

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 914

Short Title: Modernize City/County Planning.

(Public)

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Sponsors: Senator Clodfelter.

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Referred to: Judiciary I.

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April 3, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY, SIMPLIFY, AND MODERNIZE CITY AND COUNTY  
3 PLANNING AND LAND-USE MANAGEMENT AUTHORITY.

4 The General Assembly of North Carolina enacts:

5  
6 **PART I. GENERAL PROVISIONS.**

7 **SECTION 1.** G.S. 160A-360 reads as rewritten:

8 **"§ 160A-360. Territorial jurisdiction.**

9 (a) All of the powers granted by this Article may be exercised by any city within  
10 its corporate limits. In addition, any city may exercise these powers within a defined  
11 area extending not more than one mile beyond its limits. ~~With the approval of the board  
12 or boards of county commissioners with jurisdiction over the area, a~~ city of 10,000 or  
13 more population but less than 25,000 may exercise these powers over an area extending  
14 not more than two miles beyond its limits and a city of 25,000 or more population may  
15 exercise these powers over an area extending not more than three miles beyond its  
16 limits. ~~The boundaries of the city's extraterritorial jurisdiction shall be the same for all  
17 powers conferred in this Article. No city may exercise extraterritorially any power  
18 conferred by this Article that it is not exercising within its corporate limits. In  
19 determining the population of a city for the purposes of this Article, the city council and  
20 the board of county commissioners may use the most recent annual estimate of  
21 population as certified by the Secretary of the North Carolina Department of  
22 Administration.~~

23 The boundaries of the city's extraterritorial jurisdiction shall be the same for all  
24 powers conferred in this Article. No city may exercise extraterritorially any power  
25 conferred by this Article that it is not exercising within its corporate limits. Any  
26 regulatory power authorized by this Article that is exercised throughout the entirety of a  
27 city's primary corporate limits must also be exercised throughout the entirety of the  
28 extraterritorial area.

1 (a1) Any municipality planning to exercise extraterritorial jurisdiction under this  
2 Article shall notify the owners of all parcels of land proposed for addition to the area of  
3 extraterritorial jurisdiction, ~~as shown on the county tax records. The notice shall be sent~~  
4 ~~by first-class mail to the last addresses listed for affected property owners in the county~~  
5 ~~tax records.~~ jurisdiction. The notice shall inform the landowner of the effect of the  
6 extension of extraterritorial jurisdiction, of the landowner's right to participate in a  
7 public hearing prior to adoption of any ordinance extending the area of extraterritorial  
8 jurisdiction, ~~as provided in G.S. 160A-364,~~ and the right of all residents of the area to  
9 apply to the board of county commissioners to serve as a representative on the planning  
10 agency and the board of ~~adjustment, as provided in G.S. 160A-362.~~ adjustment. The  
11 notice shall be mailed ~~at least four weeks prior to the public hearing.~~ in the same  
12 manner and schedule as provided in G.S. 160A-384(a) and may be combined with that  
13 mailing. The person or persons mailing the notices shall certify to the city council that  
14 the notices were sent by first-class mail, and the certificate shall be deemed conclusive  
15 in the absence of fraud.

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

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

33 (d) If a city fails to adopt an ordinance specifying the boundaries of its  
34 extraterritorial jurisdiction, the county of which it is a part shall be authorized to  
35 exercise the powers granted by this Article in any area beyond the city's corporate  
36 limits. The county may also, on request of the city council, exercise any or all these  
37 powers in any or all areas lying within the city's corporate limits or within the city's  
38 specified area of extraterritorial jurisdiction.

39 (e) ~~No city may hereafter extend its extraterritorial powers under this Article into~~  
40 ~~any area for which the county at that time has adopted and is enforcing a zoning~~  
41 ~~ordinance and subdivision regulations and within which it is enforcing the State~~  
42 ~~Building Code. However, the city may do so where the county is not exercising all three~~  
43 ~~of these powers, or when the city and the county have agreed upon the area within~~  
44 ~~which each will exercise the powers conferred by this Article. A city may not extend its~~

1 extraterritorial jurisdiction either (i) beyond one mile from its primary corporate limits  
2 or (ii) into any area in which the county is already exercising county zoning and  
3 subdivision authority without the approval of the affected county.

4 (f) When a city annexes, or a new city is incorporated in, or a city extends its  
5 jurisdiction to include, ~~an area that is currently being regulated by the county, the area,~~  
6 any county regulations and powers of enforcement previously in effect shall remain in  
7 effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has  
8 elapsed following the annexation, extension or incorporation, whichever is sooner.  
9 ~~During this period the A~~ city may hold provide public notices, conduct hearings and  
10 take any other measures that may be required in order to adopt and apply its regulations  
11 for the area. area prior to the effective date of its assumption of jurisdiction, provided  
12 that any action taken contingent upon assumption of jurisdiction shall not take effect  
13 until jurisdiction is secured.

14 (f1) When a city relinquishes jurisdiction over an area that it is regulating under  
15 this Article to a county, the city regulations and powers of enforcement shall remain in  
16 effect until (i) the county has adopted this regulation or (ii) a period of 60 days has  
17 elapsed following the action by which the city relinquished jurisdiction, whichever is  
18 sooner. ~~During this period the A~~ county may hold provide public notices, conduct  
19 hearings and take other measures that may be required in order to adopt and apply its  
20 regulations for the area. area prior to the effective date of its assumption of jurisdiction;  
21 however, any action taken contingent upon assumption of jurisdiction shall not take  
22 effect until jurisdiction is secured.

23 (g) When a local government is granted powers by this section subject to the  
24 request, approval, or agreement of another local government, the request, approval, or  
25 agreement shall be evidenced by a formally adopted resolution of that government's  
26 legislative body. Any such request, approval, or agreement can be rescinded upon two  
27 years' written notice to the other legislative bodies concerned by repealing the  
28 resolution. The resolution may be modified at any time by mutual agreement of the  
29 legislative bodies concerned.

30 (h) Nothing in this section shall repeal, modify, or amend any local act which  
31 defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or  
32 courses and distances.

33 (i) Whenever a city or county, pursuant to this section, acquires jurisdiction over  
34 a territory that theretofore has been subject to the jurisdiction of another local  
35 government, any person who has acquired vested rights under a permit, certificate, or  
36 other evidence of compliance issued by the local government surrendering jurisdiction  
37 may exercise those rights as if no change of jurisdiction had occurred. The city or  
38 county acquiring jurisdiction may take any action regarding such a permit, certificate, or  
39 other evidence of compliance that could have been taken by the local government  
40 surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided  
41 in this subsection, any building, structure, or other land use in a territory over which a  
42 city or county has acquired jurisdiction is subject to the ordinances and regulations of  
43 the city or county.

44 (j) Repealed by Session Laws 1973, c. 669, s. 1."

1           **SECTION 2.** G.S. 160A-361 reads as rewritten:

2   "**§ 160A-361. Planning agency boards.**

3       (a) Any city may by ordinance create or designate one or more ~~agencies boards~~  
4 ~~or commissions~~ to perform the following duties:

- 5           (1) Make studies of the area within its jurisdiction and surrounding areas;  
6           (2) Determine objectives to be sought in the development of the study  
7           area;  
8           (3) Prepare and adopt plans for achieving these objectives;  
9           (4) Develop and recommend policies, ordinances, administrative  
10          procedures, and other means for carrying out plans in a coordinated  
11          and efficient manner;  
12          (5) Advise the council concerning the use and amendment of means for  
13          carrying out plans;  
14          (6) Exercise any functions in the administration and enforcement of  
15          various means for carrying out plans that the council may direct;  
16          (7) Perform any other related duties that the council may direct.

17       (b) ~~An agency~~ A board or commission created or designated pursuant to this  
18 section may include, but shall not be limited to, one or more of the following:

- 19           (1) A planning board or commission of any size (with not fewer than three  
20           members) or composition deemed appropriate, organized in any  
21           manner deemed appropriate;  
22           (2) A joint planning board created by two or more local governments  
23           pursuant to Article 20, Part 1, of this Chapter."

24           **SECTION 3.** G.S. 160A-362 reads as rewritten:

25   "**§ 160A-362. Extraterritorial representation.**

26       When a city elects to exercise extraterritorial ~~zoning or subdivision regulation~~  
27 powers under G.S. 160A-360, it shall ~~in the by ordinance creating or designating its~~  
28 ~~planning agency or agencies~~ provide a means of proportional representation based on its  
29 planning board and board for adjustment on population for residents of the  
30 extraterritorial area to be regulated. Representation shall be provided by appointing at  
31 least one resident of the ~~entire extraterritorial zoning and subdivision regulation~~ area to  
32 the planning agency and the board of ~~adjustment that makes recommendations or grants~~  
33 ~~relief in these matters.~~ adjustment. ~~For purposes of this section, an additional member~~  
34 ~~must be appointed to the planning agency or board of adjustment to achieve~~  
35 ~~proportional representation only when the population of the entire extraterritorial zoning~~  
36 ~~and subdivision area constitutes a full fraction of the municipality's population divided~~  
37 ~~by the total membership of the planning agency or board of adjustment.~~ Membership of  
38 joint municipal county planning agencies or boards of adjustment may be appointed as  
39 agreed by counties and municipalities. ~~Any advisory board established prior to July 1,~~  
40 ~~1983, to provide the required extraterritorial representation shall constitute compliance~~  
41 ~~with this section until the board is abolished by ordinance of the city.~~ The  
42 extraterritorial representatives on the planning agency board and the board of  
43 adjustment shall be appointed by the board of county commissioners with jurisdiction  
44 over the area. When selecting a new representative to the planning agency board or to

1 the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the  
2 board of county commissioners shall hold a public hearing on the selection. A notice of  
3 the hearing shall be ~~given once a week for two successive calendar weeks in a~~  
4 ~~newspaper having general circulation in the area.~~ published as provided by G.S.  
5 160A-364(a). The board of county commissioners shall select appointees only from  
6 those who apply at or before the public hearing. The county shall make the  
7 appointments within 45 days following the public hearing. Once a city provides  
8 proportional representation, no power available to a city under G.S. 160A-360 shall be  
9 ineffective in its extraterritorial area solely because county appointments have not yet  
10 been made. If there is an insufficient number of qualified residents of the area to meet  
11 membership requirements, the board of county commissioners may appoint as many  
12 other residents of the county as necessary to make up the requisite number. When the  
13 extraterritorial area extends into two or more counties, each board of county  
14 commissioners concerned shall appoint representatives from its portion of the area, as  
15 specified in the ordinance. If a board of county commissioners fails to make these  
16 appointments within 90 days after receiving a resolution from the city council  
17 requesting that they be made, the city council may make them. If the ordinance so  
18 provides, the outside representatives may have equal rights, privileges, and duties with  
19 the other members of the agency-board to which they are appointed, regardless of  
20 whether the matters at issue arise within the city or within the extraterritorial area;  
21 otherwise they shall function only with respect to matters within the extraterritorial  
22 area."

23 **SECTION 4.** G.S. 160A-363 reads as rewritten:

24 "**§ 160A-363. Supplemental powers.**

25 A city or its designated planning agency-board may accept, receive, and disburse in  
26 furtherance of its functions any funds, grants, and services made available by the federal  
27 government and its agencies, the State government and its agencies, any local  
28 government and its agencies, and any private and civic sources. Any city, or its  
29 designated planning agency-board with the concurrence of the council, may enter into  
30 and carry out contracts with the State and federal governments or any agencies thereof  
31 under which financial or other planning assistance is made available to the city and may  
32 agree to and comply with any reasonable conditions that are imposed upon such  
33 assistance.

34 Any city, or its designated planning agency-board with the concurrence of the  
35 council, may enter into and carry out contracts with any other city, county, or regional  
36 council or planning agency under which it agrees to furnish technical planning  
37 assistance to the other local government or planning agency. Any city, or its designated  
38 planning agency-board with the concurrence of its council, may enter into and carry out  
39 contracts with any other city, county, or regional council or planning agency under  
40 which it agrees to pay the other local government or planning agency-board for  
41 technical planning assistance.

42 Any city council is authorized to make any appropriations that may be necessary to  
43 carry out any activities or contracts authorized by this Article or to support, and

1 compensate members of, any planning ~~agency-board~~ that it may create pursuant to this  
2 Article, and to levy taxes for these purposes as a necessary expense."

3 **SECTION 5.** G.S. 160A-364 reads as rewritten:

4 "**§ 160A-364. Procedure for adopting or amending ordinances under Article.**

5 (a) Before adopting or amending any ordinance authorized by this Article, the  
6 city council shall hold a public hearing on it. A notice of the public hearing shall be  
7 given once a week for two successive calendar weeks in a newspaper having general  
8 circulation in the area. The notice shall be published the first time not less than 10 days  
9 nor more than 25 days before the date fixed for the hearing. In computing such period,  
10 the day of publication is not to be included but the day of the hearing shall be included.

11 (b) A city may adopt ordinances providing that notice of public hearings may be  
12 given through electronic means, including, but not limited to, the city's Internet site.  
13 Electronic notice of public hearings may be substituted for the published notice required  
14 by this section but shall not supersede any other law that requires notice by mail to  
15 certain classes of people or the posting of signs on certain property and shall not alter  
16 the publication schedule for any public notice."

17 **SECTION 6.** G.S. 153A-321 reads as rewritten:

18 "**§ 153A-321. Planning ~~agency-boards.~~**

19 A county may by ordinance create or designate one or more ~~agencies-boards or~~  
20 commissions to perform the following duties:

- 21 (1) Make studies of the county and surrounding areas;
- 22 (2) Determine objectives to be sought in the development of the study  
23 area;
- 24 (3) Prepare and adopt plans for achieving these objectives;
- 25 (4) Develop and recommend policies, ordinances, administrative  
26 procedures, and other means for carrying out plans in a coordinated  
27 and efficient manner;
- 28 (5) Advise the board of commissioners concerning the use and amendment  
29 of means for carrying out plans;
- 30 (6) Exercise any functions in the administration and enforcement of  
31 various means for carrying out plans that the board of commissioners  
32 may direct;
- 33 (7) Perform any other related duties that the board of commissioners may  
34 direct.

35 ~~An agency-A board or commission~~ created or designated pursuant to this section  
36 may include but shall not be limited to one or more of the following:

- 37 (1) A planning board or commission of any size (with not fewer than three  
38 members) or composition considered appropriate, organized in any  
39 manner considered appropriate;
- 40 (2) A joint planning board created by two or more local governments  
41 according to the procedures and provisions of Chapter 160A, Article  
42 20, Part 1."

43 **SECTION 7.** G.S. 153A-322 reads as rewritten:

44 "**§ 153A-322. Supplemental powers.**

1 A county or its designated planning ~~agency~~board may accept, receive, and disburse  
2 in furtherance of its functions funds, grants, and services made available by the federal  
3 government or its agencies, the State government or its agencies, any local government  
4 or its agencies, and private or civic sources. A county, or its designated planning ~~agency~~  
5 board with the concurrence of the board of commissioners, may enter into and carry out  
6 contracts with the State or federal governments or any agencies of either under which  
7 financial or other planning assistance is made available to the county and may agree to  
8 and comply with any reasonable conditions that are imposed upon the assistance.

9 A county, or its designated planning ~~agency~~board with the concurrence of the board  
10 of commissioners, may enter into and carry out contracts with any other county, city,  
11 regional council, or planning agency under which it agrees to furnish technical planning  
12 assistance to the other local government or planning agency. A county, or its designated  
13 planning ~~agency~~board with the concurrence of the board of commissioners, may enter  
14 into and carry out contracts with any other county, city, regional council, or planning  
15 ~~agency~~board under which it agrees to pay the other local government or planning  
16 ~~agency~~board for technical planning assistance.

17 A county may make any appropriations that may be necessary to carry out an  
18 activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A,  
19 Article 19 or to support, and compensate members of, any planning agency that it may  
20 create or designate pursuant to this Article."

21 **SECTION 8.** G.S. 153A-323 reads as rewritten:

22 "**§ 153A-323. Procedure for adopting or amending ordinances under this Article**  
23 **and Chapter 160A, Article 19.**

24 (a) Before adopting or amending any ordinance authorized by this Article or  
25 Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the  
26 ordinance or amendment. The board shall cause notice of the hearing to be published  
27 once a week for two successive calendar weeks. The notice shall be published the first  
28 time not less than 10 days nor more than 25 days before the date fixed for the hearing.  
29 In computing such period, the day of publication is not to be included but the day of the  
30 hearing shall be included.

31 (b) A county may adopt ordinances providing that notice of public hearings may  
32 be given through electronic means, including, but not limited to, the county's Internet  
33 site. Such electronic notice of public hearings may be substituted for the published  
34 notice required by this section but shall not supersede any other law that requires notice  
35 by mail to certain classes of people or the posting of signs on certain property and shall  
36 not alter the publication schedule for any public notice."

37  
38 **PART II. SUBDIVISION REGULATION.**

39 **SECTION 9.** G.S. 160A-371 reads as rewritten:

40 "**§ 160A-371. Subdivision regulation.**

41 A city may by ordinance regulate the subdivision of land within its territorial  
42 jurisdiction. In addition to final plat approval, the ordinance may include provision for  
43 review and approval of sketch plans and preliminary plats. The ordinance may be

1 adopted as part of a unified development ordinance or as a separate subdivision  
2 regulation."

3 **SECTION 10.** G.S. 160A-372 reads as rewritten:

4 **"§ 160A-372. Contents and requirements of ordinance.**

5 (a) A subdivision control ordinance may provide for the orderly growth and  
6 development of the city; for the safe and efficient provision of transportation networks,  
7 public utilities, education and recreation space and facilities, and other public and  
8 community needs; for protection of natural resources and open space; for the  
9 coordination of streets and highways streets, highways, and utilities within proposed  
10 subdivisions with existing or planned streets and highways and with other public  
11 facilities; ~~for the dedication or reservation of recreation areas serving residents of the~~  
12 ~~immediate neighborhood within the subdivision or, alternatively, for provision of funds~~  
13 ~~to be used to acquire recreation areas serving residents of the development or~~  
14 ~~subdivision or more than one subdivision or development within the immediate area,~~  
15 ~~and rights of way or easements for street and utility purposes including the dedication~~  
16 ~~of rights of way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution~~  
17 of population and traffic in a manner that will avoid congestion and overcrowding and  
18 will create conditions essential to that promote public health, safety, and the general  
19 welfare.

20 (b) The ordinance may require that a plat be prepared, approved, and recorded  
21 pursuant to its provisions whenever any subdivision of land takes place. The ordinance  
22 may include requirements that ~~the final plat~~ plats show sufficient data to determine  
23 readily and reproduce accurately on the ground the location, bearing, and length of  
24 every street and alley line, lot line, easement boundary line, and other property  
25 boundaries, including the radius and other data for curved property lines, to an  
26 appropriate accuracy and in conformance with good surveying practice.

27 ~~The ordinance may provide for the more orderly development of subdivisions by~~  
28 ~~requiring the construction of community service facilities in accordance with municipal~~  
29 ~~policies and standards and, to assure compliance with these requirements, the ordinance~~  
30 ~~may provide for the posting of bond or any other method that will offer guarantee of~~  
31 ~~compliance.~~

32 ~~The ordinance may provide for the reservation of school sites in accordance with~~  
33 ~~comprehensive land use plans approved by the council or the planning agency. In order~~  
34 ~~for this authorization to become effective, before approving such plans the council or~~  
35 ~~planning agency and the board of education with jurisdiction over the area shall jointly~~  
36 ~~determine the specific location and size of any school sites to be reserved, which~~  
37 ~~information shall appear in the comprehensive land use plan. Whenever a subdivision is~~  
38 ~~submitted for approval which includes part or all of a school site to be reserved under~~  
39 ~~the plan, the council or planning agency shall immediately notify the board of education~~  
40 ~~and the board shall promptly decide whether it still wishes the site to be reserved. If the~~  
41 ~~board of education does not wish to reserve the site, it shall so notify the council or~~  
42 ~~planning agency and no site shall be reserved. If the board does wish to reserve the site,~~  
43 ~~the subdivision shall not be approved without such reservation. The board of education~~  
44 ~~shall then have 18 months beginning on the date of final approval of the subdivision~~



1 within which to acquire the site by purchase or by initiating condemnation proceedings.  
2 If the board of education has not purchased or begun proceedings to condemn the site  
3 within 18 months, the subdivider may treat the land as freed of the reservation.

4 The ordinance may require that a plat be prepared, approved, and recorded pursuant  
5 to its provisions whenever any subdivision of land takes place.

6 The ordinance may provide that a developer may provide funds to the city whereby  
7 the city may acquire recreational land or areas to serve the development or subdivision,  
8 including the purchase of land which may be used to serve more than one subdivision or  
9 development within the immediate area. All funds received by the city pursuant to this  
10 paragraph shall be used only for the acquisition or development of recreation, park, or  
11 open space sites. Any formula enacted to determine the amount of funds that are to be  
12 provided under this paragraph shall be based on the value of the development or  
13 subdivision for property tax purposes. The ordinance may allow a combination or  
14 partial payment of funds and partial dedication of land when the governing body of the  
15 city determines that this combination is in the best interests of the citizens of the area to  
16 be served.

17 The ordinance may provide that in lieu of required street construction, a developer  
18 may be required to provide funds that the city may use for the construction of roads to  
19 serve the occupants, residents, or invitees of the subdivision or development and these  
20 funds may be used for roads which serve more than one subdivision or development  
21 within the area. All funds received by the city pursuant to this paragraph shall be used  
22 only for development of roads, including design, land acquisition, and construction.  
23 However, a city may undertake these activities in conjunction with the Department of  
24 Transportation under an agreement between the city and the Department of  
25 Transportation. Any formula adopted to determine the amount of funds the developer is  
26 to pay in lieu of required street construction shall be based on the trips generated from  
27 the subdivision or development. The ordinance may require a combination of partial  
28 payment of funds and partial dedication of constructed streets when the governing body  
29 of the city determines that a combination is in the best interests of the citizens of the  
30 area to be served.

31 (c) The ordinance may require the provision of: (i) utilities, streets, sidewalks,  
32 bikeways, and transit facilities, including the dedication of rights-of-way pursuant to  
33 G.S. 136-66.10 or G.S. 136-66.11; (ii) recreation areas and facilities, open space, and  
34 buffers; and (iii) community service facilities. The ordinance may also require  
35 reservation of school sites. In all instances, the exactions required shall be directly  
36 related to and no greater than an amount roughly proportional to the impacts reasonably  
37 expected to be generated by the proposed development.

38 (d) In order for subdividers to make the provisions authorized by this section, the  
39 ordinance may require the dedication of land or easements, reservation of land for future  
40 acquisition, transfer of land to a homeowners association, nonprofit corporation, or  
41 other appropriate third party, construction of facilities, and payment of fees or any  
42 reasonable combination of these mechanisms. Where land has been reserved for future  
43 acquisition, if the site has not been purchased or appropriate proceedings to condemn

1 the site initiated within 18 months, the subdivider may treat the land as freed of the  
2 reservation.

3 (e) The ordinance may require posting of bonds, letters of credit, or other  
4 performance guarantees to assure successful completion of required improvements."

5 **SECTION 11.** G.S. 160A-373 reads as rewritten:

6 **"§ 160A-373. Ordinance to contain procedure for plat approval; approval**  
7 **prerequisite to plat recordation; statement by owner.**

8 Any subdivision ordinance adopted pursuant to this Part shall contain provisions  
9 setting forth the procedures to be followed in granting or denying approval of a  
10 subdivision plat prior to its registration.

11 The ordinance may provide that final ~~approval of each individual subdivision plat is~~  
12 ~~to be given by~~ decisions on preliminary plats and final plans are to be made by:

13 (1) The city council,

14 (2) The city council on recommendation of a ~~planning agency,~~ designated  
15 body, or

16 (3) A designated ~~planning agency board,~~ technical review committee, or  
17 other designated body.

18 From and after the effective date of a subdivision ordinance that is adopted by the  
19 city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded  
20 until it shall have been submitted to and approved by the council or appropriate agency,  
21 as specified in the subdivision ordinance, and until this approval shall have been entered  
22 on the face of the plat in writing by an authorized representative of the city. The Review  
23 Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located  
24 within the territorial jurisdiction of a city that has not been approved in accordance with  
25 these provisions, nor shall the clerk of superior court order or direct the recording of a  
26 plat if the recording would be in conflict with this section."

27 **SECTION 12.** G.S. 160A-375 reads as rewritten:

28 **"§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

29 If a city adopts an ordinance regulating the subdivision of land as authorized herein,  
30 any person who, being the owner or agent of the owner of any land located within the  
31 jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or  
32 transfers or sells land by reference to, exhibition of, or any other use of a plat showing a  
33 subdivision of the land before the plat has been properly approved under such ordinance  
34 and recorded in the office of the appropriate register of deeds, shall be guilty of a Class  
35 1 misdemeanor. The description by metes and bounds in the instrument of transfer or  
36 other document used in the process of selling or transferring land shall not exempt the  
37 transaction from this penalty. The city may bring an action for injunction of any illegal  
38 subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate  
39 findings, issue an injunction and order requiring the offending party to comply with the  
40 subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be  
41 denied for lots that have been illegally subdivided. In addition to other remedies, a city  
42 may institute any appropriate action or proceedings to prevent the unlawful subdivision  
43 of land, to restrain, correct, or abate the violation, or to prevent any illegal act or  
44 conduct."

1           **SECTION 13.** G.S. 160A-376 reads as rewritten:

2   "**§ 160A-376. Definition.**

3       For the purpose of this Part, 'subdivision' means all divisions of a tract or parcel of  
4 land into ~~two or more~~ lots, building sites, or other divisions for the purpose of sale or  
5 building development (whether immediate or future) and shall include all divisions of  
6 land involving the dedication of a new street or a change in existing streets; but the  
7 following shall not be included within this definition nor be subject to the regulations  
8 authorized by this Part:

- 9           (1) The combination or recombination of portions of previously  
10 subdivided and recorded lots where the total number of lots is not  
11 increased and the resultant lots and supporting infrastructure  
12 (including streets, utilities, open space, and recreation areas) are equal  
13 to or exceed the standards of the municipality as shown in its  
14 subdivision regulations;
- 15           (2) The division of land into parcels greater than 10 acres where no street  
16 right-of-way dedication is involved;
- 17           (3) The public acquisition by purchase of strips of land for the widening  
18 or opening of streets; and
- 19           (4) The division of a tract in single ownership whose entire area is no  
20 greater than two acres into not more than three lots, where no street  
21 right-of-way dedication is involved and where the resultant lots and  
22 supporting infrastructure (including streets, utilities, open space, and  
23 recreation areas) are equal to or exceed the standards of the  
24 municipality, as shown in its subdivision regulations.

25       A city may adopt additional exemptions from its subdivision definition and may  
26 provide for expedited review of specified classes of subdivisions."

27           **SECTION 14.** G.S. 153A-330 reads as rewritten:

28   "**§ 153A-330. Subdivision regulation.**

29       A county may by ordinance regulate the subdivision of land within its territorial  
30 jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance  
31 that applies only to one or more designated portions of its territorial jurisdiction, it may  
32 adopt subdivision regulations that apply only within the areas so zoned and need not  
33 regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat  
34 approval, the ordinance may include provision for review and approval of sketch plans  
35 and preliminary plats. The ordinance may be adopted as part of a unified development  
36 ordinance or as a separate subdivision regulation."

37           **SECTION 15.** G.S. 153A-331 reads as rewritten:

38   "**§ 153A-331. Contents and requirements of ordinance.**

39       (a) A subdivision control ordinance may provide for the orderly growth and  
40 development of the county; for the safe and efficient provision of transportation  
41 networks, public utilities, education and recreation space and facilities, and other public  
42 and community needs; for protection of natural resources and open space; for the  
43 coordination of ~~streets and highways~~ streets, highways, and utilities within proposed  
44 subdivisions with existing or planned streets and highways and with other public

1 facilities; for the dedication or reservation of recreation areas serving residents of the  
2 immediate neighborhood within the subdivision and of rights of way or easements for  
3 street and utility purposes including the dedication of rights of way pursuant to G.S.  
4 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a  
5 manner that will avoid congestion and overcrowding and will create conditions that  
6 promote essential to public health, safety, and the general welfare.

7 (b) The ordinance may require that a plat be prepared, approved, and recorded  
8 pursuant to its provisions whenever any subdivision of land takes place. The ordinance  
9 may include requirements that the final plat show sufficient data to determine readily  
10 and reproduce accurately on the ground the location, bearing, and length of every street  
11 and alley line, lot line, easement boundary line, and other property boundaries,  
12 including the radius and other data for curved property lines, to an appropriate accuracy  
13 and in conformity with good surveying practice. ~~A subdivision control ordinance may~~  
14 ~~provide that a developer may provide funds to the county whereby the county may~~  
15 ~~acquire recreational land or areas to serve the development or subdivision, including the~~  
16 ~~purchase of land which may be used to serve more than one subdivision or development~~  
17 ~~within the immediate area.~~

18 ~~The ordinance may provide that in lieu of required street construction, a developer~~  
19 ~~may provide funds to be used for the development of roads to serve the occupants,~~  
20 ~~residents, or invitees of the subdivision or development. All funds received by the~~  
21 ~~county under this section shall be transferred to the municipality to be used solely for~~  
22 ~~the development of roads, including design, land acquisition, and construction. Any~~  
23 ~~municipality receiving funds from a county under this section is authorized to expend~~  
24 ~~such funds outside its corporate limits for the purposes specified in the agreement~~  
25 ~~between the municipality and the county. Any formula adopted to determine the amount~~  
26 ~~of funds the developer is to pay in lieu of required street construction shall be based on~~  
27 ~~the trips generated from the subdivision or development. The ordinance may require a~~  
28 ~~combination of partial payment of funds and partial dedication of constructed streets~~  
29 ~~when the governing body of the county determines that a combination is in the best~~  
30 ~~interest of the citizens of the area to be served.~~

31 ~~The ordinance may provide for the more orderly development of subdivisions by~~  
32 ~~requiring the construction of community service facilities in accordance with county~~  
33 ~~policies and standards, and, to assure compliance with these requirements, the ordinance~~  
34 ~~may provide for the posting of bond or any other method that will offer guarantee of~~  
35 ~~compliance.~~

36 ~~The ordinance may provide for the reservation of school sites in accordance with~~  
37 ~~comprehensive land use plans approved by the board of commissioners or the planning~~  
38 ~~agency. For the authorization to reserve school sites to be effective, the board of~~  
39 ~~commissioners or planning agency, before approving a comprehensive land use plan,~~  
40 ~~shall determine jointly with the board of education with jurisdiction over the area the~~  
41 ~~specific location and size of each school site to be reserved, and this information shall~~  
42 ~~appear in the plan. Whenever a subdivision that includes part or all of a school site to be~~  
43 ~~reserved under the plan is submitted for approval, the board of commissioners or the~~  
44 ~~planning agency shall immediately notify the board of education. That board shall~~

1 promptly decide whether it still wishes the site to be reserved and shall notify the board  
2 of commissioners or planning agency of its decision. If the board of education does not  
3 wish the site to be reserved, no site may be reserved. If the board of education does wish  
4 the site to be reserved, the subdivision may not be approved without the reservation.  
5 The board of education must acquire the site within 18 months after the date the site is  
6 reserved, either by purchase or by exercise of the power of eminent domain. If the board  
7 of education has not purchased the site or begun proceedings to condemn the site within  
8 the 18 months, the subdivider may treat the land as freed of the reservation.

9 The ordinance may require that a plat be prepared, approved, and recorded pursuant  
10 to its provisions whenever a subdivision of land takes place.

11 (c) The ordinance may require the provision of: (i) utilities, streets, sidewalks,  
12 bikeways, and transit facilities, including the dedication of rights-of-way pursuant to  
13 G.S. 136-66.10 or G.S. 136-66.11; (ii) recreation areas and facilities, open space, and  
14 buffers; (iii) community service facilities. The ordinance may also require reservation of  
15 school sites. In all instances the exactions required shall be directly related to and no  
16 greater than an amount roughly proportional to the impacts reasonably expected to be  
17 generated by the proposed development.

18 (d) In order for subdividers to make the provisions authorized by this section,  
19 the ordinance may require the dedication of land or easements, reservation of land for  
20 future acquisition, transfer of land to a homeowners association, nonprofit corporation,  
21 or other appropriate third party, construction of facilities, and payment of fees or any  
22 reasonable combination of these mechanisms. Where land has been reserved for future  
23 acquisition, if the site has not been purchased or appropriate proceedings to condemn  
24 the site initiated within 18 months, the subdivider may treat the land as freed of the  
25 reservation.

26 Any funds received by the county for streets shall be transferred to the municipality  
27 to be used solely for the development of roads, including design, land acquisition, and  
28 construction. Any municipality receiving funds from a county under this section is  
29 authorized to expend the funds outside its corporate limits for the purposes specified in  
30 the agreement between the municipality and the county.

31 (e) The ordinance may require posting of bonds, letters of credit, or other  
32 performance guarantees to assure successful completion of required improvements."

33 **SECTION 16.** G.S. 153A-332 reads as rewritten:

34 **"§ 153A-332. Ordinance to contain procedure for plat approval; approval**  
35 **prerequisite to plat recordation; statement by owner.**

36 A subdivision ordinance adopted pursuant to this Part shall contain provisions  
37 setting forth the procedures to be followed in granting or denying approval of a  
38 subdivision plat before its registration.

39 The ordinance shall provide that the following agencies be given an opportunity to  
40 make recommendations concerning an individual subdivision plat before the plat is  
41 approved:

- 42 (1) The district highway engineer as to proposed State streets, State  
43 highways, and related drainage systems;

- 1 (2) The county health director or local public utility, as appropriate, as to  
2 proposed water or sewerage systems;
- 3 (3) Any other agency or official designated by the board of  
4 commissioners.

5 The ordinance may provide that final ~~approval of each individual subdivision plat is~~  
6 ~~to be given by:~~ decisions on preliminary plats and final plats are to be made by:

- 7 (1) The board of commissioners,  
8 (2) The board of commissioners on recommendation of a ~~planning agency,~~  
9 ~~designated body,~~ or  
10 (3) A designated planning agency board, technical review committee, or  
11 other designated body.

12 From the effective date of a subdivision ordinance that is adopted by the county, no  
13 subdivision plat of land within the county's jurisdiction may be filed or recorded until it  
14 has been submitted to and approved by the appropriate board or agency, as specified in  
15 the subdivision ordinance, and until this approval is entered in writing on the face of the  
16 plat by an authorized representative of the county. The Review Officer, pursuant to G.S.  
17 47-30.2, shall not certify a plat of a subdivision of land located within the territorial  
18 jurisdiction of the county that has not been approved in accordance with these  
19 provisions, and the clerk of superior court may not order or direct the recording of a plat  
20 if the recording would be in conflict with this section."

21 **SECTION 17.** G.S. 153A-334 reads as rewritten:

22 **"§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

23 If a person who is the owner or the agent of the owner of any land located within the  
24 territorial jurisdiction of a county that has adopted a subdivision regulation ordinance  
25 subdivides his land in violation of the ordinance or transfers or sells land by reference  
26 to, exhibition of, or any other use of a plat showing a subdivision of the land before the  
27 plat has been properly approved under the ordinance and recorded in the office of the  
28 appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by  
29 metes and bounds in the instrument of transfer or other document used in the process of  
30 selling or transferring land does not exempt the transaction from this penalty. The  
31 county may bring an action for injunction of any illegal subdivision, transfer,  
32 conveyance, or sale of land, and the court shall, upon appropriate findings, issue an  
33 injunction and order requiring the offending party to comply with the subdivision  
34 ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots  
35 that have been illegally subdivided. In addition to other remedies, a city may institute  
36 any appropriate action or proceedings to prevent the unlawful subdivision of land, to  
37 restrain, correct, or abate the violation, or to prevent any illegal act or conduct."

38 **SECTION 18.** G.S. 153A-335 reads as rewritten:

39 **"§ 153A-335. 'Subdivision' defined.**

40 For purposes of this Part, 'subdivision' means all divisions of a tract or parcel of land  
41 into ~~two or more~~ lots, building sites, or other divisions for the purpose of sale or  
42 building development (whether immediate or future) and includes all division of land  
43 involving the dedication of a new street or a change in existing streets; however, the

1 following is not included within this definition and is not subject to any regulations  
2 enacted pursuant to this Part:

- 3 (1) The combination or recombination of portions of previously  
4 subdivided and recorded lots if the total number of lots is not increased  
5 and the resultant lots and supporting infrastructure (including streets,  
6 utilities, open space, and recreation areas) are equal to or exceed the  
7 standards of the county as shown in its subdivision regulations;
- 8 (2) The division of land into parcels greater than 10 acres if no street  
9 right-of-way dedication is involved;
- 10 (3) The public acquisition by purchase of strips of land for widening or  
11 opening streets; and
- 12 (4) The division of a tract in single ownership the entire area of which is  
13 no greater than two acres into not more than three lots, if no street  
14 right-of-way dedication is involved and if the resultant lots and  
15 supporting infrastructure (including streets, utilities, open space, and  
16 recreation areas) are equal to or exceed the standards of the county as  
17 shown by its subdivision regulations.

18 A county may adopt additional exemptions from its subdivision definition and may  
19 provide for expedited review of specified classes of subdivisions."  
20

### 21 PART III. ZONING REGULATION.

22 SECTION 19. G.S. 160A-381 reads as rewritten:

#### 23 "§ 160A-381. Grant of power.

24 (a) For the purpose of promoting health, safety, morals, or the general welfare of  
25 the community, any city may adopt zoning ordinances. Zoning ordinances may be  
26 adopted as part of a unified development ordinance or as a separate ordinance. A zoning  
27 ordinance may regulate and restrict the height, number of stories and the type, form, and  
28 size of buildings and other structures, the percentage of lots that may be occupied, the  
29 size of yards, courts and other open spaces, the density of population, and the location  
30 location, maintenance, and use of buildings, structures and land for trade, industry,  
31 residence or other purposes and to structures, and land, and the maintenance or  
32 alteration of natural features. The ordinance may provide density credits or severable  
33 development rights for dedicated rights of way pursuant to G.S. 136-66.10 or G.S.  
34 136-66.11. and for transferable development rights.

35 (b) Expired.

36 (b1) These regulations may provide that a board of adjustment may determine and  
37 vary their application in harmony with their general purpose and intent and in  
38 accordance with general or specific rules therein contained. The regulations may also  
39 provide that the board of ~~adjustment~~ adjustment, the planning board, or the city council  
40 may issue special use permits or conditional use permits in the classes of cases or  
41 situations and in accordance with the principles, conditions, safeguards, and procedures  
42 specified therein and may impose reasonable and appropriate conditions and safeguards  
43 upon these permits. When deciding special use permits or conditional use permits, the  
44 city council shall follow the procedures for boards of adjustment except that no vote

1 greater than a majority vote shall be required for the city council to issue such permits.  
2 Every such decision of the city council shall be subject to review by the superior court  
3 in the same manner as is set forth in G.S. 160A-388(e) for review of decisions of the  
4 board of adjustment.

5 ~~(c) Where appropriate, such conditions may include requirements that street and~~  
6 ~~utility rights of way be dedicated to the public and that provision be made of~~  
7 ~~recreational space and facilities. When issuing or denying special use permits or~~  
8 ~~conditional use permits, the city council shall follow the procedures for boards of~~  
9 ~~adjustment except that no vote greater than a majority vote shall be required for the city~~  
10 ~~council to issue such permits, and every such decision of the city council shall be~~  
11 ~~subject to review by the superior court by proceedings in the nature of certiorari. Any~~  
12 ~~petition for review by the superior court shall be filed with the clerk of superior court~~  
13 ~~within 30 days after the decision of the city council is filed in such office as the~~  
14 ~~ordinance specifies, or after a written copy thereof is delivered to every aggrieved party~~  
15 ~~who has filed a written request for such copy with the clerk at the time of the hearing of~~  
16 ~~the case, whichever is later. The decision of the city council may be delivered to the~~  
17 ~~aggrieved party either by personal service or by registered mail or certified mail return~~  
18 ~~receipt requested. The ordinance may include requirements that provisions be made to~~  
19 ~~address the impacts generated by the proposed development. The provisions may~~  
20 ~~include the dedication of land, reservation of land for future acquisition, transfer of land~~  
21 ~~to a homeowners association, nonprofit corporation, or other appropriate third party, and~~  
22 ~~construction of facilities. The ordinance may require posting of bonds, letters of credit,~~  
23 ~~or other performance guarantees to assure successful completion of required~~  
24 ~~improvements. Any impacts reasonably related to the proposed development may be~~  
25 ~~addressed, including, but not limited to, (i) roads, sidewalks, bikeways, transit, and~~  
26 ~~other transportation needs; (ii) water, wastewater, stormwater, drainage, and other utility~~  
27 ~~needs; (iii) recreation and open space; (iv) protection of critical natural areas and natural~~  
28 ~~hazard areas; and (v) public education needs. In all instances the total exactions required~~  
29 ~~shall be no greater than an amount roughly proportional to the impacts reasonably~~  
30 ~~expected to be generated by the proposed development.~~

31 (d) Cities may adopt temporary development moratoria of reasonable duration. A  
32 development moratorium with a duration of 60 days or any shorter period may be  
33 adopted without the necessity of a public hearing and notice that would otherwise be  
34 required pursuant to G.S. 160A-364. A development moratorium with a duration of 61  
35 days or longer, and any extension of a moratorium adopted without a hearing to a total  
36 duration of more than 60 days, is subject to the notice and hearing requirements of G.S.  
37 160A-364. Absent an imminent threat to public health and safety, a development  
38 moratorium adopted pursuant to this section shall not apply to any project for which a  
39 valid building permit issued pursuant to G.S. 160A-417 is outstanding, to development  
40 set forth in a site specific or phased development plan approved pursuant to G.S. 160A-  
41 385.1, or to development for which substantial expenditures have already been made in  
42 good faith reliance on a prior valid zoning approval.

43 Any ordinance establishing a development moratorium must expressly include each  
44 of the following:



- 1           (1) A clear statement of the problems or conditions necessitating the  
2           moratorium.
- 3           (2) A clear statement of the development approvals subject to the  
4           moratorium and how a moratorium on those approvals will address the  
5           problems or conditions leading to imposition of the moratorium.
- 6           (3) An express date for termination of the moratorium and a statement  
7           setting forth why that duration is reasonably necessary to address the  
8           problems or conditions leading to imposition of the moratorium.
- 9           (4) A clear statement of the actions proposed to be taken by the city during  
10           the duration of the moratorium to address the problems or conditions  
11           leading to imposition of the moratorium."

12           **SECTION 20.** G.S. 160A-382 reads as rewritten:

13   "**§ 160A-382. Districts.**

14       (a) For any or all these purposes, the city may divide its territorial jurisdiction  
15 into districts of any number, shape, and area that may be deemed best suited to carry out  
16 the purposes of this Part; and within those districts it may regulate and restrict the  
17 erection, construction, reconstruction, alteration, repair or use of buildings, structures, or  
18 land. Such districts may include, but shall not be limited to, general use districts, in  
19 which a variety of uses are permissible in accordance with general standards; overlay  
20 districts, in which additional requirements are imposed on certain properties within one  
21 or more underlying general or special use districts; ~~and special use districts or~~  
22 ~~conditional use districts, in which uses are permitted only upon the issuance of a special~~  
23 ~~use permit or a conditional use permit.~~ and conditional zoning districts, in which site  
24 plans and individualized development conditions are imposed.

25       (b) Property may be placed in a ~~special use district or conditional use district~~  
26 only in response to a petition by the owners of all the property to be included. Specific  
27 conditions applicable to these districts may be proposed by the petitioner, the city or its  
28 agencies, or any affected person, but only those conditions mutually approved by the  
29 city and the petitioner may be incorporated into the zoning regulations or permit  
30 requirements. Conditions and site specific standards imposed in a conditional district  
31 shall be limited to those that address the conformance of the development and use of the  
32 site to the comprehensive plan, any other plan officially adopted by the city and city  
33 ordinance, and those that address the impacts reasonably expected to be generated by  
34 development or use of the site.

35       A statement analyzing the reasonableness of the proposed rezoning shall be prepared  
36 for each petition for a rezoning to a conditional district. This statement may be prepared  
37 by the petitioner or by the city, and it shall be completed and available for public  
38 inspection at the time notice is provided for the public hearing on the proposed  
39 rezoning. This statement shall address the consistency of the proposed rezoning with the  
40 comprehensive plan and any other officially adopted plan that is applicable, the  
41 compatibility of the proposed rezoning with the site and surrounding area, and the  
42 benefits and detriments of the proposed rezoning for the land owner, the immediate  
43 neighbors, and the surrounding community. The ordinance may require meetings to be

1 held between the petitioner and neighboring property owners prior to the submittal of a  
2 petition for rezoning to a conditional zoning district.

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

6 **SECTION 21.** G.S. 160A-383 reads as rewritten:

7 "**§ 160A-383. Purposes in view.**

8 Zoning regulations shall be made in accordance with a comprehensive ~~plan and~~  
9 ~~designed to lessen congestion in the streets; to secure safety from fire, panic and other~~  
10 ~~dangers;~~ plan. Prior to adoption of any zoning provision that is not consistent with the  
11 adopted comprehensive plan or any other applicable plan that has been officially  
12 adopted by the city, the governing board shall adopt a statement describing the  
13 inconsistency and explaining why the board considers the action taken to be reasonable  
14 and in the public interest.

15 Zoning regulations shall be designed to promote health—the public health, safety, and  
16 the general welfare;—welfare. To that end, the regulations may address the following  
17 public purposes: to provide adequate light and air; to prevent the overcrowding of land;  
18 to avoid undue concentration of population; to lessen congestion in the streets; to secure  
19 safety from fire, panic, and other dangers; and to facilitate the efficient and adequate  
20 provision of transportation, water, sewerage, schools, parks, and other public  
21 requirements.—requirements; to manage the impacts of development and land uses on  
22 other properties and public interests; to maintain and improve the quality of  
23 neighborhoods and communities; to secure safe, decent, and affordable housing for all  
24 citizens; to protect the aesthetic attributes and character of neighborhoods and cities;  
25 and to protect natural resources and the environment. The regulations shall be made  
26 with reasonable consideration, among other things, as to the character of the district and  
27 its peculiar suitability for particular uses, and with a view to conserving the value of  
28 buildings and encouraging the most appropriate use of land throughout such city."

29 **SECTION 22.** G.S. 160A-384 reads as rewritten:

30 "**§ 160A-384. Method of procedure.**

31 (a) The city council shall provide for the manner in which zoning regulations and  
32 restrictions and the boundaries of zoning districts shall be determined, established and  
33 enforced, and from time to time amended, supplemented or changed, in accordance with  
34 the provisions of this Article. The procedures adopted pursuant to this section shall  
35 provide that whenever there is a zoning map amendment, the owner of that parcel of  
36 land as shown on the county tax listing, and the owners of all parcels of land abutting  
37 that parcel of land as shown on the county tax listing, shall be mailed a notice of a  
38 public hearing on the proposed amendment by first class mail at the last addresses listed  
39 for such owners on the county tax abstracts. This notice must be deposited in the mail at  
40 least 10 but not more than 25 days prior to the date of the public hearing. The person or  
41 persons mailing such notices shall certify to the City Council that fact, and such  
42 certificate shall be deemed conclusive in the absence of fraud.

43 (b) The first class mail notice required under subsection (a) of this section shall  
44 not be required if the zoning map amendment directly affects more than 50 properties,

1 owned by a total of at least 50 different property owners, and the city elects to use the  
2 expanded published notice provided for in this subsection. In this instance, a city may  
3 elect to either make the mailed notice provided for in subsection (a) of this section or  
4 may as an alternative elect to publish ~~once a week for four successive calendar weeks in~~  
5 ~~a newspaper having general circulation in the area an advertisement of the public~~  
6 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~  
7 ~~amendment and explains the nature of the proposed change. The final two~~  
8 ~~advertisements shall comply with and be deemed to satisfy the provisions of G.S.~~  
9 ~~160A-364. The notice of the hearing as required by G.S. 160A-364, but provided that~~  
10 each advertisement shall not be less than one-half of a newspaper page in size. The  
11 advertisement shall only be effective for property owners who reside in the area of  
12 general circulation of the newspaper which publishes the notice. Property owners who  
13 reside outside of the newspaper circulation area, according to the address listed on the  
14 most recent property tax listing for the affected property, shall be notified according to  
15 the provisions of subsection (a) of by first class mail pursuant to this section. ~~The person~~  
16 ~~or persons mailing the notices shall certify to the city council that fact, and the~~  
17 ~~certificates shall be deemed conclusive in the absence of fraud. In addition to the~~  
18 ~~published notice, a city shall post one or more prominent signs on or immediately~~  
19 ~~adjacent to the subject area reasonably calculated to give public notice of the proposed~~  
20 ~~rezoning.~~

21 (c) The provisions of this section shall not be applicable to any zoning map  
22 adoption that initially zones property added to the territorial coverage of the ordinance."

23 **SECTION 23.** G.S. 160A-385 reads as rewritten:

24 "**§ 160A-385. Changes.**

25 (a) Zoning ordinances regulations and restrictions and zone boundaries may from  
26 time to time be amended, supplemented, changed, modified or repealed. In case,  
27 however, of a qualified protest against such change, signed by the owners of twenty  
28 percent (20%) or more either of the area of the lots included in a proposed change, or of  
29 those immediately adjacent thereto either in the rear thereof or on either side thereof,  
30 extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet  
31 from the street frontage of the opposite lots, an amendment a zoning map amendment,  
32 that amendment shall not become effective except by favorable vote of three-fourths of  
33 all the members of the city council, council eligible to vote on the matter. To qualify as  
34 a protest under this section, the petition must be signed by the owners of either (i)  
35 twenty percent (20%) or more of the area included in the proposed change or (ii) five  
36 percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each  
37 discrete area proposed to be rezoned. Street rights-of-way shall not be considered in  
38 computing the 100-foot buffer area. When less than an entire parcel of land is subject to  
39 the proposed zoning map amendment, the 100-foot buffer shall be measured from the  
40 property line of that parcel. The foregoing provisions concerning protests shall not be  
41 applicable to any amendment which initially zones property added to the territorial  
42 coverage of the ordinance as a result of annexation or otherwise, or to an amendment to  
43 an adopted special use district or conditional use district if the amendment does not  
44 change the types of uses that are permitted within the district or increase the approved

1 density for residential development, or increase the total approved size of nonresidential  
2 development, or reduce the size of any buffers or screening approved for the ~~special-use~~  
3 ~~or conditional use~~ district.

4 (b) ~~Amendments, modifications, supplements, repeal or other changes~~  
5 Amendments in zoning regulations ~~and restrictions~~ and zone boundaries shall not be  
6 applicable or enforceable without consent of the owner with regard to buildings and  
7 uses for which either (i) building permits have been issued pursuant to G.S. 160A-417  
8 prior to the enactment of the ordinance making the change or changes so long as the  
9 permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant  
10 to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S.  
11 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S.  
12 160A-385.1."

13 **SECTION 24.** G.S. 160A-386 reads as rewritten:

14 "**§ 160A-386. Protest petition; form; requirements; time for filing.**

15 No protest against any change in or amendment to a zoning ordinance or zoning map  
16 shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of  
17 a written petition actually bearing the signatures of the requisite number of property  
18 owners and stating that the signers do protest the proposed change or amendment, and  
19 unless it shall have been received by the city clerk in sufficient time to allow the city at  
20 least two normal work days, excluding Saturdays, Sundays and legal holidays, before  
21 the date established for a public hearing on the proposed change or amendment to  
22 determine the sufficiency and accuracy of the petition. The city council may by  
23 ordinance require that all protest petitions be on a form prescribed and furnished by the  
24 city, and such form may prescribe any reasonable information deemed necessary to  
25 permit the city to determine the sufficiency and accuracy of the petition. Unless  
26 specifically provided otherwise within the zoning ordinance, a person who has signed a  
27 protest petition may withdraw his or her name from the petition at any time prior to the  
28 vote on the proposed zoning amendment. Only those protest petitions that meet the  
29 qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning  
30 map amendment shall trigger the super-majority voting requirement."

31 **SECTION 25.** G.S. 160A-387 reads as rewritten:

32 "**§ 160A-387. Planning agency; zoning plan; certification to city council.**

33 In order to initially exercise the powers conferred by this Part, a city council shall  
34 create or designate a planning ~~agency board~~ under the provisions of this Article or of a  
35 special act of the General Assembly. The planning ~~agency board~~ shall ~~prepare~~ review  
36 and comment upon a proposed zoning ordinance, including both the full text of such  
37 ordinance and maps showing proposed district boundaries. The planning ~~agency board~~  
38 may hold public hearings in the course of preparing the ordinance. Upon completion,  
39 the planning ~~agency board~~ shall ~~certify~~ make a written recommendation regarding  
40 adoption of the ordinance to the city council. The city council shall not hold its required  
41 public hearing or take action until it has received a ~~certified~~ recommendation regarding  
42 the ordinance from the planning ~~agency board~~. Following its required public hearing,  
43 the city council may refer the ordinance back to the planning ~~agency board~~ for any

1 further recommendations that the ~~agency board~~ may wish to make prior to final action  
2 by the city council in adopting, modifying and adopting, or rejecting the ordinance.

3 Subsequent to initial adoption of a zoning ordinance, any proposed amendment to  
4 the zoning ordinance or zoning map shall be submitted to the planning board for review  
5 and comment. The planning board shall consider whether the proposed amendment is  
6 consistent with the comprehensive plan and any other officially adopted plans that are  
7 applicable. The planning board shall provide a written recommendation to the governing  
8 board that addresses plan consistency and such other matters as deemed appropriate by  
9 the planning board. If no written report is received from the planning board within 30  
10 days of referral of the amendment to that board, the governing board may proceed in its  
11 consideration of the amendment without the planning board report."

12 **SECTION 26.** G.S. 160A-388 reads as rewritten:

13 **"§ 160A-388. Board of adjustment.**

14 (a) The city council may provide for the appointment and compensation of a  
15 board of adjustment consisting of five or more members, each to be appointed for three  
16 years. In appointing the original members of such board, or in the filling of vacancies  
17 caused by the expiration of the terms of existing members, the council may appoint  
18 certain members for less than three years to the end that thereafter the terms of all  
19 members shall not expire at the same time. The council may, in its discretion, appoint  
20 and provide compensation for alternate members to serve on the board in the absence or  
21 temporary disqualification of any regular-~~member.~~member or to fill a vacancy pending  
22 appointment of a member. Alternate members shall be appointed for the same term, at  
23 the same time, and in the same manner as regular members. Each alternate member,  
24 while attending any regular or special meeting of the board and serving ~~in the absence~~  
25 on behalf of any regular member, shall have and may exercise all the powers and duties  
26 of a regular member. A city may designate a planning ~~agency board~~ or the governing  
27 board to perform any or all of the duties of a board of adjustment in addition to its other  
28 duties.

29 (b) The board of adjustment shall hear and decide appeals from and review any  
30 order, requirement, decision, or determination made by an administrative official  
31 charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal  
32 may be taken by any person aggrieved or by an officer, department, board, or bureau of  
33 the city. Appeals shall be taken within times prescribed by the board of adjustment by  
34 general rule, by filing with the officer from whom the appeal is taken and with the board  
35 of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom  
36 the appeal is taken shall forthwith transmit to the board all the papers constituting the  
37 record upon which the action appealed from was taken. An appeal stays all proceedings  
38 in furtherance of the action appealed from, unless the officer from whom the appeal is  
39 taken certifies to the board of adjustment, after notice of appeal has been filed with him,  
40 that because of facts stated in the certificate a stay would, in his opinion, cause  
41 imminent peril to life or property or that because the violation charged is transitory in  
42 nature a stay would seriously interfere with enforcement of the ordinance. In that case  
43 proceedings shall not be stayed except by a restraining order, which may be granted by  
44 the board of adjustment or by a court of record on application, on notice to the officer

1 from whom the appeal is taken and on due cause shown. The board of adjustment shall  
2 fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties,  
3 and decide it within a reasonable time. The board of adjustment may reverse or affirm,  
4 wholly or partly, or may modify the order, requirement, decision, or determination  
5 appealed from, and shall make any order, requirement, decision, or determination that in  
6 its opinion ought to be made in the premises. To this end the board shall have all the  
7 powers of the officer from whom the appeal is taken.

8 (c) The zoning ordinance may provide that the board of adjustment may permit  
9 special exceptions to the zoning regulations in classes of cases or situations and in  
10 accordance with the principles, conditions, safeguards, and procedures specified in the  
11 ordinance. The ordinance may also authorize the board to interpret zoning maps and  
12 pass upon disputed questions of lot lines or district boundary lines and similar questions  
13 as they arise in the administration of the ordinance. The board shall hear and decide all  
14 matters referred to it or upon which it is required to pass under any zoning ordinance.

15 (d) When practical difficulties or unnecessary hardships would result from  
16 carrying out the strict letter of a zoning ordinance, the board of adjustment shall have  
17 the power, in passing upon appeals, to vary or modify any of the regulations or  
18 provisions of the ordinance relating to the use, construction or alteration of buildings or  
19 structures or the use of land, so that the spirit of the ordinance shall be observed, public  
20 safety and welfare secured, and substantial justice done.

21 (e) The concurring vote of four-fifths of the members of the board shall be  
22 necessary to reverse any order, requirement, decision, or determination of any  
23 administrative official charged with the enforcement of an ordinance adopted pursuant  
24 to this Part, or to decide in favor of the applicant any matter upon which it is required to  
25 pass under any ordinance, or to grant a variance from the provisions of the ordinance.  
26 For the purposes of this subsection, vacant positions on the board and members who are  
27 disqualified from voting on a quasi-judicial matter shall not be considered 'members of  
28 the board' for calculation of the requisite super-majority if there are no qualified  
29 alternates available to take the place of such members.

30 (e1) A member of the board or any other body exercising the functions of a board  
31 of adjustment shall not participate in or vote on any quasi-judicial matter for which the  
32 board member has a conflict of interest or bias that would violate a party to the  
33 decision's constitutional right to an impartial decision-maker.

34 (e2) Every decision of the board shall be subject to review by the superior court by  
35 proceedings in the nature of certiorari and such appeals may be made by any person  
36 who would have had standing to bring or participate in the hearing before the board.  
37 Any petition for review by the superior court shall be filed with the clerk of superior  
38 court within 30 days after the decision of the board is filed in such office as the  
39 ordinance specifies, or after a written copy thereof is delivered to every aggrieved party  
40 who has filed a written request for such copy with the secretary or chairman of the  
41 board at the time of its hearing of the case, whichever is later. The decision of the board  
42 may be delivered to the aggrieved party either by personal service or by registered mail  
43 or certified mail return receipt requested.

1 (f) The chairman of the board of adjustment or any member temporarily acting  
2 as chairman, is authorized in his official capacity to administer oaths to witnesses in any  
3 matter coming before the board.

4 (g) The board of adjustment may subpoena witnesses and compel the production  
5 of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this  
6 subsection, the board of adjustment may apply to the General Court of Justice for an  
7 order requiring that its order be obeyed, and the court shall have jurisdiction to issue  
8 these orders after notice to all proper parties. No testimony of any witness before the  
9 board of adjustment pursuant to a subpoena issued in exercise of the power conferred by  
10 this subsection may be used against the witness in the trial of any civil or criminal  
11 action other than a prosecution for false swearing committed on the examination. Any  
12 person who, while under oath during a proceeding before the board of adjustment,  
13 willfully swears falsely, is guilty of a Class 1 misdemeanor."

14 **SECTION 27.** G.S. 160A-392 reads as rewritten:

15 "**§ 160A-392. Part applicable to buildings constructed by State and its**  
16 **subdivisions; exception.**

17 All of the provisions of this Part are hereby made applicable to the erection,  
18 construction, and use of buildings and land by the State of North Carolina and its  
19 political subdivisions.

20 Notwithstanding the provisions of any general or local law or ordinance, no land  
21 owned by the State of North Carolina may be included within ~~an overlay district or a~~  
22 ~~special use or conditional use district~~ without approval of the Council of ~~State, State or~~  
23 its designate."

24 **SECTION 28.** G.S. 153A-340 reads as rewritten:

25 "**§ 153A-340. Grant of power.**

26 (a) For the purpose of promoting health, safety, morals, or the general welfare, a  
27 county may adopt zoning ordinances. Zoning ordinances may be adopted as part of a  
28 unified development ordinance or as a separate ordinance. A zoning ordinance may  
29 regulate and restrict the height, number of stories, the type, form, and size of buildings  
30 and other structures, the percentage of lots that may be occupied, the size of yards,  
31 courts and other open spaces, the density of population, and the location and use of  
32 buildings, structures, and land for trade, industry, residence, or other purposes, and to  
33 land, and the maintenance or alteration of natural features. The ordinance may provide  
34 density credits or severable development rights for dedicated rights-of-way pursuant to  
35 G.S. 136-66.10 or G.S. 136-66.11 and for transferable development rights.

36 (b) (1) These regulations may affect property used for bona fide farm  
37 purposes only as provided in subdivision (3) of this subsection. This  
38 subsection does not limit regulation under this Part with respect to the  
39 use of farm property for nonfarm purposes.

40 (2) Bona fide farm purposes include the production and activities relating  
41 or incidental to the production of crops, fruits, vegetables, ornamental  
42 and flowering plants, dairy, livestock, poultry, and all other forms of  
43 agricultural products having a domestic or foreign market.

1           (3) The definitions set out in G.S. 106-802 apply to this subdivision. A  
2 county may adopt zoning regulations governing swine farms served by  
3 animal waste management systems having a design capacity of  
4 600,000 pounds steady state live weight (SSLW) or greater provided  
5 that the zoning regulations may not have the effect of excluding swine  
6 farms served by an animal waste management system having a design  
7 capacity of 600,000 pounds SSLW or greater from the entire zoning  
8 jurisdiction.

9           (c) The regulations may provide that a board of adjustment may determine and  
10 vary their application in harmony with their general purpose and intent and in  
11 accordance with general or specific rules therein contained. The regulations may also  
12 provide that the board of ~~adjustment~~ adjustment, the planning board, or the board of  
13 commissioners may issue special use permits or conditional use permits in the classes of  
14 cases or situations and in accordance with the principles, conditions, safeguards, and  
15 procedures specified therein and may impose reasonable and appropriate conditions and  
16 safeguards upon these permits. ~~Where appropriate, the conditions may include~~  
17 ~~requirements that street and utility rights of way be dedicated to the public and that~~  
18 ~~recreational space be provided. When issuing or denying special use permits or~~  
19 ~~conditional use permits, the board of commissioners shall follow the procedures for~~  
20 ~~boards of adjustment except that no vote greater than a majority vote shall be required~~  
21 ~~for the board of commissioners to issue such permits, and every such decision of the~~  
22 ~~board of commissioners shall be subject to review by the superior court by proceedings~~  
23 ~~in the nature of certiorari. When deciding special use permits or conditional use permits,~~  
24 the board of county commissioners shall follow the procedures for boards of adjustment  
25 except that no vote greater than a majority vote shall be required for the board of county  
26 commissioners to issue such permits. Every such decision of the board of county  
27 commissioners shall be subject to review by the superior court in the same manner as is  
28 set forth in G.S. 153A-345(e) for review of decisions of the board of adjustment.

29           (d) A county may regulate the development over estuarine waters and over lands  
30 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the  
31 bounds of that county.

32           (e) For the purpose of this section, the term 'structures' shall include floating  
33 homes.

34           (f) ~~Any petition for review by the superior court shall be filed with the clerk of~~  
35 ~~superior court within 30 days after the decision of the board of commissioners is filed in~~  
36 ~~such office as the ordinance specifies, or after a written copy thereof is delivered to~~  
37 ~~every aggrieved party who has filed a written request for such copy with the clerk at the~~  
38 ~~time of the hearing of the case, whichever is later. The decision of the board of~~  
39 ~~commissioners may be delivered to the aggrieved party either by personal service or by~~  
40 ~~registered mail or certified mail return receipt requested. The ordinance may include~~  
41 requirements that provisions be made to address the impacts generated by the proposed  
42 development. The provisions may include the dedication of land, reservation of land for  
43 future acquisition, transfer of land to a homeowners association, nonprofit corporation,  
44 or other appropriate third party, and construction of facilities. The ordinance may



1 require posting of bonds, letters of credit, or other performance guarantees to assure  
2 successful completion of required improvements. Any impacts reasonably related to the  
3 proposed development may be addressed, including, but not limited to, (i) roads,  
4 sidewalks, bikeways, transit, and other transportation needs; (ii) water, wastewater,  
5 stormwater, drainage, and other utility needs; (iii) recreation and open space; (iv)  
6 protection of critical natural areas and natural hazard areas; and (v) public education  
7 needs. In all instances the total exactions required shall be no greater than an amount  
8 roughly proportional to the impacts reasonably expected to be generated by the  
9 proposed development.

10 (g) Counties may adopt temporary development moratoria of reasonable  
11 duration. A development moratorium with a duration of 60 days or any shorter period  
12 may be adopted without the necessity of a public hearing and notice that would  
13 otherwise be required pursuant to G.S. 153A-323. A development moratorium with a  
14 duration of 61 days or longer, and any extension of a moratorium adopted without a  
15 hearing to a total duration of more than 60 days, is subject to the notice and hearing  
16 requirements of G.S. 153A-323. Absent an imminent threat to public health and safety,  
17 a development moratorium adopted pursuant to this section shall not apply to any  
18 project for which a valid building permit issued pursuant to G.S. 153A-357 is  
19 outstanding, to development set forth in a site specific or phased development plan  
20 approved pursuant to G.S. 153A-344.1, or to development for which substantial  
21 expenditures have already been made in good faith reliance on a prior valid zoning  
22 approval.

23 Any ordinance establishing a development moratorium must expressly include each  
24 of the following:

- 25 (1) A clear statement of the problems or conditions necessitating the  
26 moratorium.
- 27 (2) A clear statement of the development approvals subject to the  
28 moratorium and how a moratorium on those approvals will address the  
29 problems or conditions leading to imposition of the moratorium.
- 30 (3) An express date for termination of the moratorium and a statement  
31 setting forth why that duration is reasonably necessary to address the  
32 problems or conditions leading to imposition of the moratorium.
- 33 (4) A clear statement of the actions proposed to be taken by the county  
34 during the duration of the moratorium to address the problems or  
35 conditions leading to imposition of the moratorium."

36 **SECTION 29.** G.S. 153A-341 reads as rewritten:

37 "**§ 153A-341. Purposes in view.**

38 Zoning regulations shall be made in accordance with a comprehensive plan and  
39 designed to lessen congestion in the streets; to secure safety from fire, panic, and other  
40 dangers; plan. Prior to adopting of any zoning provision that is not consistent with the  
41 adopted comprehensive plan or any other applicable plan that has been officially  
42 adopted by the county, the board of county commissioners shall adopt a statement  
43 describing the inconsistency and explaining why the board considers the action taken to  
44 be reasonable and in the public interest.

1        Zoning regulations shall be designed to promote the public health, safety and  
2 ~~the~~ general welfare; to provide adequate light and air; to prevent the overcrowding of  
3 land; to avoid undue concentration of population; to lessen congestion in the streets; to  
4 secure safety from fire, panic, and other dangers; and to facilitate the efficient and  
5 adequate provision of transportation, water, sewerage, schools, parks, and other public  
6 ~~requirements.~~ requirements; to manage the impacts of development and land uses on  
7 other properties and public interests; to maintain and improve the quality of  
8 neighborhoods and communities; to secure safe, decent, and affordable housing for all  
9 citizens; to protect the aesthetic attributes and character of neighborhoods and counties;  
10 and to protect natural resources and the environment. The regulations shall be made  
11 with reasonable consideration as to, among other things, the character of the district and  
12 its peculiar suitability for particular uses, and with a view to conserving the value of  
13 buildings and encouraging the most appropriate use of land throughout the county. In  
14 addition, the regulations shall be made with reasonable consideration to expansion and  
15 development of any cities within the county, so as to provide for their orderly growth  
16 and development."

17        **SECTION 30.** G.S. 153A-342 reads as rewritten:

18        **"§ 153A-342. Districts; zoning less than entire jurisdiction.**

19        (a) A county may divide its territorial jurisdiction into districts of any number,  
20 shape, and area that it may consider best suited to carry out the purposes of this Part.  
21 Within these districts a county may regulate and restrict the erection, construction,  
22 reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts  
23 may include, but shall not be limited to, general use districts, in which a variety of uses  
24 are permissible in accordance with general standards; overlay districts, in which  
25 additional requirements are imposed on certain properties within one or more  
26 underlying general or ~~special use conditional~~ districts; ~~and special use districts or~~  
27 ~~conditional use districts, in which uses are permitted only upon the issuance of a special~~  
28 ~~use permit or a conditional use permit.~~ and conditional zoning districts, in which site  
29 plans and individualized development conditions are imposed.

30        (b) Property may be placed in a ~~special use district or conditional use~~ district  
31 only in response to a petition by the owners of all the property to be included. Specific  
32 conditions applicable to such districts may be proposed by the petitioner, the county or  
33 its agencies, or any affected person, but only those conditions mutually approved by the  
34 county and the petitioner may be incorporated into the zoning regulations or permit  
35 requirements. Conditions and site specific standards imposed in a conditional district  
36 shall be limited to those that address the conformance of the development and use of the  
37 site to the comprehensive plan, any other plan officially adopted by the county, any  
38 county ordinance, and those that address the impacts reasonably expected to be  
39 generated by development or use of the site.

40        A statement analyzing the reasonableness of the proposed rezoning shall be prepared  
41 for each petition for a rezoning to a conditional district. This statement may be prepared  
42 by the petitioner or by the county and it shall be completed and available for public  
43 inspection at the time notice is provided for the public hearing on the proposed  
44 rezoning. This statement shall address the consistency of the proposed rezoning with the

1 comprehensive plan and any other officially adopted plan that is applicable, the  
2 compatibility of the proposed rezoning with the site and surrounding area, and the  
3 benefits and detriments of the proposed rezoning for the land owner, the immediate  
4 neighbors, and the surrounding community. The ordinance may require meetings to be  
5 held between the petitioner and neighboring property owners prior to the submittal of a  
6 petition for rezoning to a conditional zoning district.

7 (c) Except as authorized by the foregoing, all regulations shall be uniform for  
8 each class or kind of building throughout each district, but the regulations in one district  
9 may differ from those in other districts.

10 (d) A county may determine that the public interest does not require that the  
11 entire territorial jurisdiction of the county be zoned and may designate one or more  
12 portions of that jurisdiction as a zoning area or areas. A zoning area must originally  
13 contain at least 640 acres and at least 10 separate tracts of land in separate ownership  
14 and may thereafter be expanded by the addition of any amount of territory. A zoning  
15 area may be regulated in the same manner as if the entire county were zoned, and the  
16 remainder of the county need not be regulated."

17 **SECTION 31.** G.S. 153A-343 reads as rewritten:

18 **"§ 153A-343. Method of procedure.**

19 (a) The board of commissioners shall, in accordance with the provisions of this  
20 Article, provide for the manner in which zoning regulations and restrictions and the  
21 boundaries of zoning districts shall be determined, established, and enforced, and from  
22 time to time amended, supplemented, or changed. The procedures adopted pursuant to  
23 this section shall provide that whenever there is a zoning map amendment, the owner of  
24 that parcel of land as shown on the county tax listing, and the owners of all parcels of  
25 land abutting that parcel of land as shown on the county tax listing, shall be mailed a  
26 notice of a public hearing on the proposed amendment by first class mail at the last  
27 addresses listed for such owners on the county tax abstracts. This notice must be  
28 deposited in the mail at least 10 but not more than 25 days prior to the date of the public  
29 hearing. The person or persons mailing such notices shall certify to the Board of  
30 Commissioners that fact, and such certificate shall be deemed conclusive in the absence  
31 of fraud.

32 (b) The first class mail notice required under subsection (a) of this section shall  
33 not be required if the zoning map amendment directly affects more than 50 properties,  
34 owned by a total of at least 50 different property owners, and the county elects to use  
35 the expanded published notice provided for in this subsection. In this instance, a county  
36 may elect to either make the mailed notice provided for in subsection (a) of this section  
37 or may as an alternative elect to publish ~~once a week for four successive calendar weeks~~  
38 ~~in a newspaper having general circulation in the area an advertisement of the public~~  
39 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~  
40 ~~amendment and explains the nature of the proposed change. The final two~~  
41 ~~advertisements shall comply with and be deemed to satisfy the provisions of G.S.~~  
42 ~~153A-323. The advertisement notice of the hearing as required by G.S. 153A-323, but~~  
43 provided that each of the advertisements shall not be less than one-half of a newspaper  
44 page in size. The advertisement shall only be effective for property owners who reside

1 in the area of general circulation of the newspaper which publishes the notice. Property  
2 owners who reside outside of the newspaper circulation area, according to the address  
3 listed on the most recent property tax listing for the affected property, shall be notified  
4 ~~according to the provisions of subsection (a) of by first class mail pursuant to this~~  
5 ~~section. The person or persons mailing the notices shall certify to the board of~~  
6 ~~commissioners that fact, and the certificates shall be deemed conclusive in the absence~~  
7 ~~of fraud. In addition to the published notice, a county shall post one or more prominent~~  
8 ~~signs on or immediately adjacent to the subject area reasonably calculated to give public~~  
9 ~~notice of the proposed rezoning.~~

10 (c) The provisions of this section shall not be applicable to any zoning map  
11 adoption that initially zones property added to the territorial coverage of the ordinance."

12 **SECTION 32.** G.S. 153A-344 reads as rewritten:

13 "**§ 153A-344. Planning agency; zoning plan; certification to board of**  
14 **commissioners; amendments, commissioners.**

15 (a) To initially exercise the powers conferred by this Part, a county shall create or  
16 designate a planning agency board under the provisions of this Article or of a local act.  
17 The planning agency board shall ~~prepare review and comment upon~~ a proposed zoning  
18 ordinance, including both the full text of such ordinance and maps showing proposed  
19 district boundaries. The planning agency board may hold public hearings in the course  
20 of preparing the ordinance. Upon completion, the planning agency board shall ~~certify~~  
21 make a written recommendation regarding adoption of the ordinance to the board of  
22 commissioners. The board of commissioners shall not hold the public hearing required  
23 by G.S. 153A-323 or take action until it has received a ~~certified recommendation~~  
24 regarding the ordinance from the planning agency board. Following its required public  
25 hearing, the board of commissioners may refer the ordinance back to the planning  
26 agency board for any further recommendations that the agency board may wish to make  
27 prior to final action by the board in adopting, modifying and adopting, or rejecting the  
28 ordinance.

29 ~~Zoning regulations and restrictions and zone boundaries may from time to time be~~  
30 ~~amended, supplemented, changed, modified, or repealed.~~ Whenever territory is added to  
31 an existing designated zoning area, it shall be treated as an amendment to the zoning  
32 ordinance for that area. Before an amendment may be adopted, it must be referred to the  
33 planning agency board for the agency's board's recommendation. The agency board  
34 shall be given at least 30 days in which to make a recommendation. The board of  
35 commissioners is not bound by the recommendations, if any, of the planning  
36 agency board.

37 (b) ~~Amendments, modifications, supplements, repeal or other changes in zoning~~  
38 ~~regulations and restrictions and zone boundaries shall not be applicable or enforceable~~  
39 ~~without consent of the owner with regard to buildings and uses for which either (i)~~  
40 ~~building permits have been issued pursuant to G.S. 153A 357 prior to the enactment of~~  
41 ~~the ordinance making the change or changes so long as the permits remain valid and~~  
42 ~~unexpired pursuant to G.S. 153A 358 and unrevoked pursuant to G.S. 153A 362 or (ii)~~  
43 ~~a vested right has been established pursuant to G.S. 153A 344.1 and such vested right~~  
44 ~~remains valid and unexpired pursuant to G.S. 153A 344.1."~~

1           **SECTION 33.** G.S. 153A-345 reads as rewritten:

2   "**§ 153A-345. Board of adjustment.**

3       (a) The board of commissioners may provide for the appointment and  
4 compensation, if any, of a board of adjustment consisting of at least five members, each  
5 to be appointed for three years. In appointing the original members of the board, or in  
6 filling vacancies caused by the expiration of the terms of existing members, the board of  
7 commissioners may appoint some members for less than three years to the end that  
8 thereafter the terms of all members do not expire at the same time. The board of  
9 commissioners may provide for the appointment and compensation, if any, of alternate  
10 members to serve on the board in the absence or temporary disqualification of any  
11 regular ~~member.~~ member or to fill a vacancy pending appointment of a member.  
12 Alternate members shall be appointed for the same term, at the same time, and in the  
13 same manner as regular members. Each alternate member, while attending any regular  
14 or special meeting of the board and serving ~~in the absence~~ on behalf of a regular  
15 member, has and may exercise all the powers and duties of a regular member. If the  
16 board of commissioners does not zone the entire territorial jurisdiction of the county,  
17 each designated zoning area shall have at least one resident as a member of the board of  
18 adjustment.

19       A county may designate a planning ~~agency~~ board or the board of county  
20 commissioners to perform any or all of the duties of a board of adjustment in addition to  
21 its other duties.

22       (b) The board of adjustment shall hear and decide appeals from and review any  
23 order, requirement, decision, or determination made by an administrative official  
24 charged with enforcing an ordinance adopted pursuant to this Part. Any person  
25 aggrieved or any officer, department, board, or bureau of the county may take an appeal.  
26 Appeals shall be taken within times prescribed by the board of adjustment by general  
27 rule, by filing with the officer from whom the appeal is taken and with the board of  
28 adjustment a notice of appeal, specifying the grounds thereof. The officer from whom  
29 the appeal is taken shall forthwith transmit to the board all the papers constituting the  
30 record upon which action appealed from was taken. An appeal stays all proceedings in  
31 furtherance of the action appealed from, unless the officer from whom the appeal is  
32 taken certifies to the board of adjustment, after notice of appeal has been filed with him,  
33 that because of facts stated in the certificate a stay would, in his opinion, cause  
34 imminent peril to life or property or that because the violation charged is transitory in  
35 nature a stay would seriously interfere with enforcement of the ordinance. In that case  
36 proceedings may not be stayed except by a restraining order, which may be granted by  
37 the board of adjustment or by a court of record on application, on notice to the officer  
38 from whom the appeal is taken and on due cause shown. The board of adjustment shall  
39 fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the  
40 parties, and decide the appeal within a reasonable time. The board of adjustment may  
41 reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or  
42 determination appealed from, and shall make any order, requirement, decision, or  
43 determination that in its opinion ought to be made in the circumstances. To this end the  
44 board has all of the powers of the officer from whom the appeal is taken.

1 (c) The zoning ordinance may provide that the board of adjustment may permit  
2 special exceptions to the zoning regulations in classes of cases or situations and in  
3 accordance with the principles, conditions, safeguards, and procedures specified in the  
4 ordinance. The ordinance may also authorize the board to interpret zoning maps and  
5 pass upon disputed questions of lot lines or district boundary lines and similar questions  
6 that may arise in the administration of the ordinance. The board shall hear and decide all  
7 matters referred to it or upon which it is required to pass under the zoning ordinance.

8 (d) When practical difficulties or unnecessary hardships would result from  
9 carrying out the strict letter of a zoning ordinance, the board of adjustment may, in  
10 passing upon appeals, vary or modify any regulation or provision of the ordinance  
11 relating to the use, construction, or alteration of buildings or structures or the use of  
12 land, so that the spirit of the ordinance is observed, public safety and welfare secured,  
13 and substantial justice done.

14 (e) The board of adjustment, by a vote of four-fifths of its members, may reverse  
15 any order, requirement, decision, or determination of an administrative officer charged  
16 with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the  
17 applicant a matter upon which the board is required to pass under the ordinance, or may  
18 grant a variance from the provisions of the ordinance. For the purposes of this  
19 subsection, vacant positions on the board and members who are disqualified from  
20 voting on a quasi-judicial matter shall not be considered 'members of the board' for  
21 calculation of the requisite super-majority if there are no qualified alternates available to  
22 take the place of such members.

23 (e1) A member of the board or any other body exercising the functions of a board  
24 of adjustment shall not participate in or vote on any quasi-judicial matter for which the  
25 board member has a conflict of interest or bias that would violate a party to the  
26 decision's constitutional right to an impartial decisionmaker.

27 (e2) Each decision of the board is subject to review by the superior court by  
28 proceedings in the nature of ~~certiorari~~-certiorari and such appeals may be made by any  
29 person who would have had standing to bring or participate in the hearing before the  
30 board. Any petition for review by the superior court shall be filed with the clerk of  
31 superior court within 30 days after the decision of the board is filed in such office as the  
32 ordinance specifies, or after a written copy thereof is delivered to every aggrieved party  
33 who has filed a written request for such copy with the secretary or chairman of the  
34 board at the time of its hearing of the case, whichever is later. The decision of the board  
35 may be delivered to the aggrieved party either by personal service or by registered mail  
36 or certified mail return receipt requested.

37 (f) The chairman of the board of adjustment or any member temporarily acting  
38 as chairman may in his official capacity administer oaths to witnesses in any matter  
39 coming before the board.

40 (g) The board of adjustment may subpoena witnesses and compel the production  
41 of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this  
42 subsection, the board of adjustment may apply to the General Court of Justice for an  
43 order requiring that its order be obeyed, and the court shall have jurisdiction to issue  
44 these orders after notice to all proper parties. No testimony of any witness before the

1 board of adjustment pursuant to a subpoena issued in exercise of the power conferred by  
2 this subsection may be used against the witness in the trial of any civil or criminal  
3 action other than a prosecution for false swearing committed on the examination. Any  
4 person who, while under oath during a proceeding before the board of adjustment,  
5 willfully swears falsely, is guilty of a Class 1 misdemeanor."

6 **SECTION 34.** G.S. 153A-347 reads as rewritten:

7 **"§ 153A-347. Part applicable to buildings constructed by the State and its**  
8 **subdivisions; exception.**

9 Each provision of this Part is applicable to the erection, construction, and use of  
10 buildings and land by the State of North Carolina and its political subdivisions.

11 Notwithstanding the provisions of any general or local law or ordinance, no land  
12 owned by the State of North Carolina may be included within ~~an overlay district or a~~  
13 ~~special use or conditional use~~ district without approval of the Council of ~~State.~~ State or  
14 its delegee."

#### 15 **PART IV. INFRASTRUCTURE AGREEMENTS.**

16 **SECTION 35.** Article 21 of Chapter 160A of the General Statutes is  
17 amended by adding a new section to read:

18 **"§ 160A-499. Reimbursement agreements.**

19 (a) A city may enter into reimbursement agreements with private developers and  
20 property owners for the design and construction of municipal infrastructure that is  
21 included on the city's Capital Improvement Plan and serves the developer or property  
22 owner. For the purpose of this act, municipal infrastructure includes, without limitation,  
23 water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter,  
24 sidewalks, traffic control devices, and other associated facilities.

25 (b) A city shall enact ordinances setting forth procedures and terms under which  
26 such agreements may be approved.

27 (c) A city may provide for such reimbursements to be paid from any lawful  
28 source.

29 (d) No reimbursement pursuant to an agreement authorized by this act shall be  
30 deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or  
31 to be deemed to be a violation or evasion of any provision of said Article.  
32 Notwithstanding the foregoing provisions of this section, a construction contract subject  
33 to a reimbursement agreement authorized by this act shall not be awarded by a  
34 developer or property owner who is a party to such reimbursement agreement without  
35 complying with the requirements of G.S. 143-129 and G.S. 143-128(f) relating to public  
36 advertising and bid opening requirements which would be applicable if the construction  
37 contract had been awarded by the city."

38 **SECTION 36.** Article 15 of Chapter 160A of the General Statutes is  
39 amended by adding a new section to read:

40 **"§ 160A-309. Intersection and roadway improvements.**

41 A city may contract with a private party for public intersection or roadway  
42 improvements that are adjacent or ancillary to a private land development project. Such  
43 a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public  
44

1 cost will not exceed one hundred seventy-five thousand dollars (\$175,000) and the city  
2 determines that: (i) the public cost will not exceed the estimated cost of providing for  
3 such public intersection or roadway improvements through either eligible force account  
4 qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of  
5 the General Statutes; or (ii) the coordination of separately constructed public  
6 intersection or roadway improvements and the adjacent or ancillary private land  
7 development improvements would be impracticable."  
8

9 **PART V. DEVELOPMENT AGREEMENTS.**

10 **SECTION 37.** Article 19 of Chapter 160A of the General Statutes is  
11 amended by adding a new Part to read:

12 "Part 3D. Development Agreements

13 **"§ 160A-400.20. Authorization for development agreements.**

14 (a) The General Assembly finds:

- 15 (1) The lack of certainty in the approval of development can result in a  
16 waste of economic and land resources, can discourage sound capital  
17 improvement planning and financing, can cause the cost of housing  
18 and development to escalate, and can discourage commitment to  
19 comprehensive planning.
- 20 (2) Developers should be assured that upon receipt of a development  
21 permit, they may proceed in accordance with existing laws and  
22 policies, subject to the conditions of a development agreement. A  
23 development agreement should strengthen the public planning process,  
24 encourage sound capital improvement planning and financing, assist in  
25 assuring there are adequate capital facilities for the development,  
26 encourage private participation in comprehensive planning, reduce the  
27 economic costs of development, allow for the orderly planning of  
28 public facilities and services, and allow for the equitable allocation of  
29 the cost of public services.
- 30 (3) Because the development approval process involves the expenditure of  
31 considerable sums of money, predictability encourages the maximum  
32 efficient utilization of resources at the least economic cost to the  
33 public.
- 34 (4) Public benefits derived from development agreements may include,  
35 but are not limited to, affordable housing, design standards, and on and  
36 off-site infrastructure and other improvements. These public benefits  
37 may be negotiated in return for the vesting of development rights for a  
38 specific period.
- 39 (5) Land planning and development involve review and action by multiple  
40 governmental agencies having jurisdiction over land development.
- 41 (6) Development agreements will encourage the vesting of property rights  
42 by protecting such rights from the effect of subsequently enacted local  
43 legislation or from the effects of changing policies and procedures of  
44 local government agencies which may conflict with any term or



1 provision of the development agreement or in any way hinder, restrict,  
2 or prevent the development of the project. Development agreements  
3 will provide a reasonable certainty as to the lawful requirements that  
4 must be met in protecting vested property rights, while maintaining the  
5 authority and duty of government to enforce laws and regulations  
6 which promote the public safety, health, and general welfare of the  
7 citizens of our State.

8 (b) It is the intent of the General Assembly to encourage a stronger commitment  
9 to comprehensive and capital facilities planning, ensure the provision of adequate public  
10 facilities for development, encourage the efficient use of resources, and reduce the  
11 economic cost of development.

12 (c) Local governments and agencies may enter into development agreements  
13 with developers, subject to the procedures and requirements of this Part.

14 (d) This Part is supplemental to the powers conferred upon local governments  
15 and does not preclude or supercede rights and obligations established pursuant to other  
16 law regarding building permits, site-specific development plans, phased development  
17 plans, or other provisions of law.

18 **"§ 160A-400.21. Definitions.**

19 The following definitions apply in this Part:

20 (1) Comprehensive plan. – The comprehensive plan, land use plan, small  
21 area plans, neighborhood plans, transportation plan, capital  
22 improvement plan, official map, and any other plans regarding land  
23 use and development that have been officially adopted by the  
24 governing board.

25 (2) Developer. – A person, including a governmental agency or  
26 redevelopment authority, who intends to undertake any development  
27 and who has a legal or equitable interest in the property to be  
28 developed.

29 (3) Development. – The planning for or carrying out of a building activity  
30 or mining operation, the making of a material change in the use or  
31 appearance of any structure or property, or the dividing of land into  
32 two or more parcels. 'Development', as designated in a law or  
33 development permit, includes the planning for and all other activity  
34 customarily associated with it unless otherwise specified. When  
35 appropriate to the context, 'development' refers to the planning for or  
36 the act of developing or to the result of development. Reference to a  
37 specific operation is not intended to mean that the operation or  
38 activity, when part of other operations or activities, is not  
39 development. Reference to particular operations is not intended to  
40 limit the generality of this item.

41 (4) Development permit. – A building permit, zoning permit, subdivision  
42 approval, special or conditional use permit, variance, or any other  
43 official action of local government having the effect of permitting the  
44 development of property.

- 1           (5) Governing body. – The city council of a municipality or the board of  
2 county commissioners of a county.
- 3           (6) Land development regulations. – Ordinances and regulations enacted  
4 by the appropriate governing body for the regulation of any aspect of  
5 development and includes a local government zoning, subdivision  
6 regulations, or any other regulations controlling the development of  
7 property.
- 8           (7) Laws. – All ordinances, resolutions, regulations, comprehensive plans,  
9 land development regulations, policies and rules adopted by a local  
10 government affecting the development of property, and includes laws  
11 governing permitted uses of the property, governing density, and  
12 governing design, improvement, and construction standards and  
13 specifications.
- 14           (8) Property. – All real property subject to land use regulation by a local  
15 government and includes any improvements or structures customarily  
16 regarded as a part of real property.
- 17           (9) Local government. – Any municipality or county that exercises  
18 regulatory authority over and grants development permits for land  
19 development or which provides public facilities.
- 20           (10) Local planning board. – Any planning board established pursuant to  
21 G.S. 160A-361 or 153A-321.
- 22           (11) Person. – An individual, corporation, business or land trust, estate,  
23 trust, partnership, association, two or more persons having a joint or  
24 common interest, state agency, or any legal entity.
- 25           (12) Public facilities. – 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  
28 facilities.

29 **§ 160A-400.22. Local governments authorized to enter into development**  
30 **agreements; approval of county or municipal governing body required.**

31 A local government may establish procedures and requirements, as provided in this  
32 Part, to consider and enter into development agreements with developers. A  
33 development agreement must be approved by the governing body of a county or  
34 municipality by written resolution.

35 **§ 160A-400.23. Developed property must contain certain number of acres;**  
36 **permissible durations of agreements.**

37 A local government may enter into a development agreement with a developer for  
38 the development of property as provided in this Part, provided the property contains 25  
39 acres or more of developable property (exclusive of wetlands, mandatory buffers, steep  
40 slopes, and other portions of the property precluded from development at the time of  
41 application). Development agreements shall be of a term specified in the agreement,  
42 provided they may not be for a term exceeding 20 years.

43 **§ 160A-400.24. Public hearing.**

1        Before entering into a development agreement, a local government shall conduct a  
2 public hearing on the proposed agreement following the procedures set forth in G.S.  
3 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or amendment. The  
4 notice for the public hearing must specify the location of the property subject to the  
5 development agreement, the development uses proposed on the property, and must  
6 specify a place where a copy of the proposed development agreement can be obtained.  
7 In the event that the development agreement provides that the local government shall  
8 provide certain public facilities, the development agreement shall provide that the  
9 delivery date of such public facilities will be tied to defined completion percentages or  
10 other defined performance standards to be met by the developer.

11 **"§ 160A-400.25. What development agreement must provide; what it may provide;**  
12 **major modification requires public notice and hearing.**

13        (a) A development agreement shall include all of the following:

- 14            (1) A legal description of the property subject to the agreement and the  
15 names of its legal and equitable property owners.
- 16            (2) The duration of the agreement. However, the parties are not precluded  
17 from extending the termination date by mutual agreement or from  
18 entering into subsequent development agreements.
- 19            (3) The development uses permitted on the property, including population  
20 densities and building types, intensities, placement on the site, and  
21 design.
- 22            (4) A description of public facilities that will service the development,  
23 including who provides the facilities, the date any new public  
24 facilities, if needed, will be constructed, and a schedule to assure  
25 public facilities are available concurrent with the impacts of the  
26 development.
- 27            (5) A description, where appropriate, of any reservation or dedication of  
28 land for public purposes and any provisions to protect environmentally  
29 sensitive property as may be required or permitted pursuant to laws in  
30 effect at the time of entering into the development agreement.
- 31            (6) A description of all local development permits approved or needed to  
32 be approved for the development of the property together with a  
33 statement indicating that the failure of the agreement to address a  
34 particular permit, condition, term, or restriction does not relieve the  
35 developer of the necessity of complying with the law governing the  
36 permitting requirements, conditions, terms, or restrictions.
- 37            (7) A finding that the development permitted or proposed is consistent  
38 with the local government's comprehensive plan and land development  
39 regulations.
- 40            (8) A description of any conditions, terms, restrictions, or other  
41 requirements determined to be necessary by the local government for  
42 the public health, safety, or welfare of its citizens.
- 43            (9) A description, where appropriate, of any provisions for the  
44 preservation and restoration of historic structures.

1       **(b) A development agreement may provide that the entire development or any**  
2 **phase of it be commenced or completed within a specified period of time. The**  
3 **development agreement must provide a development schedule including**  
4 **commencement dates and interim completion dates at no greater than five-year**  
5 **intervals; provided, however, the failure to meet a commencement or completion date**  
6 **shall not, in and of itself, constitute a material breach of the development agreement**  
7 **pursuant to G.S. 160A-400.28, but must be judged based upon the totality of the**  
8 **circumstances. The development agreement may include other defined performance**  
9 **standards to be met by the developer. If the developer requests a modification in the**  
10 **dates as set forth in the agreement and is able to demonstrate and establish that there is**  
11 **good cause to modify those dates, those dates must be modified by the local**  
12 **government. A major modification of the agreement may occur only after public notice**  
13 **and a public hearing by the local government.**

14       **(c) If more than one local government is made party to an agreement, the**  
15 **agreement must specify which local government is responsible for the overall**  
16 **administration of the development agreement.**

17       **(d) The development agreement also may cover any other matter not inconsistent**  
18 **with this Part.**

19       **"§ 160A-400.26. Agreement and development must be consistent with local**  
20 **government comprehensive plan and land development regulations.**

21       **A development agreement and authorized development must be consistent with the**  
22 **local government's comprehensive plan and land development regulations.**

23       **"§ 160A-400.27. Law in effect at time of agreement governs development;**  
24 **exceptions.**

25       **(a) Unless otherwise provided by the development agreement, the laws**  
26 **applicable to development of the property subject to a development agreement are those**  
27 **in force at the time of execution of the agreement.**

28       **(b) A local government may apply subsequently adopted laws to a development**  
29 **that is subject to a development agreement only if the local government has held a**  
30 **public hearing and determined:**

31           **(1) The laws are not in conflict with the laws governing the development**  
32 **agreement and do not prevent the development set forth in the**  
33 **development agreement;**

34           **(2) They are essential to the public health, safety, or welfare and the laws**  
35 **expressly state that they apply to a development that is subject to a**  
36 **development agreement;**

37           **(3) The laws are specifically anticipated and provided for in the**  
38 **development agreement;**

39           **(4) The local government demonstrates that substantial changes have**  
40 **occurred in pertinent conditions existing at the time of approval of the**  
41 **development agreement which changes, if not addressed by the local**  
42 **government, would pose a serious threat to the public health, safety, or**  
43 **welfare; or**

1           (5) The development agreement is based on substantially and materially  
2           inaccurate information supplied by the developer.

3           (c) This section does not abrogate any rights preserved by G.S. 160A-385,  
4           160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or  
5           otherwise in the absence of a development agreement.

6           "**§ 160A-400.28. Periodic review to assess compliance with agreement; material**  
7           **breach by developer; notice of breach; cure of breach or modification or**  
8           **termination of agreement.**

9           (a) Procedures established pursuant to G.S. 160A-400.22 must include a  
10          provision for requiring periodic review by the zoning administrator, or, if the local  
11          government has no zoning administrator, by an appropriate officer of the local  
12          government, at least every 12 months, at which time the developer must be required to  
13          demonstrate good faith compliance with the terms of the development agreement.

14          (b) If, as a result of a periodic review, the local government finds and determines  
15          that the developer has committed a material breach of the terms or conditions of the  
16          agreement, the local government shall serve notice in writing, within a reasonable time  
17          after the periodic review, upon the developer setting forth with reasonable particularity  
18          the nature of the breach and the evidence supporting the finding and determination, and  
19          providing the developer a reasonable time in which to cure the material breach.

20          (c) If the developer fails to cure the material breach within the time given, then  
21          the local government unilaterally may terminate or modify the development agreement;  
22          provided, that the local government has first given the developer the opportunity to  
23          rebut the finding and determination or to consent to amend the development agreement  
24          to meet the concerns of the local government with respect to the findings and  
25          determinations.

26          "**§ 160A-400.29. Amendment or cancellation of development agreement by mutual**  
27          **consent of parties or successors in interest.**

28          A development agreement may be amended or canceled by mutual consent of the  
29          parties to the agreement or by their successors in interest.

30          "**§ 160A-400.30. Validity and duration of agreement entered into prior to change of**  
31          **jurisdiction; subsequent modification or suspension.**

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

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

1 **"§ 160A-400.31. Developer to record agreement within 14 days; burdens and**  
2 **benefits inure to successors in interest.**

3 Within 14 days after a local government enters into a development agreement, the  
4 developer shall record the agreement with the register of deeds in the county where the  
5 property is located. The burdens of the development agreement are binding upon, and  
6 the benefits of the agreement shall inure to, all successors in interest to the parties to the  
7 agreement.

8 **"§ 160A-400.32. Agreement to be modified or suspended to comply with**  
9 **later-enacted state or federal laws or regulations.**

10 In the event state or federal laws or regulations, enacted after a development  
11 agreement has been entered into, prevent or preclude compliance with one or more  
12 provisions of the development agreement, the provisions of the agreement must be  
13 modified or suspended as may be necessary to comply with the state or federal laws or  
14 regulations.

15 **"§ 160A-400.33. Rights, duties, and privileges of gas and electricity suppliers not**  
16 **affected.**

17 The provisions of this act are not intended nor may they be construed in any way to  
18 alter or amend in any way the rights, duties, and privileges of suppliers of electricity or  
19 natural gas with reference to the provision of electricity or gas service, including, but  
20 not limited to, the generation, transmission, distribution, or provision of electricity at  
21 wholesale, retail, or in any other capacity.

22 **"§ 160A-400.34. Applicability to local government of constitutional and statutory**  
23 **procedures for approval of debt.**

24 In the event that any of the obligations of the local government in the development  
25 agreement constitute debt, the local government shall comply at the time of the  
26 obligation to incur such debt becomes enforceable against the local government with  
27 any applicable constitutional and statutory procedures for the approval of this debt.

28 **"§ 160A-400.35. Agreement may not contravene or supersede building or housing**  
29 **code; compliance with code if subsequently enacted.**

30 Notwithstanding any other provision of law, a development agreement adopted  
31 pursuant to this chapter must comply with any building or housing codes subsequently  
32 adopted by the governing body of a municipality or county. A development agreement  
33 may not include provisions that supersede or contravene the requirements of any  
34 building or housing code adopted by the governing body of a municipality or county."

35  
36 **PART VI. EFFECTIVE DATE.**

37 **SECTION 38.** This act becomes effective January 1, 2004.