

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 814  
Judiciary I Committee Substitute Adopted 5/31/05

Short Title: Modernize City/County Planning.

(Public)

Sponsors:

Referred to:

March 23, 2005

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

4 The General Assembly of North Carolina enacts:

5  
6 **PART I. GENERAL PROVISIONS**

7  
8 **SECTION 1.(a)** G.S. 160A-364 reads as rewritten:

9 "**§ 160A-364. Procedure for ~~adopting or amending~~ adopting, amending, or**  
10 **repealing ordinances under Article.**

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

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

28 **SECTION 1.(b)** G.S. 153A-323 reads as rewritten:

1 "§ 153A-323. Procedure for ~~adopting or amending~~ adopting, amending, or  
2 repealing ordinances under this Article and Chapter 160A, Article 19.

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

10 (b) If the adoption or modification of the ordinance would result in changes to  
11 the zoning map or would change or affect the permitted uses of land located five miles  
12 or less from the perimeter boundary of a military base, the board of commissioners shall  
13 provide written notice of the proposed changes by certified mail, return receipt  
14 requested, to the commander of the military base not less than 10 days nor more than 25  
15 days before the date fixed for the public hearing. If the military provides comments or  
16 analysis regarding the compatibility of the proposed ordinance or amendment with  
17 military operations at the base, the board of commissioners shall take the comments and  
18 analysis into consideration before making a final determination on the ordinance."  
19

## 20 PART II. SUBDIVISION REGULATION

21  
22 SECTION 2.(a) G.S. 160A-372 reads as rewritten:

23 "§ 160A-372. Contents and requirements of ordinance.

24 (a) A subdivision control ordinance may provide for the orderly growth and  
25 development of the city; for the coordination of ~~streets and highway~~ transportation  
26 networks and utilities within proposed subdivisions with existing or planned streets and  
27 highways and with other public facilities; for the dedication or reservation of recreation  
28 areas serving residents of the immediate neighborhood within the subdivision or,  
29 alternatively, for provision of funds to be used to acquire recreation areas serving  
30 residents of the development or subdivision or more than one subdivision or  
31 development within the immediate area, and rights-of-way or easements for street and  
32 utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or  
33 G.S. 136-66.11; and for the distribution of population and traffic in a manner that will  
34 avoid congestion and overcrowding and will create conditions ~~essential to that~~  
35 substantially promote public health, safety, and the general welfare.

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

43 (c) The ordinance may provide for the more orderly development of subdivisions  
44 by requiring the construction of community service facilities in accordance with

1 ~~municipal policies and standards and, to assure compliance with these requirements, the~~  
2 ~~ordinance may provide for the posting of bond or any other method that will offer~~  
3 ~~guarantee of compliance. plans, policies, and standards.~~

4 The ordinance may provide for the reservation of school sites in accordance with  
5 comprehensive land use plans approved by the council or the planning ~~agency~~-board. In  
6 order for this authorization to become effective, before approving such plans the council  
7 or planning ~~agency~~-board and the board of education with jurisdiction over the area  
8 shall jointly determine the specific location and size of any school sites to be reserved,  
9 which information shall appear in the comprehensive land use plan. Whenever a  
10 subdivision is submitted for approval which includes part or all of a school site to be  
11 reserved under the plan, the council or planning ~~agency~~-board shall immediately notify  
12 the board of education and the board of education shall promptly decide whether it still  
13 wishes the site to be reserved. If the board of education does not wish to reserve the site,  
14 it shall so notify the council or planning ~~agency~~-board and no site shall be reserved. If  
15 the board of education does wish to reserve the site, the subdivision shall not be  
16 approved without such reservation. The board of education shall then have 18 months  
17 beginning on the date of final approval of the subdivision within which to acquire the  
18 site by purchase or by initiating condemnation proceedings. If the board of education  
19 has not purchased or begun proceedings to condemn the site within 18 months, the  
20 subdivider may treat the land as freed of the reservation.

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

23 The ordinance may provide that a developer may provide funds to the city whereby  
24 the city may acquire recreational land or areas to serve the development or subdivision,  
25 including the purchase of land ~~which~~that may be used to serve more than one  
26 subdivision or development within the immediate area. All funds received by the city  
27 pursuant to this paragraph shall be used only for the acquisition or development of  
28 recreation, park, or open space sites. Any formula enacted to determine the amount of  
29 funds that are to be provided under this paragraph shall be based on the value of the  
30 development or subdivision for property tax purposes. The ordinance may allow a  
31 combination or partial payment of funds and partial dedication of land when the  
32 governing body of the city determines that this combination is in the best interests of the  
33 citizens of the area to be served.

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

1 payment of funds and partial dedication of constructed streets when the governing body  
2 of the city determines that a combination is in the best interests of the citizens of the  
3 area to be served.

4 To assure compliance with these and other ordinance requirements, the ordinance  
5 may provide for performance guarantees to assure successful completion of required  
6 improvements. If a performance guarantee is required, the city shall provide a range of  
7 options of types of performance guarantees, such as surety bonds or letters of credit,  
8 from which the developer may choose. For any specific development, the type of  
9 performance guarantee from the range specified by the city shall be at the election of the  
10 developer."

11 **SECTION 2.(b)** G.S. 153A-331 reads as rewritten:

12 **"§ 153A-331. Contents and requirements of ordinance.**

13 (a) A subdivision control ordinance may provide for the orderly growth and  
14 development of the county; for the coordination of ~~streets and highway~~transportation  
15 networks and utilities within proposed subdivisions with existing or planned streets and  
16 highways and with other public facilities; for the dedication or reservation of recreation  
17 areas serving residents of the immediate neighborhood within the subdivision and of  
18 rights-of-way or easements for street and utility purposes including the dedication of  
19 rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of  
20 population and traffic in a manner that will avoid congestion and overcrowding and will  
21 create conditions ~~essential to~~ that substantially promote public health, safety, and the  
22 general welfare.

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

30 (c) A subdivision control ordinance may provide that a developer may provide  
31 funds to the county whereby the county may acquire recreational land or areas to serve  
32 the development or subdivision, including the purchase of land ~~which~~that may be used  
33 to serve more than one subdivision or development within the immediate area.

34 The ordinance may provide that in lieu of required street construction, a developer  
35 may provide funds to be used for the development of roads to serve the occupants,  
36 residents, or invitees of the subdivision or development. All funds received by the  
37 county under this section shall be transferred to the municipality to be used solely for  
38 the development of roads, including design, land acquisition, and construction. Any  
39 municipality receiving funds from a county under this section is authorized to expend  
40 such funds outside its corporate limits for the purposes specified in the agreement  
41 between the municipality and the county. Any formula adopted to determine the amount  
42 of funds the developer is to pay in lieu of required street construction shall be based on  
43 the trips generated from the subdivision or development. The ordinance may require a  
44 combination of partial payment of funds and partial dedication of constructed streets

1 when the governing body of the county determines that a combination is in the best  
2 interest of the citizens of the area to be served.

3 The ordinance may provide for the more orderly development of subdivisions by  
4 requiring the construction of community service facilities in accordance with county  
5 ~~policies and standards, and, to assure compliance with these requirements, the ordinance~~  
6 ~~may provide for the posting of bond or any other method that will offer guarantee of~~  
7 ~~compliance.~~ plans, policies, and standards.

8 The ordinance may provide for the reservation of school sites in accordance with  
9 comprehensive land use plans approved by the board of commissioners or the planning  
10 ~~agency.~~ board. For the authorization to reserve school sites to be effective, the board of  
11 commissioners or ~~planning agency,~~ board, before approving a comprehensive land use  
12 plan, shall determine jointly with the board of education with jurisdiction over the area  
13 the specific location and size of each school site to be reserved, and this information  
14 shall appear in the plan. Whenever a subdivision that includes part or all of a school site  
15 to be reserved under the plan is submitted for approval, the board of commissioners or  
16 the ~~planning agency~~ board shall immediately notify the board of education. ~~That~~ The  
17 board of education shall promptly decide whether it still wishes the site to be reserved  
18 and shall notify the board of commissioners or ~~planning agency~~ board of its decision. If  
19 the board of education does not wish the site to be reserved, no site may be reserved. If  
20 the board of education does wish the site to be reserved, the subdivision may not be  
21 approved without the reservation. The board of education must acquire the site within  
22 18 months after the date the site is reserved, either by purchase or by exercise of the  
23 power of eminent domain. If the board of education has not purchased the site or begun  
24 proceedings to condemn the site within the 18 months, the subdivider may treat the land  
25 as freed of the reservation.

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

28 To assure compliance with these and other ordinance requirements, the ordinance  
29 may provide for performance guarantees to assure successful completion of required  
30 improvements. If a performance guarantee is required, the county shall provide a range  
31 of options of types of performance guarantees, such as surety bonds or letters of credit,  
32 from which the developer may choose. For any specific development, the type of  
33 performance guarantee from the range specified by the county shall be at the election of  
34 the developer."

35 **SECTION 3.(a)** G.S. 160A-375 reads as rewritten:

36 "**§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

37 (a) If a city adopts an ordinance regulating the subdivision of land as authorized  
38 herein, any person who, being the owner or agent of the owner of any land located  
39 within the jurisdiction of that city, thereafter subdivides his land in violation of the  
40 ordinance or transfers or sells land by reference to, exhibition of, or any other use of a  
41 plat showing a subdivision of the land before the plat has been properly approved under  
42 such ordinance and recorded in the office of the appropriate register of deeds, shall be  
43 guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument  
44 of transfer or other document used in the process of selling or transferring land shall not

1 exempt the transaction from this penalty. The city may bring an action for injunction of  
2 any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon  
3 appropriate findings, issue an injunction and order requiring the offending party to  
4 comply with the subdivision ordinance. Building permits required pursuant to  
5 G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to  
6 other remedies, a city may institute any appropriate action or proceedings to prevent the  
7 unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent  
8 any illegal act or conduct.

9 (b) The provisions of this section are not violated by presale or prelease contracts  
10 entered into by an owner or by the owner's agent for the purpose of obtaining  
11 development financing where that presale or prelease contract describes or refers to land  
12 by reference to a subdivision plat that has not yet been approved or recorded in the  
13 office of the register of deeds, provided that presale or prelease contract complies with  
14 each of the following provisions:

15 (1) The contract must plainly and conspicuously notify the prospective  
16 buyer or lessee that a subdivision plat has not been approved or  
17 recorded and that the contract is cancelable by either party until the  
18 final subdivision plat is recorded and the buyer or lessee elects not to  
19 terminate the contract under subdivision (4) of this subsection.

20 (2) The contract must plainly and conspicuously notify the prospective  
21 buyer or lessee that execution of the contract confers on the  
22 prospective buyer or lessee no right to receive or to compel favorable  
23 action on the subdivision plat and that no governmental body incurs  
24 any obligation to the prospective buyer or lessee with respect to  
25 approval of the subdivision plat.

26 (3) The contract obligates the owner or the owner's agent to deliver to the  
27 prospective buyer or lessee a copy of the approved and recorded  
28 subdivision plat prior to any closing and conveyance.

29 (4) The contract grants to the prospective buyer or lessee a period of 15  
30 days after receipt of the recorded plat to terminate the contract and to  
31 receive a refund of all earnest money if, in the sole judgment of the  
32 prospective buyer or lessee, the approved and recorded subdivision  
33 plat differs in any way from any representative relied upon by the  
34 buyer or lessee or is in any way unsatisfactory to that prospective  
35 buyer or lessee.

36 (5) The contract provides that the prospective buyer or lessee may not be  
37 required to close any earlier than five days after expiration of the  
38 period for termination set forth in subdivision (4) of this subsection."

39 **SECTION 3.(b)** G.S. 153A-334 reads as rewritten:

40 "**§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

41 (a) If a person who is the owner or the agent of the owner of any land located  
42 within the territorial jurisdiction of a county that has adopted a subdivision regulation  
43 ordinance subdivides his land in violation of the ordinance or transfers or sells land by  
44 reference to, exhibition of, or any other use of a plat showing a subdivision of the land

1 before the plat has been properly approved under the ordinance and recorded in the  
2 office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The  
3 description by metes and bounds in the instrument of transfer or other document used in  
4 the process of selling or transferring land does not exempt the transaction from this  
5 penalty. The county may bring an action for injunction of any illegal subdivision,  
6 transfer, conveyance, or sale of land, and the court shall, upon appropriate findings,  
7 issue an injunction and order requiring the offending party to comply with the  
8 subdivision ordinance. Building permits required pursuant to G.S. 153A-357 may be  
9 denied for lots that have been illegally subdivided. In addition to other remedies, a  
10 county may institute any appropriate action or proceedings to prevent the unlawful  
11 subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal  
12 act or conduct.

13 (b) The provisions of this section are not violated by presale or prelease contracts  
14 entered into by an owner or by the owner's agent for the purpose of obtaining  
15 development financing where that presale or prelease contract describes or refers to land  
16 by reference to a subdivision plat that has not yet been approved or recorded in the  
17 office of the register of deeds, provided that presale or prelease contract complies with  
18 each of the following provisions:

19 (1) The contract must plainly and conspicuously notify the prospective  
20 buyer or lessee that a subdivision plat has not been approved or  
21 recorded and that the contract is cancelable by either party until the  
22 final subdivision plat is recorded and the buyer or lessee elects not to  
23 terminate the contract under subdivision (4) of this subsection.

24 (2) The contract must plainly and conspicuously notify the prospective  
25 buyer or lessee that execution of the contract confers on the  
26 prospective buyer or lessee no right to receive or to compel favorable  
27 action on the subdivision plat and that no governmental body incurs  
28 any obligation to the prospective buyer or lessee with respect to  
29 approval of the subdivision plat.

30 (3) The contract obligates the owner or the owner's agent to deliver to the  
31 prospective buyer or lessee a copy of the approved and recorded  
32 subdivision plat prior to any closing and conveyance.

33 (4) The contract grants to the prospective buyer or lessee a period of 15  
34 days after receipt of the recorded plat to terminate the contract and to  
35 receive a refund of all earnest money if, in the sole judgment of the  
36 prospective buyer or lessee, the approved and recorded subdivision  
37 plat differs in any way from any representative relied upon by the  
38 buyer or lessee or is in any way unsatisfactory to that prospective  
39 buyer or lessee.

40 (5) The contract provides that the prospective buyer or lessee may not be  
41 required to close any earlier than five days after expiration of the  
42 period for termination set forth in subdivision (4) of this subsection."

43 **SECTION 4.(a)** G.S. 160A-376 reads as rewritten:

44 "**§ 160A-376. Definition.**

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

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

21 (b) A city may provide for expedited review of specified classes of subdivisions."

22 **SECTION 4.(b)** G.S. 153A-335 reads as rewritten:

23 **"§ 153A-335. "Subdivision" defined.**

24 (a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel  
25 of land into two or more lots, building sites, or other divisions when any one or more of  
26 those divisions are created for the purpose of sale or building development (whether  
27 immediate or future) and includes all division of land involving the dedication of a new  
28 street or a change in existing streets; however, the following is not included within this  
29 definition and is not subject to any regulations enacted pursuant to this Part:

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



1       (b) A county may provide for expedited review of specified classes of  
2 subdivisions."

3  
4 **PART III. ZONING REGULATION**

5  
6           **SECTION 5.(a)** G.S. 160A-381 reads as rewritten:

7 **"§ 160A-381. Grant of power.**

8       (a) For the purpose of promoting health, safety, morals, or the general welfare of  
9 the community, any city may adopt zoning and development regulation ordinances.  
10 These ordinances may be adopted as part of a unified development ordinance or as a  
11 separate ordinance. A zoning ordinance may regulate and restrict the height, number of  
12 stories and size of buildings and other structures, the percentage of lots that may be  
13 occupied, the size of yards, courts and other open spaces, the density of population, and  
14 the location and use of buildings, structures and land for trade, industry, residence or  
15 other purposes and to land. The ordinance may provide density credits or severable  
16 development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or  
17 G.S. 136-66.11.

18       (b) Expired.

19       **(b1)** These regulations may provide that a board of adjustment may determine and  
20 vary their application in harmony with their general purpose and intent and in  
21 accordance with general or specific rules therein ~~contained~~contained, provided no  
22 change in permitted uses may be authorized by variance.

23       **(c)** The regulations may also provide that the board of ~~adjustment~~adjustment, the  
24 planning board, or the city council may issue special use permits or conditional use  
25 permits in the classes of cases or situations and in accordance with the principles,  
26 conditions, safeguards, and procedures specified therein and may impose reasonable and  
27 appropriate conditions and safeguards upon these permits. When deciding special use  
28 permits or conditional use permits, the city council shall follow quasi-judicial  
29 procedures. No vote greater than a majority vote shall be required for the city council to  
30 issue such permits. For the purposes of this section, vacant positions on the board and  
31 members who are disqualified from voting on a quasi-judicial matter shall not be  
32 considered 'members of the board' for calculation of the requisite majority. Every such  
33 decision of the city council shall be subject to review of the superior court in the nature  
34 of certiorari in accordance with G.S. 160A-388.

35       **(e)** Where appropriate, such conditions may include requirements that street and  
36 utility rights-of-way be dedicated to the public and that provision be made of  
37 recreational space and facilities. ~~When issuing or denying special use permits or~~  
38 ~~conditional use permits, the city council shall follow the procedures for boards of~~  
39 ~~adjustment except that no vote greater than a majority vote shall be required for the city~~  
40 ~~council to issue such permits, and every such decision of the city council shall be~~  
41 ~~subject to review by the superior court by proceedings in the nature of certiorari. Any~~  
42 ~~petition for review by the superior court shall be filed with the clerk of superior court~~  
43 ~~within 30 days after the decision of the city council is filed in such office as the~~  
44 ~~ordinance specifies, or after a written copy thereof is delivered to every aggrieved party~~

1 ~~who has filed a written request for such copy with the clerk at the time of the hearing of~~  
2 ~~the case, whichever is later. The decision of the city council may be delivered to the~~  
3 ~~aggrieved party either by personal service or by registered mail or certified mail return~~  
4 ~~receipt requested.~~

5 (d) A city council member shall not vote on any zoning map or text amendment  
6 where the outcome of the matter being considered is reasonably likely to have a direct,  
7 substantial, and readily identifiable financial impact on the member. Members of  
8 appointed boards providing advice to the city council shall not vote on  
9 recommendations regarding any zoning map or text amendment where the outcome of  
10 the matter being considered is reasonably likely to have a direct, substantial, and readily  
11 identifiable financial impact on the member.

12 (e) As provided in this subsection, cities may adopt temporary moratoria on any  
13 city development approval required by law. The duration of any moratorium shall be  
14 reasonable in light of the specific conditions that warrant imposition of the moratorium  
15 and may not exceed the period of time necessary to correct, modify, or resolve such  
16 conditions. A development moratorium with a duration of 60 days or any shorter period  
17 may be adopted without the necessity of a public hearing and notice that would  
18 otherwise be required pursuant to G.S. 160A-364. A development moratorium with a  
19 duration of 61 days or longer, and any extension of a moratorium adopted without a  
20 hearing to a total duration of more than 60 days, is subject to the notice and hearing  
21 requirements of G.S. 160A-364. Absent an imminent threat to public health and safety,  
22 a development moratorium adopted pursuant to this section shall not apply to any  
23 project for which a valid building permit issued pursuant to G.S. 160A-417 is  
24 outstanding, to development set forth in a site-specific or phased development plan  
25 approved pursuant to G.S. 160A-385.1, to development for which substantial  
26 expenditures have already been made in good faith reliance on a prior valid  
27 administrative or quasi-judicial permit or approval, or to preliminary or final  
28 subdivision plats that have been accepted for review by the city prior to the initiation of  
29 any procedure to adopt the moratorium.

30 Any ordinance establishing a development moratorium must expressly include at the  
31 time of adoption each of the following:

- 32 (1) A clear statement of the problems or conditions necessitating the  
33 moratorium and what courses of action, alternative to a moratorium,  
34 were considered by the city.
- 35 (2) A clear statement of the development approvals subject to the  
36 moratorium and how a moratorium on those approvals will address the  
37 problems or conditions leading to imposition of the moratorium.
- 38 (3) An express date for termination of the moratorium and a statement  
39 setting forth why that duration is reasonably necessary to address the  
40 problems or conditions leading to imposition of the moratorium.
- 41 (4) A clear statement of the actions, and the schedule for those actions,  
42 proposed to be taken by the city during the duration of the moratorium  
43 to address the problems or conditions leading to imposition of the  
44 moratorium.

1 No moratorium may be subsequently renewed or extended for any additional period  
2 unless the city shall have taken all reasonable and feasible steps proposed to be taken by  
3 the city in its ordinance establishing the moratorium to address the problems or  
4 conditions leading to imposition of the moratorium and unless new facts and conditions  
5 warrant an extension. Any ordinance renewing or extending a development moratorium  
6 must expressly include, at the time of adoption, the findings set forth in subdivisions (1)  
7 through (4) of this subsection, including what new facts or conditions warrant the  
8 extension."

9 **SECTION 5.(b)** G.S. 153A-340 reads as rewritten:

10 **"§ 153A-340. Grant of power.**

11 (a) For the purpose of promoting health, safety, morals, or the general welfare, a  
12 county may adopt zoning and development regulation ordinances. These ordinances  
13 may be adopted as part of a unified development ordinance or as a separate ordinance.  
14 A zoning ordinance may regulate and restrict the height, number of stories and size of  
15 buildings and other structures, the percentage of lots that may be occupied, the size of  
16 yards, courts and other open spaces, the density of population, and the location and use  
17 of buildings, structures, and land for trade, industry, residence, or other purposes, and to  
18 purposes. The ordinance may provide density credits or severable development rights  
19 for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

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

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

28 (3) The definitions set out in G.S. 106-802 apply to this subdivision. A  
29 county may adopt zoning regulations governing swine farms served by  
30 animal waste management systems having a design capacity of  
31 600,000 pounds steady state live weight (SSLW) or greater provided  
32 that the zoning regulations may not have the effect of excluding swine  
33 farms served by an animal waste management system having a design  
34 capacity of 600,000 pounds SSLW or greater from the entire zoning  
35 jurisdiction.

36 (c) The 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~~contained, provided no  
39 change in permitted uses may be authorized by variance.

40 (c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the  
41 planning board, or the board of commissioners may issue special use permits or  
42 conditional use permits in the classes of cases or situations and in accordance with the  
43 principles, conditions, safeguards, and procedures specified therein and may impose  
44 reasonable and appropriate conditions and safeguards upon these permits. Where

1 appropriate, the conditions may include requirements that street and utility  
2 rights-of-way be dedicated to the public and that recreational space be provided. ~~When~~  
3 ~~issuing or denying special use permits or conditional use permits, the board of~~  
4 ~~commissioners shall follow the procedures for boards of adjustment except that no vote~~  
5 ~~greater than a majority vote shall be required for the board of commissioners to issue~~  
6 ~~such permits, and every such decision of the board of commissioners shall be subject to~~  
7 ~~review by the superior court by proceedings in the nature of certiorari.~~ When deciding  
8 special use permits or conditional use permits, the board of county commissioners shall  
9 follow quasi-judicial procedures. No vote greater than a majority vote shall be required  
10 for the city council to issue such permits. For the purposes of this section, vacant  
11 positions on the board and members who are disqualified from voting on a  
12 quasi-judicial matter shall not be considered 'members of the board' for calculation of  
13 the requisite majority. Every such decision of the board of county commissioners shall  
14 be subject to review of the superior court in the nature of certiorari consistent with  
15 G.S. 153A-345.

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

19 (e) For the purpose of this section, the term "structures" shall include floating  
20 homes.

21 (f) ~~Any petition for review by the superior court shall be filed with the clerk of~~  
22 ~~superior court within 30 days after the decision of the board of commissioners is filed in~~  
23 ~~such office as the ordinance specifies, or after a written copy thereof is delivered to~~  
24 ~~every aggrieved party who has filed a written request for such copy with the clerk at the~~  
25 ~~time of the hearing of the case, whichever is later. The decision of the board of~~  
26 ~~commissioners may be delivered to the aggrieved party either by personal service or by~~  
27 ~~registered mail or certified mail return receipt requested.~~

28 (g) A member of the board of county commissioners shall not vote on any zoning  
29 map or text amendment where the outcome of the matter being considered is reasonably  
30 likely to have a direct, substantial, and readily identifiable financial impact on the  
31 member. Members of appointed boards providing advice to the board of county  
32 commissioners shall not vote on recommendations regarding any zoning map or text  
33 amendment where the outcome of the matter being considered is reasonably likely to  
34 have a direct, substantial, and readily identifiable financial impact on the member.

35 (h) As provided in this subsection, counties may adopt temporary moratoria on  
36 any county development approval required by law. The duration of any moratorium  
37 shall be reasonable in light of the specific conditions that warrant imposition of the  
38 moratorium and may not exceed the period of time necessary to correct, modify, or  
39 resolve such conditions. A development moratorium with a duration of 60 days or any  
40 shorter period may be adopted without the necessity of a public hearing and notice that  
41 would otherwise be required pursuant to G.S. 153A-323. A development moratorium  
42 with a duration of 61 days or longer, and any extension of a moratorium adopted  
43 without a hearing to a total duration of more than 60 days, is subject to the notice and  
44 hearing requirements of G.S. 153A-323. Absent an imminent threat to public health and

1 safety, a development moratorium adopted pursuant to this section shall not apply to  
2 any project for which a valid building permit issued pursuant to G.S. 153A-357 is  
3 outstanding, to development set forth in a site-specific or phased development plan  
4 approved pursuant to G.S. 153A-344.1, to development for which substantial  
5 expenditures have already been made in good faith reliance on a prior valid  
6 administrative or quasi-judicial permit or approval, or to preliminary or final  
7 subdivision plats that have been accepted for review by the county prior to the initiation  
8 of any procedure to adopt the moratorium.

9 Any ordinance establishing a development moratorium must expressly include at the  
10 time of adoption each of the following:

- 11 (1) A clear statement of the problems or conditions necessitating the  
12 moratorium and what courses of action, alternative to a moratorium,  
13 were considered by the county.
- 14 (2) A clear statement of the development approvals subject to the  
15 moratorium and how a moratorium on those approvals will address the  
16 problems or conditions leading to imposition of the moratorium.
- 17 (3) An express date for termination of the moratorium and a statement  
18 setting forth why that duration is reasonably necessary to address the  
19 problems or conditions leading to imposition of the moratorium.
- 20 (4) A clear statement of the actions, and the schedule for those actions,  
21 proposed to be taken by the county during the duration of the  
22 moratorium to address the problems or conditions leading to  
23 imposition of the moratorium.

24 No moratorium may be subsequently renewed or extended for any additional period  
25 unless the city shall have taken all reasonable and feasible steps proposed to be taken by  
26 the county in its ordinance establishing the moratorium to address the problems or  
27 conditions leading to imposition of the moratorium and unless new facts and conditions  
28 warrant an extension. Any ordinance renewing or extending a development moratorium  
29 must expressly include, at the time of adoption, the findings set forth in subdivisions (1)  
30 through (4) of this subsection, including what new facts or conditions warrant the  
31 extension."

32 **SECTION 5.1.(a)** G.S. 160A-75 reads as rewritten:

33 **"§ 160A-75. Voting.**

34 No member shall be excused from voting except upon matters involving the  
35 consideration of the member's own financial interest or official conduct or on matters on  
36 which the member is prohibited from voting under G.S. 14-234.—14-234 or  
37 G.S. 160A-381(d). In all other cases, a failure to vote by a member who is physically  
38 present in the council chamber, or who has withdrawn without being excused by a  
39 majority vote of the remaining members present, shall be recorded as an affirmative  
40 vote. The question of the compensation and allowances of members of the council is not  
41 a matter involving a member's own financial interest or official conduct.

42 An affirmative vote equal to a majority of all the members of the council not  
43 excused from voting on the question in issue, including the mayor's vote in case of an  
44 equal division, shall be required to adopt an ordinance, take any action having the effect

1 of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or  
2 authorize any contract on behalf of the city. In addition, no ordinance nor any action  
3 having the effect of any ordinance may be finally adopted on the date on which it is  
4 introduced except by an affirmative vote equal to or greater than two thirds of all the  
5 actual membership of the council, excluding vacant seats and not including the mayor  
6 unless the mayor has the right to vote on all questions before the council. For purposes  
7 of this section, an ordinance shall be deemed to have been introduced on the date the  
8 subject matter is first voted on by the council. "

9 **SECTION 5.1.(b)** G.S. 153A-44 reads as rewritten:

10 **"§ 153A-44. Members excused from voting.**

11 The board may excuse a member from voting, but only upon questions involving the  
12 member's own financial interest or official conduct or on matters on which the member  
13 is prohibited from voting under G.S. ~~14-234.~~ 14-234 or G.S. 153A-340(g). For purposes  
14 of this section, the question of the compensation and allowances of members of the  
15 board does not involve a member's own financial interest or official conduct."

16 **SECTION 6.(a)** G.S. 160A-382 reads as rewritten:

17 **"§ 160A-382. Districts.**

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

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

39 A statement analyzing the reasonableness of the proposed rezoning shall be prepared  
40 for each petition for a rezoning to a special or conditional use district, or a conditional  
41 district, or other small-scale or spot zoning. This statement may be prepared by the  
42 petitioner or by the city, and it shall be completed and available for public inspection at  
43 the time notice is provided for the public hearing on the proposed rezoning. This  
44 statement shall address the consistency of the proposed rezoning with any

1 comprehensive plan that has been adopted and any other officially adopted plan that is  
2 applicable and the compatibility of the proposed rezoning with the site and surrounding  
3 area.

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

7 **SECTION 6.(b)** G.S. 153A-342 reads as rewritten:

8 "**§ 153A-342. Districts; zoning less than entire jurisdiction.**

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

20 (b) Property may be placed in a special use ~~district or conditional use district~~  
21 district, conditional use district, or conditional district only in response to a petition by  
22 the owners of all the property to be included. Specific conditions applicable to the  
23 districts may be proposed by the petitioner, the county or its agencies, or any affected  
24 person, but only those conditions mutually approved by the county and the petitioner  
25 may be incorporated into the zoning regulations or permit requirements.

26 A statement analyzing the reasonableness of the proposed rezoning shall be prepared  
27 for each petition for a rezoning to a special or conditional use district, or a conditional  
28 district, or other small-scale or spot zoning. This statement may be prepared by the  
29 petitioner or by the county, and it shall be completed and available for public inspection  
30 at the time notice is provided for the public hearing on the proposed rezoning. This  
31 statement shall address the consistency of the proposed rezoning with any  
32 comprehensive plan that has been adopted and any other officially adopted plan that is  
33 applicable and the compatibility of the proposed rezoning with the site and surrounding  
34 area.

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

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

1           **SECTION 7.(a)** G.S. 160A-383 reads as rewritten:

2   "**§ 160A-383. Purposes in view.**

3       Zoning regulations shall be made in accordance with a comprehensive ~~plan and~~  
4 ~~designed to lessen congestion in the streets; to secure safety from fire, panic and other~~  
5 ~~dangers; plan.~~ Prior to adopting or rejecting any zoning amendment, the governing board  
6 shall adopt a statement describing whether its action is consistent with an adopted  
7 comprehensive plan and explaining why the board considers the action taken to be  
8 reasonable and in the public interest. That statement is not subject to judicial review.

9       Zoning regulations shall be designed to promote ~~health~~the public health, safety, and  
10 ~~the general welfare; welfare.~~ To that end, the regulations may address, among other  
11 things, the following public purposes: to provide adequate light and air; to prevent the  
12 overcrowding of land; to avoid undue concentration of population; to lessen congestion  
13 in the streets; to secure safety from fire, panic, and dangers; ~~and~~ to facilitate the efficient  
14 and adequate provision of transportation, water, sewerage, schools, parks, and other  
15 public ~~requirements.~~requirements; and to maintain and improve the quality of  
16 neighborhoods and communities. The regulations shall be made with reasonable  
17 consideration, among other things, as to the character of the district and its peculiar  
18 suitability for particular uses, and with a view to conserving the value of buildings and  
19 encouraging the most appropriate use of land throughout such city."

20           **SECTION 7.(b)** G.S. 153A-341 reads as rewritten:

21   "**§ 153A-341. Purposes in view.**

22       Zoning regulations shall be made in accordance with a comprehensive ~~plan and~~  
23 ~~designed to lessen congestion in the streets; to secure safety from fire, panic, and other~~  
24 ~~dangers; plan.~~ Prior to adopting or rejecting any zoning amendment, the governing board  
25 shall adopt a statement describing whether its action is consistent with an adopted  
26 comprehensive plan and explaining why the board considers the action taken to be  
27 reasonable and in the public interest. That statement is not subject to judicial review.

28       Zoning regulations shall be designed to promote ~~the public health~~health, safety, and  
29 ~~the general welfare; welfare.~~ To that end, the regulations may address, among other  
30 things, the following public purposes: to provide adequate light and air; to prevent the  
31 overcrowding of land; to avoid undue concentration of population; to lessen congestion  
32 in the streets; to secure safety from fire, panic, and dangers; ~~and~~ to facilitate the efficient  
33 and adequate provision of transportation, water, sewerage, schools, parks, and other  
34 public ~~requirements.~~requirements; and to maintain and improve the quality of  
35 neighborhoods and communities. The regulations shall be made with reasonable  
36 consideration as to, among other things, the character of the district and its peculiar  
37 suitability for particular uses, and with a view to conserving the value of buildings and  
38 encouraging the most appropriate use of land throughout the county. In addition, the  
39 regulations shall be made with reasonable consideration to expansion and development  
40 of any cities within the county, so as to provide for their orderly growth and  
41 development."

42  
43   **PART IV. INFRASTRUCTURE AGREEMENTS**  
44



1           **SECTION 8.(a)** Article 21 of Chapter 160A of the General Statutes is  
2 amended by adding a new section to read:

3 **"§ 160A-499. Reimbursement agreements.**

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

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

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

14       (d) No reimbursement pursuant to an agreement authorized by this act shall be  
15 deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or  
16 to be deemed to be a violation or evasion of any provision of said Article.  
17 Notwithstanding the foregoing provisions of this section, a construction contract subject  
18 to a reimbursement agreement authorized by this act shall not be awarded by a  
19 developer or property owner who is a party to such reimbursement agreement without  
20 complying with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public  
21 advertising and bid opening requirements which would be applicable if the construction  
22 contract had been awarded by the city.

23       (e) This section also applies to counties."

24           **SECTION 8.(b)** Article 15 of Chapter 160A of the General Statutes is  
25 amended by adding a new section to read:

26 **"§ 160A-309. Intersection and roadway improvements.**

27       A city may contract with a private party for public intersection or roadway  
28 improvements that are adjacent or ancillary to a private land development project. Such  
29 a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public  
30 cost will not exceed one hundred seventy-five thousand dollars (\$175,000) and the city  
31 determines that: (i) the public cost will not exceed the estimated cost of providing for  
32 such public intersection or roadway improvements through either eligible force account  
33 qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of  
34 the General Statutes; or (ii) the coordination of separately constructed public  
35 intersection or roadway improvements, and the adjacent or ancillary private land  
36 development improvements would be impracticable."

37           **SECTION 8.(c)** Article 16 of Chapter 160A of the General Statutes is  
38 amended by adding a new section to read:

39 **"§ 160A-320. Public enterprise improvements.**

40       (a) Authorization. – A city may contract with a private party for public enterprise  
41 improvements that are adjacent or ancillary to a private land development project. Such  
42 a contract shall allow the city to reimburse the private party for costs associated with the  
43 design and construction of improvements that are in addition to those required by the  
44 city's land development regulations. Such a contract is not subject to Article 8 of

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

7 (b) Property Acquisition. – The improvements may be constructed on property  
8 owned or acquired by the private party or on property directly acquired by the city. The  
9 private party may assist the city in obtaining easements in favor of the city from private  
10 property owners on those properties that will be involved in or affected by the project.  
11 The contract between the city and the private party may be entered into before the  
12 acquisition of any real property necessary to the project.

13 (c) This section also applies to counties."  
14

## 15 PART V. DEVELOPMENT AGREEMENTS

16  
17 SECTION 9. Article 19 of Chapter 160A of the General Statutes is amended  
18 by adding a new Part to read:

19 "Part 3D. Development Agreements.

20 "**§ 160A-400.20. Authorization for development agreements.**

21 (a) The General Assembly finds:

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

1       (b) Local governments and agencies may enter into development agreements  
2 with developers, subject to the procedures and requirements of this Part. In entering into  
3 such agreements, a city may not exercise any authority or make any commitment not  
4 authorized by general or local act.

5       (c) This Part is supplemental to the powers conferred upon local governments  
6 and does not preclude or supersede rights and obligations established pursuant to other  
7 law regarding building permits, site-specific development plans, phased development  
8 plans, or other provisions of law.

9 **"§ 160A-400.21. Definitions.**

10       The following definitions apply in this Part:

- 11       (1) Comprehensive plan. – The comprehensive plan, land-use plan, small  
12 area plans, neighborhood plans, transportation plan, capital  
13 improvement plan, official map, and any other plans regarding land  
14 use and development that have been officially adopted by the  
15 governing board.
- 16       (2) Developer. – A person, including a governmental agency or  
17 redevelopment authority, who intends to undertake any development  
18 and who has a legal or equitable interest in the property to be  
19 developed.
- 20       (3) Development. – The planning for or carrying out of a building activity,  
21 the making of a material change in the use or appearance of any  
22 structure or property, or the dividing of land into two or more parcels.  
23 'Development', as designated in a law or development permit, includes  
24 the planning for and all other activity customarily associated with it  
25 unless otherwise specified. When appropriate to the context,  
26 'development' refers to the planning for or the act of developing or to  
27 the result of development. Reference to a specific operation is not  
28 intended to mean that the operation or activity, when part of other  
29 operations or activities, is not development. Reference to particular  
30 operations is not intended to limit the generality of this item.
- 31       (4) Development permit. – A building permit, zoning permit, subdivision  
32 approval, special or conditional use permit, variance, or any other  
33 official action of local government having the effect of permitting the  
34 development of property.
- 35       (5) Governing body. – The city council of a municipality or the board of  
36 county commissioners of a county.
- 37       (6) Land development regulations. – Ordinances and regulations enacted  
38 by the appropriate governing body for the regulation of any aspect of  
39 development and includes zoning, subdivision, or any other land  
40 development ordinances.
- 41       (7) Laws. – All ordinances, resolutions, regulations, comprehensive plans,  
42 land development regulations, policies, and rules adopted by a local  
43 government affecting the development of property, and includes laws

1 governing permitted uses of the property, density, design, and  
2 improvements.

3 (8) Property. – All real property subject to land-use regulation by a local  
4 government and includes any improvements or structures customarily  
5 regarded as a part of real property.

6 (9) Local government. – Any municipality or county that exercises  
7 regulatory authority over and grants development permits for land  
8 development or which provides public facilities.

9 (10) Local planning board. – Any planning board established pursuant to  
10 G.S. 160A-361 or G.S. 153A-321.

11 (11) Person. – An individual, corporation, business or land trust, estate,  
12 trust, partnership, association, two or more persons having a joint or  
13 common interest, State agency, or any legal entity.

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

18 **"§ 160A-400.22. Local governments authorized to enter into development**  
19 **agreements; approval of county or municipal governing body required.**

20 A local government may establish procedures and requirements, as provided in this  
21 Part, to consider and enter into development agreements with developers. A  
22 development agreement must be approved by the governing body of a county or  
23 municipality by ordinance.

24 **"§ 160A-400.23. Developed property must contain certain number of acres;**  
25 **permissible durations of agreements.**

26 A local government may enter into a development agreement with a developer for  
27 the development of property as provided in this Part, provided the property contains 25  
28 acres or more of developable property (exclusive of wetlands, mandatory buffers, steep  
29 slopes, and other portions of the property precluded from development at the time of  
30 application). Development agreements shall be of a term specified in the agreement,  
31 provided they may not be for a term exceeding 10 years.

32 **"§ 160A-400.24. Public hearing.**

33 Before entering into a development agreement, a local government shall conduct a  
34 public hearing on the proposed agreement following the procedures set forth in  
35 G.S. 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or property  
36 subject to the development agreement, the development uses proposed on the property,  
37 and must specify a place where a copy of the proposed development agreement can be  
38 obtained. In the event that the development agreement provides that the local  
39 government shall provide certain public facilities, the development agreement shall  
40 provide that the delivery date of such public facilities will be tied to successful  
41 performance by the developer in implementing the proposed development (such as  
42 meeting defined completion percentages or other performance standards).

43 **"§ 160A-400.25. What development agreement must provide; what it may provide;**  
44 **major modification requires public notice and hearing.**

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

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

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

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

10 (4) A description of public facilities that will service the development,  
11 including who provides the facilities, the date any new public  
12 facilities, if needed, will be constructed, and a schedule to assure  
13 public facilities are available concurrent with the impacts of the  
14 development.

15 (5) A description, where appropriate, of any reservation or dedication of  
16 land for public purposes and any provisions to protect environmentally  
17 sensitive property.

18 (6) A description of all local development permits approved or needed to  
19 be approved for the development of the property together with a  
20 statement indicating that the failure of the agreement to address a  
21 particular permit, condition, term, or restriction does not relieve the  
22 developer of the necessity of complying with the law governing their  
23 permitting requirements, conditions, terms, or restriction.

24 (7) A description of any conditions, terms, restrictions, or other  
25 requirements determined to be necessary by the local government for  
26 the public health, safety, or welfare of its citizens.

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

29 (b) A development agreement may provide that the entire development or any  
30 phase of it be commenced or completed within a specified period of time. The  
31 development agreement must provide a development schedule including  
32 commencement dates and interim completion dates at no greater than five-year  
33 intervals; provided, however, the failure to meet a commencement or completion date  
34 shall not, in and of itself, constitute a material breach of the development agreement  
35 pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the  
36 circumstances. The development agreement may include other defined performance  
37 standards to be met by the developer. The developer may request a modification in the  
38 dates as set forth in the agreement. Consideration of a proposed major modification of  
39 the agreement shall follow the same procedures as required for initial approval of a  
40 development agreement.

41 (c) If more than one local government is made party to an agreement, the  
42 agreement must specify which local government is responsible for the overall  
43 administration of the development agreement.

1 (d) The development agreement also may cover any other matter not inconsistent  
2 with this Part.

3 **"§ 160A-400.26. Law in effect at time of agreement governs development;**  
4 **exceptions.**

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

8 (b) Except for grounds specified in G.S. 160A-385.1(e), a local government may  
9 not apply subsequently adopted ordinances or development policies to a development  
10 that is subject to a development agreement.

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

16 (d) This section does not abrogate any rights preserved by G.S. 160A-385,  
17 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or  
18 otherwise in the absence of a development agreement.

19 **"§ 160A-400.27. Periodic review to assess compliance with agreement; material**  
20 **breach by developer; notice of breach; cure of breach or modification or**  
21 **termination of agreement.**

22 (a) Procedures established pursuant to G.S. 160A-400.22 must include a  
23 provision for requiring periodic review by the zoning administrator or other appropriate  
24 officer of the local government at least every 12 months, at which time the developer  
25 must be required to demonstrate good faith compliance with the terms of the  
26 development agreement.

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

33 (c) If the developer fails to cure the material breach within the time given, then  
34 the local government unilaterally may terminate or modify the development agreement;  
35 provided, the notice of termination or modification may be appealed to the board of  
36 adjustment in the manner provided by G.S. 160A-388(b) and G.S. 153A-345(b).

37 **"§ 160A-400.28. Amendment or cancellation of development agreement by mutual**  
38 **consent of parties or successors in interest.**

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

41 **"§ 160A-400.29. Validity and duration of agreement entered into prior to change**  
42 **of jurisdiction; subsequent modification or suspension.**

43 (a) Except as otherwise provided by this Part, any development agreement  
44 entered into by a local government before the effective date of a change of jurisdiction

1 shall be valid for the duration of the agreement, or eight years from the effective date of  
2 the change in jurisdiction, whichever is earlier. The parties to the development  
3 agreement and the local government assuming jurisdiction have the same rights and  
4 obligations with respect to each other regarding matters addressed in the development  
5 agreement as if the property had remained in the previous jurisdiction.

6 (b) A local government assuming jurisdiction may modify or suspend the  
7 provisions of the development agreement if the local government determines that the  
8 failure of the local government to do so would place the residents of the territory subject  
9 to the development agreement, or the residents of the local government, or both, in a  
10 condition dangerous to their health or safety, or both.

11 **"§ 160A-400.30. Developer to record agreement within 14 days; burdens and**  
12 **benefits inure to successors in interest.**

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

18 **"§ 160A-400.31. Applicability to local government of constitutional and statutory**  
19 **procedures for approval of debt.**

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

25 **"§ 160A-400.32. Relationship of agreement to building or housing code.**

26 A development agreement adopted pursuant to this Chapter shall not exempt the  
27 property owner or developer from compliance with the State Building Code or State or  
28 local housing codes that are not part of the city's or county's planning, zoning, or  
29 subdivision regulations."

30  
31 **PART VI. LOCAL ACTS SAVING CLAUSE**

32  
33 **SECTION 10.** The provisions of this act shall not be deemed to repeal or  
34 amend the validity or enforceability of any local act or charter provision previously  
35 enacted by the General Assembly.

36  
37 **PART VII. EFFECTIVE DATE**

38  
39 **SECTION 11.** This act becomes effective January 1, 2006.