **SECTION 4.2.** G.S. 1-54.1 reads as rewritten:

24 "**§ 1-54.1. Two months.**

25 Within two months an action contesting the validity of any ordinance adopting or amending
 26 a zoning map ~~or approving a special use, conditional use, conditional zoning district rezoning~~
 27 ~~request under Part 3 of Article 18 of Chapter 153A of the General Statutes or Part 3 of Article~~
 28 ~~19 of Chapter 160A of the General Statutes or other applicable law.~~ Article 7 of Chapter 160D
 29 of the General Statutes. Such an action accrues upon adoption of such ordinance or amendment.
 30 As used herein, the term two months shall be calculated as 60 days."

31 **SECTION 4.3.** G.S. 63-31(a) reads as rewritten:

32 "**§ 63-31. Adoption of airport zoning regulations.**

33 (a) Every political subdivision may adopt, administer, and enforce, under the police
 34 power ~~and in the manner and upon the conditions hereinafter prescribed, or as a land~~
 35 development regulation under Chapter 160D of the General Statutes, airport zoning regulations,
 36 which regulations shall divide the area surrounding any airport within the jurisdiction of said
 37 political subdivision into zones, and, within such zones, specify the land uses permitted, and
 38 regulate and restrict the height to which structures and trees may be erected or allowed to grow.
 39 In adopting or revising any such zoning regulations, the political subdivision shall consider,
 40 among other things, the character of the flying operations expected to be conducted at the
 41 airport, the nature of the terrain, the height of existing structures and trees above the level of the
 42 airport, the possibility of lowering or removing existing obstructions, and the views of the
 43 agency of the federal government charged with the fostering of civil aeronautics, as to the aerial
 44 approaches necessary to safe flying operations at the airport."

45 **SECTION 4.4.** G.S. 63-32(b) reads as rewritten:

46 "**§ 63-32. Permits, new structures, etc., and variances.**

47 ...

48 (b) Variances. – Any person desiring to erect any structures, or increase the height of
 49 any structure, or permit the growth of any tree, or otherwise use his property, in violation of
 50 airport zoning regulations adopted under this Article, may apply to the board of appeals, as
 51 provided in G.S. 63-33, subsection (c), for a variance from the zoning regulations in question.

1 Such variances shall be allowed where a literal application or enforcement of the regulations
2 would result in practical difficulty or unnecessary hardship and the relief granted would not be
3 contrary to the public interest but do substantial justice and shall be considered pursuant to
4 G.S. 160D-7-5(d) and be in accordance with the spirit of the regulations and this Article."

5 **SECTION 4.5.** G.S. 63-33 reads as rewritten:

6 "**§ 63-33. Procedure.**

7 (a) Adoption of Zoning Regulations. – No airport zoning regulations shall be adopted,
8 amended, or changed under this Article except by action of the legislative body of the political
9 subdivision in question, or the joint board provided for in G.S. 63-31, subsection (c), ~~after a~~
10 ~~public hearing in relation thereto, at which parties in interest and citizens shall have an~~
11 ~~opportunity to be heard. At least 10 days' notice of the hearing shall be published in an official~~
12 ~~paper, or a paper of general circulation, in the political subdivision or subdivisions in which the~~
13 ~~airport is located, following the procedures set for adoption of development regulations in~~
14 Article 6 of Chapter 160D of the General Statutes.

15 ...
16 (c) Administration of Airport Zoning Regulations – Board of Appeals. – Airport zoning
17 regulations adopted under this Article shall provide for a board of appeals to have and exercise
18 the following powers:

- 19 (1) To hear and decide appeals from any order, requirement, decision, or
20 determination made by the administrative agency in the enforcement of this
21 ~~Article or of any ordinance adopted pursuant thereto;~~Article.
22 (2) To hear and decide special exceptions to the terms of the ordinance ~~use~~
23 ~~permits upon which such board may be required to pass under such~~
24 ~~ordinance;~~ordinance.
25 (3) To hear and decide specific variances under ~~G.S. 63-32, subsection~~
26 ~~(b);~~variances.

27 ~~Where a A zoning board of appeals or adjustment already exists, it may be appointed as the~~
28 ~~board of appeals. Otherwise, the board of appeals shall consist of five members, each to be~~
29 ~~appointed for a term of three years and to be removable for cause by the appointing authority~~
30 ~~upon written charges and after public hearing. G.S. 160D-4-5 and G.S. 160D-4-6 shall be~~
31 ~~applicable to appeals, special use permits, and variance petitions made pursuant to this section.~~

32 ~~The board shall adopt rules in accordance with the provisions of any ordinance adopted~~
33 ~~under this Article. Meetings of the board shall be held at the call of the chairman and at such~~
34 ~~other times as the board may determine. The chairman, or in his absence the acting chairman,~~
35 ~~may administer oaths and compel the attendance of witnesses. All meetings of the board shall~~
36 ~~be public. The board shall keep minutes of its proceedings, showing the vote of each member~~
37 ~~upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records~~
38 ~~of its examinations and other official actions, all of which shall immediately be filed in the~~
39 ~~office of the board and shall be a public record.~~

40 ~~Appeals to the board may be taken by any person aggrieved, or by any officer, department,~~
41 ~~board, or bureau of the political subdivision affected, by any decision of the administrative~~
42 ~~agency. An appeal must be taken within a reasonable time, as provided by the rules of the~~
43 ~~board, by filing with the agency from which the appeal is taken and with the board, a notice of~~
44 ~~appeal specifying the grounds thereof. The agency from which the appeal is taken shall~~
45 ~~forthwith transmit to the board all the papers constituting the record upon which the action~~
46 ~~appealed from was taken.~~

47 ~~An appeal shall stay all proceedings in furtherance of the action appealed from, unless the~~
48 ~~agency from which the appeal is taken certifies to the board, after the notice of appeal has been~~
49 ~~filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion,~~
50 ~~cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise~~

1 than by a restraining order which may be granted by the board or by a court of record on
2 application on notice to the agency from which the appeal is taken and on due cause shown.

3 The board shall fix a reasonable time for the hearing of the appeal, give public notice and
4 due notice to the parties in interest, and decide the same within a reasonable time. Upon the
5 hearing any party may appear in person or by agent or by attorney.

6 The board may, in conformity with the provisions of this Article, reverse or affirm, wholly
7 or partly, or modify, the order, requirement, decision or determination appealed from and may
8 make such order, requirement, decision or determination as ought to be made, and to that end
9 shall have all the powers of the administrative agency from which the appeal is taken.

10 The concurring vote of a majority of the members of the board shall be sufficient to reverse
11 any order, requirement, decision, or determination of the administrative agency, or to decide in
12 favor of the applicant on any matter upon which it is required to pass under any such ordinance,
13 or to effect any variation in such ordinance."

14 **SECTION 4.6.** G.S. 63-34 reads as rewritten:

15 "**§ 63-34. Judicial review.**

16 (a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or
17 any officer, department, board, or bureau of the political subdivision, may present to the
18 superior court a verified petition setting forth that the decision is illegal, in whole or in part, and
19 specifying the grounds of the illegality. Such petition shall be presented to the court within 30
20 days after the decision is filed in the office of the board. Such petition shall comply with the
21 provisions of G.S. 160A-393.

22 (b) The allowance of the writ shall not stay proceedings upon the decision appealed
23 from, but the court may, on application, on notice to the board and on due cause shown, grant a
24 restraining order.

25 (c) The board of appeals shall not be required to return the original papers acted upon
26 by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions
27 thereof as may be called for by the writ. The return shall concisely set forth such other facts as
28 may be pertinent and material to show the grounds of the decision appealed from and shall be
29 verified.

30 (d) Repealed by Session Laws 2009-421, s. 3, effective January 1, 2010.

31 (e) Costs shall not be allowed against the board of appeals unless it appears to the court
32 that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed
33 from.

34 G.S. 160D-14-1 shall be applicable to judicial review of administrative and quasi-judicial
35 decisions made pursuant to this Article."

36 **SECTION 4.7.** G.S. 63-35 reads as rewritten:

37 "**§ 63-35. Enforcement and remedies.**

38 Each violation of this Article or of any regulations, order, or ruling promulgated or made
39 pursuant to this Article, shall constitute a Class 3 misdemeanor, and each day a violation
40 continues to exist shall constitute a separate offense. In addition, the political subdivision
41 within which the property is located may institute in any court of competent jurisdiction, an
42 action to prevent, restrain, correct or abate any violation of this Article, or of airport zoning
43 regulations adopted under this Article, or of any order or ruling made in connection with their
44 administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of
45 injunction (which may be mandatory) or otherwise, as may be proper under all the facts and
46 circumstances of the case, in order fully to effectuate the purposes of this Article and of the
47 regulations adopted and orders and rulings made pursuant thereto. G.S. 160D-4-4 shall be
48 applicable to ordinances adopted pursuant to this Article."

49 **SECTION 4.8.** G.S. 143-215.57 reads as rewritten:

50 "**§ 143-215.57. Procedures in issuing permits.**

51 ...

1 (b) In prescribing standards and requirements for the issuance of permits under this Part
2 and in issuing permits, local governments shall proceed as in the case of an ordinance for the
3 better government of the county or city as the case may be. ~~A city may exercise the powers
4 granted in this Part not only within its corporate boundaries but also within the area of its
5 extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any
6 place within the county that is outside the zoning jurisdiction of a city in the county. If a city
7 does not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction,
8 the county may exercise the powers granted in this Part in the city's extraterritorial zoning
9 jurisdiction. The county may regulate territory within the zoning jurisdiction of any city whose
10 governing body, by resolution, agrees to the regulation. The governing body of a city may,
11 upon one year's written notice, withdraw its approval of the county regulations, and those
12 regulations shall have no further effect within the city's jurisdiction.~~ Local government
13 jurisdiction for these ordinances shall be as specified in Article 2 of Chapter 160D of the
14 General Statutes. Article 4 of Chapter 160D of the General Statutes shall apply to the
15 administration, enforcement, and appeals regarding these ordinances.

16 (c) ~~The local governing body is hereby empowered to adopt regulations it may deem
17 necessary concerning the form, time, and manner of submission of applications for permits
18 under this Part. These regulations may provide for the issuance of permits under this Part by the
19 local governing body or by an agency designated by the local governing body, as prescribed by
20 the governing body. Every final decision granting or denying a permit under this Part shall be
21 subject to review by the superior court of the county, with the right of jury trial at the election
22 of the party seeking review. The time and manner of election of a jury trial shall be governed
23 by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an
24 appeal, no action shall be taken that would be unlawful in the absence of a permit issued under
25 this Part."~~

26 **SECTION 4.9.** G.S. 143-215.58 reads as rewritten:

27 **"§ 143-215.58. Violations and penalties.**

28 ...

29 (a) A local government may use all of the remedies available for the enforcement of
30 ordinances under Chapters ~~153A and 160A~~ 153A, 160A, and 160D of the General Statutes to
31 enforce an ordinance adopted pursuant to this Part.

32 (b) Failure to remove any artificial obstruction or enlargement or replacement thereof,
33 that violates this Part or any ordinance adopted (or the provision of any permit issued) under
34 the authority of this Part, shall constitute a separate violation of this Part for each day that the
35 failure continues after written notice from the county board of commissioners or governing
36 body board of a city.

37 (c) In addition to or in lieu of other remedies, the county board of commissioners or
38 governing body board of a city may institute any appropriate action or proceeding to restrain or
39 prevent any violation of this Part or of any ordinance adopted (or of the provisions of any
40 permit issued) under the authority of this Part, or to require any person, firm or corporation that
41 has committed a violation to remove a violating obstruction or restore the conditions existing
42 before the placement of the obstruction."

43 **SECTION 4.10.** G.S. 130A-55(17) reads as rewritten:

44 **"§ 130A-55. Corporate powers.**

45 A sanitary district board shall be a body politic and corporate and may sue and be sued in
46 matters relating to the sanitary district. Notwithstanding any limitation in the petition under
47 G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may
48 exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary
49 district board shall have the following powers:

50 ...

1 (17) For the purpose of promoting and protecting the public health, safety and the
 2 general welfare of the State, a sanitary district board is authorized to
 3 establish as zoning units any portions of the sanitary district not under the
 4 control of the United States or this State or any agency or instrumentality of
 5 either, in accordance with the following:

6 ...

7 b. When a zoning area is established within a sanitary district, the
 8 sanitary district board as to the zoning area shall have all rights,
 9 privileges, powers and duties granted to ~~municipal corporations~~
 10 ~~under Part 3, Article 19, Chapter 160A~~ local governments under
 11 Article 7 of Chapter 160D of the General Statutes. However, the
 12 sanitary district board shall not be required to appoint any zoning
 13 commission or board of adjustment. If neither a zoning commission
 14 nor board of adjustment is appointed, the sanitary district board shall
 15 have all rights.

16"

17 **SECTION 4.11.** G.S. 143-214.5(d) reads as rewritten:

18 "(d) Mandatory Local Programs. – The Department shall assist local governments to
 19 develop water supply watershed protection programs that comply with this section. Local
 20 government compliance programs shall include an implementing local ordinance and shall
 21 provide for maintenance, inspection, and enforcement procedures. As part of its assistance to
 22 local governments, the Commission shall approve and make available a model local water
 23 supply watershed management and protection ordinance. The model management and
 24 protection ordinance adopted by the Commission shall, at a minimum, include as options (i)
 25 controlling development density, (ii) providing for performance-based alternatives to
 26 development density controls that are based on sound engineering principles, and (iii) a
 27 combination of both (i) and (ii). Local governments shall administer and enforce the minimum
 28 management requirements. Every local government that has within its jurisdiction all or a
 29 portion of a water supply watershed shall submit a local water supply watershed management
 30 and protection ordinance to the Commission for approval. Local governments may adopt such
 31 ordinances pursuant to their general police power, power to regulate the subdivision of land,
 32 zoning power, or any combination of such powers. In adopting a local ordinance that imposes
 33 water supply watershed management requirements that are more stringent than those adopted
 34 by the Commission, a ~~county local government~~ must comply with ~~the notice provisions of G.S.~~
 35 ~~153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384.~~ Article
 36 6 of Chapter 160D of the General Statutes. This section shall not be construed to affect the
 37 validity of any local ordinance adopted for the protection of water supply watersheds prior to
 38 completion of the review of the ordinance by the Commission or prior to the assumption by the
 39 Commission of responsibility for a local water supply watershed protection program. Local
 40 governments may create or designate agencies to administer and enforce such programs. The
 41 Commission shall approve a local program only if it determines that the requirements of the
 42 program equal or exceed the minimum statewide water supply watershed management
 43 requirements adopted pursuant to this section."

44 **SECTION 4.12.** G.S. 113A-208 reads as rewritten:

45 "**§ 113A-208. Regulation of mountain ridge construction by counties and cities.**

46 (a) Any county or city may adopt, effective not later than January 1, 1984, and may
 47 enforce an ordinance that regulates the construction of tall buildings or structures on protected
 48 mountain ridges by any person. The ordinance may provide for the issuance of permits to
 49 construct tall buildings on protected mountain ridges, the conditioning of such permits, and the
 50 denial of permits for such construction. Any ordinance adopted hereunder shall be based upon
 51 studies of the mountain ridges within the county, a statement of objectives to be sought by the

1 ordinance, and plans for achieving these objectives. Any such county ordinance shall apply
 2 countywide except as otherwise provided in ~~G.S. 160A-360~~, Article 2 of Chapter 160D of the
 3 General Statutes and any such city ordinance shall apply citywide, to construction of tall
 4 buildings on protected mountain ridges within the city or county, as the case may be.

5 A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an
 6 ordinance eliminating the requirement for an elevation of 3,000 feet, as permitted by
 7 G.S. 113A-206(6).

8 (b) Under the ordinance, permits shall be denied if a permit application (and shall be
 9 revoked if a project) fails to provide for:

10 ...

11 (4) Adequate consideration to protecting the natural beauty of the mountains, as
 12 determined by the local governing ~~body~~.board.

13 ...

14 (f) Any county or city that adopts an ordinance pursuant to this section ~~must hold a~~
 15 ~~public hearing before adopting the ordinance upon the question of adopting the ordinance or of~~
 16 ~~allowing the construction of tall buildings on protected mountain ridges to be governed by G.S.~~
 17 ~~113A-209. The public hearing required by this section shall be held upon at least 10 days'~~
 18 ~~notice in a newspaper of general circulation in the unit adopting the ordinance. Testimony at~~
 19 ~~the hearing shall be recorded and any and all exhibits shall be preserved within the custody of~~
 20 ~~the governing body. The testimony and evidence shall be made available for inspection and~~
 21 ~~scrutiny by any person.~~ shall follow the procedures of Article 6 of Chapter 160D of the General
 22 Statutes.

23 ~~(g) Any resident of a county or city that adopted an ordinance pursuant to this section,~~
 24 ~~or of an adjoining county, may bring a civil action against the ordinance-adopting unit,~~
 25 ~~contesting the ordinance as not meeting the requirements of this section. If the ordinance is~~
 26 ~~found not to meet all of the requirements of this section, the county or city shall be enjoined~~
 27 ~~from enforcing the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this~~
 28 ~~Article authorizes the State of North Carolina or any of its agencies to bring a civil action to~~
 29 ~~contest an ordinance, or for a violation of this Article or of an ordinance adopted pursuant to~~
 30 ~~this Article."~~

31 **SECTION 4.13.** G.S. 113A-211(a) reads as rewritten:

32 "(a) Violations of this Article shall be subject to the same criminal sanctions, civil
 33 penalties and equitable remedies as ~~violations of county ordinances under G.S.~~
 34 ~~153A-123 provided by G.S. 160D-4-4."~~

35 **SECTION 4.14.** G.S. 160A-75 reads as rewritten:

36 "**§ 160A-75. Voting.**

37 No member shall be excused from voting except upon matters involving the consideration
 38 of the member's own financial interest or official conduct or on matters on which the member is
 39 prohibited from voting under ~~G.S. 14-234, 160A-381(d), or 160A-388(e)(2).~~ G.S. 14-234 or
 40 G.S. 160D-1-9. In all other cases except votes taken under ~~G.S. 160A-385,~~ G.S. 160D-6-1, a
 41 failure to vote by a member who is physically present in the council chamber, or who has
 42 withdrawn without being excused by a majority vote of the remaining members present, shall
 43 be recorded as an affirmative vote. The question of the compensation and allowances of
 44 members of the council is not a matter involving a member's own financial interest or official
 45 conduct.

46 An affirmative vote equal to a majority of all the members of the council not excused from
 47 voting on the question in issue, including the mayor's vote in case of an equal division, shall be
 48 required to adopt an ordinance, take any action having the effect of an ordinance, authorize or
 49 commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of
 50 the city. In addition, no ordinance nor any action having the effect of any ordinance may be
 51 finally adopted on the date on which it is introduced except by an affirmative vote equal to or

1 greater than two thirds of all the actual membership of the council, excluding vacant seats and
2 not including the mayor unless the mayor has the right to vote on all questions before the
3 council. For purposes of this section, an ordinance shall be deemed to have been introduced on
4 the date the subject matter is first voted on by the council."

5 **SECTION 5.1.** G.S. 153A-102.1 is repealed.

6 **SECTION 5.2.** G.S. 160A-4.1 is repealed

7 **SECTION 5.3.** G.S. 160A-181.1 is repealed.

8 **SECTION 5.4.** G.S. 153A-143 is repealed.

9 **SECTION 5.5.** G.S. 160A-199 is repealed.

10 **SECTION 5.6.** G.S. 153A-144 is repealed.

11 **SECTION 5.7.** G.S. 160A-201 is repealed.

12 **SECTION 5.8.** G.S. 153A-452 is repealed

13 **SECTION 5.9.** G.S. 153A-455 is repealed.

14 **SECTION 5.10.** Article 3 of Chapter 168 of the General Statutes is repealed.

15 **SECTION 6.** Article 23 of Chapter 153A of the General Statutes is amended by

16 adding the following new sections to read:

17 **"§ 153A-458. Submission of statement concerning improvements.**

18 A county may by ordinance require that when a property owner improves property at a cost
19 of more than two thousand five hundred dollars (\$2,500) but less than five thousand dollars
20 (\$5,000), the property owner must, within 14 days after the completion of the work, submit to
21 the county assessor a statement setting forth the nature of the improvement and the total cost
22 thereof.

23 **"§ 153A-459. Authorization to provide grants.**

24 A county may provide grants to unaffiliated qualified private providers of high-speed
25 Internet access service, as that term is defined in G.S. 160A-340(4), for the purpose of
26 expanding service in unserved areas for economic development in the county. The grants shall
27 be awarded on a technology neutral basis, shall be open to qualified applicants, and may
28 require matching funds by the private provider. A county shall seek and consider request for
29 proposals from qualified private providers within the county prior to awarding a broadband
30 grant and shall use reasonable means to ensure that potential applicants are made aware of the
31 grant, including, at a minimum, compliance with the notice procedures set forth in
32 G.S. 160A-340.6(c). The county shall use only unrestricted general fund revenue for the grants.
33 For the purposes of this section, a qualified private provider is a private provider of high-speed
34 Internet access service in the State prior to the issuance of the grant proposal. Nothing in this
35 section authorizes a county to provide high-speed Internet broadband service."

36 **SECTION 7.** If any provision of this act or its application is held invalid, the
37 invalidity does not affect other provisions or applications of this act that can be given effect
38 without the invalid provisions or application, and to this end, the provisions of this act are
39 severable.

40 **SECTION 8.1.** Any otherwise valid permit or development approval made prior to
41 January 1, 2019, shall not be invalid based on inconsistency with the provisions of this act. The
42 validity of any plan adopted prior to January 1, 2019, is not affected by a failure to comply with
43 the procedural requirements of G.S. 160D-5-1(b).

44 **SECTION 8.2.** Any special use district or conditional use district zoning district
45 that is valid and in effect as of January 1, 2019, shall be deemed a conditional zoning district
46 consistent with the terms of this act and the special or conditional use permits issued
47 concurrently with establishment of those districts shall be valid as specified in Section 8.1 of
48 this act. Any valid "conditional use permit" issued prior to January 1, 2019, shall be deemed a
49 "special use permit" consistent with the provisions of this act.

1 **SECTION 8.3.** Any local government that has adopted zoning regulations but that
2 has not adopted a comprehensive plan shall adopt such plan no later than December 31, 2019,
3 in order to retain the authority to adopt and apply zoning regulations.

4 **SECTION 9.1.** G.S. 160D-6-5, as enacted by Section 3 of this act, reads as
5 rewritten:

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

7 (a) Plan Consistency. – When adopting or rejecting any zoning text or map amendment,
8 the governing board shall approve a statement describing whether its action is consistent or
9 inconsistent with an adopted comprehensive plan ~~and any other applicable adopted plan and~~
10 ~~briefly explain why the board considers the action taken to be reasonable and in the public~~
11 ~~interest. That plan.~~ If the amendment is adopted and the action was deemed inconsistent with
12 the adopted plan, the zoning amendment shall be deemed an amendment to the plan and no
13 additional request or application for a plan amendment shall be required. In such instances, the
14 statement shall also explain the change in conditions the governing board took into account in
15 making the zoning amendment to meet the development needs of the community. The
16 statement is not subject to judicial review. If a zoning map amendment qualifies as a
17 "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement describing plan
18 consistency may address the overall rezoning and describe how the analysis and polices in the
19 relevant adopted plans were considered in the action taken.

20 (b) Additional Reasonableness Statement for Rezoning. – When adopting or rejecting
21 any petition for a zoning map amendment, a statement ~~analyzing~~ briefly explaining the
22 reasonableness of the proposed rezoning shall be approved by the governing board. This
23 statement of reasonableness may consider, among other factors, (i) the size, physical
24 conditions, and other attributes of the tract; (ii) the benefits and detriment to the landowner, the
25 neighbors, and the surrounding community; ~~and~~ (iii) the relationship between the current actual
26 and permissible development on the tract and adjoining areas and the development that would
27 be permissible under the proposed ~~amendment.~~ amendment; and (iv) why the action taken is in
28 the public interest. If a zoning map amendment qualifies as a "large-scale rezoning" under
29 G.S. 160D-6-2(b), the governing board statement on reasonableness may address the overall
30 rezoning.

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

33 **SECTION 9.2.** G.S. 160D-10-1(c), as enacted by Section 3 of this act, reads as
34 rewritten:

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

43 **SECTION 9.3.** G.S. 160D-8-2, as enacted by Section 3 of this act, reads as
44 rewritten:

45 "**§ 160D-8-2. Applicability.**

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

1 ...
2 (5) The division of a tract into parcels in accordance with the terms of a
3 probated will or in accordance with intestate succession under Chapter 29 of
4 the General Statutes.

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

7 (c) The county may require only a plat for recordation for the division of a tract or
8 parcel of land in single ownership if all of the following criteria are met:

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

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

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

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

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

16 a. Any lot dimension size requirements of the applicable land-use
17 regulations, if any.

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

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

21 **SECTION 9.4.** If this act becomes law in 2017, it is the intent of the General
22 Assembly that legislation in other acts enacted in the 2017 Regular Session of the 2017 General
23 Assembly that affects statutes repealed and replaced by similar provisions in Chapter 160D of
24 the General Statutes, as enacted by this act, also be incorporated into Chapter 160D of the
25 General Statutes. Such other legislation includes, if so enacted, the following bills introduced in
26 the 2017 Regular Session of the 2017 General Assembly: Senate Bill 615, House Bill 158,
27 House Bill 252, House Bill 310, House Bill 376, House Bill 457, House Bill 530, House Bill
28 581, and House Bill 794. The North Carolina General Statutes Commission shall study the need
29 for legislation to accomplish this intent and shall report its findings and recommendations,
30 including any legislative proposals, to the 2018 Regular Session of the 2017 General Assembly.

31 **SECTION 10.** Sections 9.4 and 10 of this act are effective when they become law.
32 The remainder of this act becomes effective January 1, 2019, and applies to local government
33 development regulation decisions made on or after that date. This act clarifies and restates the
34 intent of existing law and applies to ordinances adopted before, on, and after the effective date.