

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH80313-LR-135 (04/13)

Short Title: Modernize City/County Planning.

(Public)

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Sponsors: Representative L. Allen.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING  
AND LAND-USE MANAGEMENT STATUTES.

The General Assembly of North Carolina enacts:

**PART I. GENERAL PROVISIONS**

**SECTION 1.** G.S. 160A-364 reads as rewritten:

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

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

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military ~~base,~~ base that is 100 acres in size or larger, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance.

1       (c) A city may adopt ordinances providing that notice of public hearings may be  
2 given through electronic means, including, but not limited to, the city's Internet site.  
3 Electronic notice of public hearings on zoning map amendments may be substituted for  
4 the published notice required by this section provided there is also a posting of a notice  
5 of the hearing on the affected site, with both the electronic and on-site posting being  
6 made not less than 10 days nor more than 25 days before the date fixed for the hearing.  
7 If such timely electronic notice of a public hearing on a zoning map amendment or  
8 posting of notice of the hearing on the affected site is made, but not both, such  
9 electronic or posted notice may be substituted for the second published notice required  
10 by this section. Electronic and on-site posting shall not supersede any other law that  
11 requires notice by mail to certain classes of people or the posting of signs on certain  
12 property and shall not alter the publication schedule for any public notice."

13       **SECTION 2.** G.S. 153A-323 reads as rewritten:

14       **"§ 153A-323. Procedure for adopting or amending ordinances under this Article**  
15 **and Chapter 160A, Article 19.**

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

23       (b) If the adoption or modification of the ordinance would result in changes to  
24 the zoning map or would change or affect the permitted uses of land located five miles  
25 or less from the perimeter boundary of a military ~~base, base that is 100 acres in size or~~  
26 larger, the board of commissioners shall provide written notice of the proposed changes  
27 by certified mail, return receipt requested, to the commander of the military base not  
28 less than 10 days nor more than 25 days before the date fixed for the public hearing. If  
29 the military provides comments or analysis regarding the compatibility of the proposed  
30 ordinance or amendment with military operations at the base, the board of  
31 commissioners shall take the comments and analysis into consideration before making a  
32 final determination on the ordinance.

33       (c) A county may adopt ordinances providing that notice of public hearings may  
34 be given through electronic means, including, but not limited to, the county's Internet  
35 site. Electronic notice of public hearings on zoning map amendments may be substituted  
36 for the published notice required by this section provided there is also a posting of a  
37 notice of the hearing on the affected site, with both electronic and on-site posting being  
38 made not less than 10 days nor more than 25 days before the date fixed for the hearing.  
39 If such timely electronic notice of a public hearing on a zoning map amendment or  
40 posting of notice of the hearing on the affected site is made, but not both, such  
41 electronic or posted notice may be substituted for the second published notice required  
42 by this section. Electronic and on-site posting shall not supersede any other law that  
43 requires notice by mail to certain classes of people or the posting of signs on certain  
44 property and shall not alter the publication schedule for any public notice."

1  
2 **PART II. SUBDIVISION REGULATION**

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

5 **"§ 160A-372. Contents and requirements of ordinance.**

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

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

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

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

1 reservation. The board of education shall then have 18 months beginning on the date of  
2 final approval of the subdivision within which to acquire the site by purchase or by  
3 initiating condemnation proceedings. If the board of education has not purchased or  
4 begun proceedings to condemn the site within 18 months, the subdivider may treat the  
5 land as freed of the reservation.

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

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

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

33 To assure compliance with these and other ordinance requirements, the ordinance  
34 may provide for the posting of bonds, letters of credit, or other performance guarantees  
35 to assure successful completion of required improvements."

36 **SECTION 4.** G.S. 160A-375 reads as rewritten:

37 **"§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

38 If a city adopts an ordinance regulating the subdivision of land as authorized herein,  
39 any person who, being the owner or agent of the owner of any land located within the  
40 jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or  
41 transfers or sells land by reference to, exhibition of, or any other use of a plat showing a  
42 subdivision of the land before the plat has been properly approved under such ordinance  
43 and recorded in the office of the appropriate register of deeds, shall be guilty of a Class  
44 1 misdemeanor. The description by metes and bounds in the instrument of transfer or

1 other document used in the process of selling or transferring land shall not exempt the  
2 transaction from this penalty. The city may bring an action for injunction of any illegal  
3 subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate  
4 findings, issue an injunction and order requiring the offending party to comply with the  
5 subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be  
6 denied for lots that have been illegally subdivided. In addition to other remedies, a city  
7 may institute any appropriate action or proceedings to prevent the unlawful subdivision  
8 of land, to restrain, correct, or abate the violation, or to prevent any illegal act or  
9 conduct."

10 **SECTION 5.** G.S. 160A-376 reads as rewritten:

11 **"§ 160A-376. Definition.**

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

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

34 A city may provide for expedited review of specified classes of subdivisions."

35 **SECTION 6.** G.S. 153A-331 reads as rewritten:

36 **"§ 153A-331. Contents and requirements of ordinance.**

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

1 street and utility purposes including the dedication of rights-of-way pursuant to  
2 G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a  
3 manner that will avoid congestion and overcrowding and will create conditions ~~essential~~  
4 ~~to that promote~~ public health, safety, and the general welfare.

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

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

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

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

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

1 education does not wish the site to be reserved, no site may be reserved. If the board of  
2 education does wish the site to be reserved, the subdivision may not be approved  
3 without the reservation. The board of education must acquire the site within 18 months  
4 after the date the site is reserved, either by purchase or by exercise of the power of  
5 eminent domain. If the board of education has not purchased the site or begun  
6 proceedings to condemn the site within the 18 months, the subdivider may treat the land  
7 as freed of the reservation.

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

10 To assure compliance with these and other ordinance requirements, the ordinance  
11 may provide for the posting of bonds, letters of credit, or other performance guarantees  
12 to assure successful completion of required improvements."

13 **SECTION 7.** G.S. 153A-334 reads as rewritten:

14 **"§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

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

30 **SECTION 8.** G.S. 153A-335 reads as rewritten:

31 **"§ 153A-335. "Subdivision" defined.**

32 For purposes of this Part, "subdivision" means all divisions of a tract or parcel of  
33 land into ~~two or more~~ lots, building sites, or other divisions for the purpose of sale or  
34 building development (whether immediate or future) and includes all division of land  
35 involving the dedication of a new street or a change in existing streets; however, the  
36 following is not included within this definition and is not subject to any regulations  
37 enacted pursuant to this Part:

- 38 (1) The combination or recombination of portions of previously  
39 subdivided and recorded lots if the total number of lots is not increased  
40 and the resultant lots and required supporting infrastructure (including  
41 streets, utilities, open space, and recreation areas) are equal to or  
42 exceed the standards of the county as shown in its subdivision  
43 regulations;

- 1 (2) The division of land into parcels greater than 10 acres if no street  
2 right-of-way dedication is involved;
- 3 (3) The public acquisition by purchase of strips of land for widening or  
4 opening streets or for public transportation system corridors; and
- 5 (4) The division of a tract in single ownership the entire area of which is  
6 no greater than two acres into not more than three lots, if no street  
7 right-of-way dedication is involved and if the resultant lots and  
8 required supporting infrastructure (including streets, utilities, open  
9 space, and recreation areas) are equal to or exceed the standards of the  
10 county as shown by its subdivision regulations.

11 A county may provide for expedited review of specified classes of subdivisions."

### 13 PART III. ZONING REGULATION

14  
15 **SECTION 9.** G.S. 160A-381 reads as rewritten:

#### 16 "§ 160A-381. Grant of power.

17 (a) For the purpose of promoting health, safety, morals, or the general welfare of  
18 the community, any city may adopt zoning and development regulation ordinances.  
19 These ordinances may be adopted as part of a unified development ordinance or as a  
20 separate ordinance. A zoning may regulate and restrict the height, number of stories and  
21 the type, form, and size of buildings and other structures, the percentage of lots that may  
22 be occupied, the size of yards, courts and other open spaces, the density of population,  
23 and the location, maintenance, and use of buildings, structures and land for trade,  
24 industry, residence or other purposes and to land. The ordinance may provide density  
25 credits or severable development rights for dedicated rights of way pursuant to  
26 G.S. 136-66.10 or G.S. 136-66.11 rights.

27 (b) Expired.

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

32 (c) The regulations may also provide that the board of ~~adjustment~~adjustment, the  
33 planning board, or the city council may issue special use permits or conditional use  
34 permits in the classes of cases or situations and in accordance with the principles,  
35 conditions, safeguards, and procedures specified therein and may impose reasonable and  
36 appropriate conditions and safeguards upon these permits. When deciding special use  
37 permits or conditional use permits, the city council shall follow the procedures for  
38 boards of adjustment except that no vote greater than a majority vote shall be required  
39 for the city council to issue such permits. For the purposes of this section, vacant  
40 positions on the board and members who are disqualified from voting on a  
41 quasi-judicial matter shall not be considered 'members of the board' for calculation of  
42 the requisite majority. Every such decision of the city council shall be subject to review  
43 by the superior court in the manner as is set forth in G.S. 160A-393.



1 (e) Where appropriate, such conditions may include requirements that street and  
2 utility rights-of-way be dedicated to the public and that provision be made of  
3 recreational space and facilities. ~~When issuing or denying special use permits or~~  
4 ~~conditional use permits, the city council shall follow the procedures for boards of~~  
5 ~~adjustment except that no vote greater than a majority vote shall be required for the city~~  
6 ~~council to issue such permits, and every such decision of the city council shall be~~  
7 ~~subject to review by the superior court by proceedings in the nature of certiorari. Any~~  
8 ~~petition for review by the superior court shall be filed with the clerk of superior court~~  
9 ~~within 30 days after the decision of the city council is filed in such office as the~~  
10 ~~ordinance specifies, or after a written copy thereof is delivered to every aggrieved party~~  
11 ~~who has filed a written request for such copy with the clerk at the time of the hearing of~~  
12 ~~the case, whichever is later. The decision of the city council may be delivered to the~~  
13 ~~aggrieved party either by personal service or by registered mail or certified mail return~~  
14 ~~receipt requested.~~

15 (d) A city council member shall not vote on any zoning map or text amendment  
16 where the outcome of the matter being considered is reasonably likely to have a direct,  
17 substantial, and readily identifiable financial impact on the member. Members of  
18 appointed boards providing advice to the city council shall not vote on  
19 recommendations regarding any zoning map or text amendment where the outcome of  
20 the matter being considered is reasonably likely to have a direct, substantial, and readily  
21 identifiable financial impact on the member.

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

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

- 37 (1) A clear statement of the problems or conditions necessitating the  
38 moratorium.
- 39 (2) A clear statement of the development approvals subject to the  
40 moratorium and how a moratorium on those approvals will address the  
41 problems or conditions leading to imposition of the moratorium.
- 42 (3) An express date for termination of the moratorium and a statement  
43 setting forth why that duration is reasonably necessary to address the  
44 problems or conditions leading to imposition of the moratorium.

1           (4) A clear statement of the actions proposed to be taken by the city during  
2           the duration of the moratorium to address the problems or conditions  
3           leading to imposition of the moratorium.

4           (f) A city may require that site-specific development restrictions imposed by  
5           individual special or conditional use permits, variances, site-specific or phased  
6           development plans, planned unit development approvals, special or conditional use  
7           districts, conditional rezonings, overlay districts, or otherwise be recorded in the chain  
8           of title of affected properties."

9           **SECTION 10.** G.S. 160A-382 reads as rewritten:

10          "**§ 160A-382. Districts.**

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

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

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

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

4 **SECTION 11.** G.S. 160A-383 reads as rewritten:

5 "**§ 160A-383. Purposes in view.**

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

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

25 **SECTION 12.** G.S. 153A-340 reads as rewritten:

26 "**§ 153A-340. Grant of power.**

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

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

41 (2) Bona fide farm purposes include the production and activities relating  
42 or incidental to the production of crops, fruits, vegetables, ornamental  
43 and flowering plants, dairy, livestock, poultry, and all other forms of  
44 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~~contained, provided no  
12 change in permitted uses may be authorized by variance.

13           (c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the  
14 planning board, or the board of commissioners may issue special use permits or  
15 conditional use permits in the classes of cases or situations and in accordance with the  
16 principles, conditions, safeguards, and procedures specified therein and may impose  
17 reasonable and appropriate conditions and safeguards upon these permits. Where  
18 appropriate, the conditions may include requirements that street and utility  
19 rights-of-way be dedicated to the public and that recreational space be provided.~~When~~  
20 ~~issuing or denying special use permits or conditional use permits, the board of~~  
21 ~~commissioners shall follow the procedures for boards of adjustment except that no vote~~  
22 ~~greater than a majority vote shall be required for the board of commissioners to issue~~  
23 ~~such permits, and every such decision of the board of commissioners shall be subject to~~  
24 ~~review by the superior court by proceedings in the nature of certiorari.~~ When deciding  
25 special use permits or conditional use permits, the board of county commissioners shall  
26 follow the procedures for boards of adjustment except that no vote greater than a  
27 majority vote shall be required for the board of county commissioners to issue such  
28 permits. For the purposes of this section, vacant positions on the board and members  
29 who are disqualified from voting on a quasi-judicial matter shall not be considered  
30 'members of the board' for calculation of the requisite majority. Every such decision of  
31 the board of county commissioners shall be subject to review by the superior court in  
32 the same manner as is set forth in G.S. 160A-393.

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

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

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

1       (g) A member of the board of county commissioners shall not vote on any zoning  
2 map or text amendment where the outcome of the matter being considered is reasonably  
3 likely to have a direct, substantial, and readily identifiable financial impact on the  
4 member. Members of appointed boards providing advice to the board of county  
5 commissioners shall not vote on recommendations regarding any zoning map or text  
6 amendment where the outcome of the matter being considered is reasonably likely to  
7 have a direct, substantial, and readily identifiable financial impact on the member.

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

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

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

34       (i) A county may require that site-specific development restrictions imposed by  
35 individual special or conditional use permits, variances, site-specific or phased  
36 development plans, planned unit development approvals, special or conditional use  
37 districts, conditional rezonings, overlay districts, or otherwise be recorded in the chain  
38 of title of affected properties."

39       **SECTION 13.** G.S. 153A-341 reads as rewritten:

40       "**§ 153A-341. Purposes in view.**

41       Zoning regulations shall be made in accordance with a comprehensive ~~plan and~~  
42 ~~designed to lessen congestion in the streets; to secure safety from fire, panic, and other~~  
43 ~~angers; plan.~~ Prior to adoption of any zoning provision that is not consistent with an  
44 adopted comprehensive plan or any other applicable plan that has been officially

1 adopted by the county, the board of county commissioners shall adopt a statement  
2 describing the inconsistency and explaining why the board considers the action taken to  
3 be reasonable and in the public interest.

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

19 **SECTION 14.** G.S. 153A-342 reads as rewritten:

20 **"§ 153A-342. Districts; zoning less than entire jurisdiction.**

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

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

38 A statement analyzing the reasonableness of the proposed rezoning shall be prepared  
39 for each petition for a rezoning to a special or conditional use district or a conditional  
40 district. This statement may be prepared by the petitioner or by the county, and it shall  
41 be completed and available for public inspection at the time notice is provided for the  
42 public hearing on the proposed rezoning. This statement shall address the consistency of  
43 the proposed rezoning with any comprehensive plan that has been adopted and any  
44 other officially adopted plan that is applicable, the compatibility of the proposed

1 rezoning with the site and surrounding area, and the benefits and detriments of the  
2 proposed rezoning for the landowner, the immediate neighbors, and the surrounding  
3 community. The ordinance may require meetings to be held between the petitioner and  
4 neighboring property owners prior to the submittal of a petition for rezoning to a special  
5 or conditional use district or a conditional zoning district.

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

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

16 **SECTION 15.** Article 18 of Chapter 153A of the General Statutes is  
17 amended by adding a new section to read:

18 **"§ 153A-343.1. Changes.**

19 (a) Zoning ordinances may from time to time be amended, supplemented,  
20 changed, modified, or repealed. A county may elect to provide that when a qualified  
21 protest against a zoning map amendment is made, that amendment shall not become  
22 effective except by favorable vote of three-fourths of the members of the board of  
23 county commissioners. For the purposes of this subsection, vacant positions on the  
24 board of county commissioners and members who are excused from voting shall not be  
25 considered 'members of the board' for calculation of the requisite supermajority.

26 (b) If a county elects to provide for zoning protest petitions, the provisions and  
27 procedures for protest petitions set forth in G.S. 160A-385 and G.S. 160A-386 shall be  
28 applicable.

29  
30 **PART IV. INFRASTRUCTURE AGREEMENTS**

31  
32 **SECTION 16.** Article 21 of Chapter 160A of the General Statutes is  
33 amended by adding a new section to read:

34 **"§ 160A-499. Reimbursement agreements.**

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

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

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

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

10       **SECTION 17.** Article 15 of Chapter 160A of the General Statutes is  
11 amended by adding a new section to read:

12 **"§ 160A-309. Intersection and roadway improvements.**

13       A city may contract with a private party for public intersection or roadway  
14 improvements that are adjacent or ancillary to a private land development project. Such  
15 a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public  
16 cost will not exceed one hundred seventy-five thousand dollars (\$175,000) and the city  
17 determines that: (i) the public cost will not exceed the estimated cost of providing for  
18 such public intersection or roadway improvements through either eligible force account  
19 qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of  
20 the General Statutes; or (ii) the coordination of separately constructed public  
21 intersection or roadway improvements and the adjacent or ancillary private land  
22 development improvements would be impracticable."

23       **SECTION 18.** Article 16 of Chapter 160A of the General Statutes is  
24 amended by adding a new section to read:

25 **"§ 160A-320. Public enterprise improvements.**

26       (a) Authorization. – A city may contract with a private party for public enterprise  
27 improvements that are adjacent or ancillary to a private land development project. Such  
28 a contract shall allow the city to reimburse the private party for costs associated with the  
29 design and construction of improvements that are in addition to those required by the  
30 city's land development regulations. Such a contract is not subject to Article 8 of  
31 Chapter 143 of the General Statutes if the public cost will not exceed one hundred  
32 seventy-five thousand dollars (\$175,000) and the city determines that: (i) the public cost  
33 will not exceed the estimated cost of providing for such improvements through either  
34 eligible force account qualified labor or through a public contract let pursuant to Article  
35 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately  
36 constructed improvements would be impracticable.

37       (b) Property Acquisition. – The improvements may be constructed on property  
38 owned or acquired by the private party or on property directly acquired by the city. The  
39 private party may assist the city in obtaining easements in favor of the city from private  
40 property owners on those properties that will be involved in or affected by the project.  
41 The contract between the city and the private party may be entered into before the  
42 acquisition of any real property necessary to the project."

43  
44 **PART V. DEVELOPMENT AGREEMENTS**



1  
2           **SECTION 19.** Article 19 of Chapter 160A of the General Statutes is  
3 amended by adding a new Part to read:

4                           "Part 3D. Development Agreements.

5           "§ 160A-400.20. Authorization for development agreements.

6           (a)   The General Assembly finds:

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

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

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

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

7 **"§ 160A-400.21. Definitions.**

8 The following definitions apply in this Part:

9 (1) Comprehensive plan. – The comprehensive plan, land-use plan, small  
10 area plans, neighborhood plans, transportation plan, capital  
11 improvement plan, official map, and any other plans regarding land  
12 use and development that have been officially adopted by the  
13 governing board.

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

18 (3) Development. – The planning for or carrying out of a building activity,  
19 the making of a material change in the use or appearance of any  
20 structure or property, or the dividing of land into two or more parcels.  
21 'Development', as designated in a law or development permit, includes  
22 the planning for and all other activity customarily associated with it  
23 unless otherwise specified. When appropriate to the context,  
24 'development' refers to the planning for or the act of developing or to  
25 the result of development. Reference to a specific operation is not  
26 intended to mean that the operation or activity, when part of other  
27 operations or activities, is not development. Reference to particular  
28 operations is not intended to limit the generality of this item.

29 (4) Development permit. – A building permit, zoning permit, subdivision  
30 approval, special or conditional use permit, variance, or any other  
31 official action of local government having the effect of permitting the  
32 development of property.

33 (5) Governing body. – The city council of a municipality or the board of  
34 county commissioners of a county.

35 (6) Land development regulations. – Ordinances and regulations enacted  
36 by the appropriate governing body for the regulation of any aspect of  
37 development and includes zoning, subdivision, or any other land  
38 development ordinances.

39 (7) Laws. – All ordinances, resolutions, regulations, comprehensive plans,  
40 land development regulations, policies, and rules adopted by a local  
41 government affecting the development of property, and includes laws  
42 governing permitted uses of the property, density, design, and  
43 improvements.

- 1           (8) Property. – All real property subject to land-use regulation by a local  
2 government and includes any improvements or structures customarily  
3 regarded as a part of real property.
- 4           (9) Local government. – Any municipality or county that exercises  
5 regulatory authority over and grants development permits for land  
6 development or which provides public facilities.
- 7           (10) Local planning board. – Any planning board established pursuant to  
8 G.S. 160A-361 or G.S. 153A-321.
- 9           (11) Person. – An individual, corporation, business or land trust, estate,  
10 trust, partnership, association, two or more persons having a joint or  
11 common interest, State agency, or any legal entity.
- 12           (12) Public facilities. – Major capital improvements, including, but not  
13 limited to, transportation, sanitary sewer, solid waste, drainage, potable  
14 water, educational, parks and recreational, and health systems and  
15 facilities.

16 **"§ 160A-400.22. Local governments authorized to enter into development**  
17 **agreements; approval of county or municipal governing body required.**

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

22 **"§ 160A-400.23. Developed property must contain certain number of acres;**  
23 **permissible durations of agreements.**

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

30 **"§ 160A-400.24. Public hearing.**

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

41 **"§ 160A-400.25. What development agreement must provide; what it may provide;**  
42 **major modification requires public notice and hearing.**

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

- 1           (1)    A legal description of the property subject to the agreement and the  
2           names of its legal and equitable property owners.
- 3           (2)    The duration of the agreement. However, the parties are not precluded  
4           from entering into subsequent development agreements that may  
5           extend the original duration period.
- 6           (3)    The development uses permitted on the property, including population  
7           densities and building types, intensities, placement on the site, and  
8           design.
- 9           (4)    A description of public facilities that will service the development,  
10           including who provides the facilities, the date any new public  
11           facilities, if needed, will be constructed, and a schedule to assure  
12           public facilities are available concurrent with the impacts of the  
13           development.
- 14           (5)    A description, where appropriate, of any reservation or dedication of  
15           land for public purposes and any provisions to protect environmentally  
16           sensitive property.
- 17           (6)    A description of all local development permits approved or needed to  
18           be approved for the development of the property together with a  
19           statement indicating that the failure of the agreement to address a  
20           particular permit, condition, term, or restriction does not relieve the  
21           developer of the necessity of complying with the law governing their  
22           permitting requirements, conditions, terms, or restriction.
- 23           (7)    A finding that the development permitted or proposed is consistent  
24           with the local government's comprehensive plan and land development  
25           regulations.
- 26           (8)    A description of any conditions, terms, restrictions, or other  
27           requirements determined to be necessary by the local government for  
28           the public health, safety, or welfare of its citizens.
- 29           (9)    A description, where appropriate, of any provisions for the  
30           preservation and restoration of historic structures.
- 31           (b)    A development agreement may provide that the entire development or any  
32           phase of it be commenced or completed within a specified period of time. The  
33           development agreement must provide a development schedule including  
34           commencement dates and interim completion dates at no greater than five-year  
35           intervals; provided, however, the failure to meet a commencement or completion date  
36           shall not, in and of itself, constitute a material breach of the development agreement  
37           pursuant to G.S. 160A-400.28 but must be judged based upon the totality of the  
38           circumstances. The development agreement may include other defined performance  
39           standards to be met by the developer. The developer may request a modification in the  
40           dates as set forth in the agreement. Consideration of a proposed major modification of  
41           the agreement shall follow the same procedures as required for initial approval of a  
42           development agreement.

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

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

6 **"§ 160A-400.26. Agreement and development must be consistent with local**  
7 **government comprehensive plan and land development regulations.**

8 A development agreement and authorized development must be consistent with the  
9 local government's comprehensive plan and land development regulations.

10 **"§ 160A-400.27. Law in effect at time of agreement governs development;**  
11 **exceptions.**

12 (a) Unless otherwise provided by the development agreement, the laws  
13 applicable to development of the property subject to a development agreement are those  
14 in force at the time of execution of the agreement.

15 (b) A local government may apply subsequently adopted laws to a development  
16 that is subject to a development agreement only for the grounds specified in  
17 G.S. 160A-385.1(e).

18 (c) This section does not abrogate any rights preserved by G.S. 160A-385,  
19 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or  
20 otherwise in the absence of a development agreement.

21 **"§ 160A-400.28. Periodic review to assess compliance with agreement; material**  
22 **breach by developer; notice of breach; cure of breach or modification or**  
23 **termination of agreement.**

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

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

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

39 **"§ 160A-400.29. Amendment or cancellation of development agreement by mutual**  
40 **consent of parties or successors in interest.**

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

43 **"§ 160A-400.30. Validity and duration of agreement entered into prior to change**  
44 **of jurisdiction; subsequent modification or suspension.**

1 (a) Except as otherwise provided by this Part, any development agreement  
2 entered into by a local government before the effective date of a change of jurisdiction  
3 shall be valid for the duration of the agreement, or eight years from the effective date of  
4 the change in jurisdiction, whichever is earlier. The parties to the development  
5 agreement and the local government assuming jurisdiction have the same rights and  
6 obligations with respect to each other regarding matters addressed in the development  
7 agreement as if the property had remained in the previous jurisdiction.

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

13 **"§ 160A-400.31. Developer to record agreement within 14 days; burdens and**  
14 **benefits inure to successors in interest.**

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

20 **"§ 160A-400.32. Agreement to be modified or suspended to comply with**  
21 **later-enacted State or federal laws or regulations.**

22 In the event State or federal laws or regulations, enacted after a development  
23 agreement has been entered into, prevent or preclude compliance with one or more  
24 provisions of the development agreement, the provisions of the agreement must be  
25 modified or suspended as may be necessary to comply with the State or federal laws or  
26 regulations.

27 **"§ 160A-400.33. Rights, duties, and privileges of gas and electricity suppliers not**  
28 **affected.**

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

34 **"§ 160A-400.34. Applicability to local government of constitutional and statutory**  
35 **procedures for approval of debt.**

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

41 **"§ 160A-400.35. Agreement may not contravene or supersede building or housing**  
42 **code; compliance with code if subsequently enacted.**

43 Notwithstanding any other provision of law, a development agreement adopted  
44 pursuant to this Chapter must comply with any building or housing codes subsequently

1 adopted by the governing body of a municipality or county. A development agreement  
2 may not include provisions that supersede or contravene the requirements of any  
3 building or housing code adopted by the State or the governing body of a municipality  
4 or county."

## 6 **PART VI. APPEALS**

8 **SECTION 20.** Article 19 of Chapter 160A of the General Statutes is  
9 amended by adding a new section to read:

### 10 **"§ 160A-393. Appeals in the nature of certiorari.**

11 (a) Applicability. – This section applies to appeals to superior court by  
12 proceedings in the nature of certiorari authorized under the provisions of this Article.

13 (b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by  
14 filing with the superior court a petition for Writ of Certiorari. The petition shall state the  
15 facts that demonstrate that the petitioner has standing to seek review and shall set forth  
16 the grounds upon which the petitioner contends that an error was made as well as the  
17 relief the petitioner seeks. The facts in support of allegations that the votes of one or  
18 more members of the decision-making body were affected by impermissible bias or  
19 conflict of interest shall be set forth with particularity.

20 (c) Standing. –

21 (1) A petition may be filed under this section only by a person who has  
22 standing to challenge the decision being appealed. A person has  
23 standing if a reasonable person in the position of the person seeking to  
24 challenge the decision could reasonably conclude that the use of the  
25 property authorized by the decision would be likely to adversely affect  
26 the interests of such person in some real, substantial, and concrete (i.e.,  
27 not purely speculative, insignificant, or philosophical) way that is  
28 demonstrably different in nature or degree than the manner in which  
29 the decision affects members of the general public. Without limiting  
30 the generality of the foregoing, the following principles shall apply in  
31 determining whether a petitioner has standing.

32 (2) If the decision being appealed involves a denial of a permit request, a  
33 denial of a variance, or a determination that property is being used in  
34 violation of an ordinance adopted under this Article, then any person  
35 with an ownership or leasehold interest in the property in question, as  
36 well as the applicant for the permit or the variance (if different than the  
37 owner), has standing to file a petition.

38 (3) If the decision being appealed involves the issuance of a permit, the  
39 granting of a variance, or a determination that property is being used in  
40 conformity with an ordinance adopted under this Article, then the  
41 following persons shall have standing to file a petition, so long as they  
42 satisfy the general criteria set forth at the beginning of this subdivision:

43 a. Any person who resides or owns property in such close  
44 proximity to the property that is the subject of the decision that

1           the use of the property authorized by the decision would  
2           adversely affect such person's use or enjoyment of his or her  
3           residence or property or would adversely affect the value of  
4           such property.

5           b. Any person whose economic interests are directly threatened by  
6           the use authorized by the decision.

7           c. An incorporated property owners' association to which all  
8           owners of property in a designated area belong by virtue of their  
9           ownership of property in such area shall have standing to  
10           challenge the issuance of a permit, the granting of a variance, or  
11           a determination that property is being used in conformity with  
12           an ordinance adopted under this Part if any of the members of  
13           such incorporated property owners' association would have  
14           standing to challenge the decision as an individual.

15           For purposes of this subsection, the term "person" refers to any legal entity  
16           authorized to bring suit in his, her, or its own name, and the term "owner" refers to any  
17           person having an ownership interest in property.

18           (d) Respondent. – The respondent named in the petition shall be the city whose  
19           council, board of adjustment, planning board, or other body made the decision that is  
20           being appealed. If the petitioner is not the applicant before the council, board of  
21           adjustment, or planning board whose decision is being appealed, the petitioner shall  
22           name such applicant as a respondent. Any petitioner may, but need not, also name as a  
23           respondent any person who participated in the hearing before the council, board of  
24           adjustment, or planning board.

25           (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the  
26           petition and a proposed Writ of Certiorari to the clerk of court of the county in which  
27           the matter arose. The writ shall direct the respondent city to prepare and certify to the  
28           court the record of proceedings below within a specified date. The writ shall also direct  
29           that the petitioner shall serve the petition and the writ upon each respondent named  
30           therein in the manner provided for service of a complaint under Rule 4j of the Rules of  
31           Civil Procedure. No summons shall be issued. The clerk shall issue the writ without  
32           notice to the respondent or respondents if the petition has been properly filed and the  
33           writ is in proper form. A copy of the executed writ shall be filed with the court.

34           (f) Answer to the Petition. – The respondent may, but need not, file an answer to  
35           the petition, except that, if the respondent contends that any petitioner lacks standing to  
36           bring the appeal, such contention must be set forth in an answer served on all petitioners  
37           at least 30 days prior to the hearing on the petition.

38           (g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions  
39           to intervene as a petitioner or respondent in an action initiated under this section, except  
40           that:

41           (1) If the petitioner is not the applicant before the council, board of  
42           adjustment, or planning board whose decision is being appealed, and  
43           the petitioner fails to name such applicant as a respondent, then such  
44           applicant may intervene as a matter of right.



1           (2) Except as otherwise stated in subdivision (1) of this subsection, an  
2 intervenor must demonstrate that a reasonable person in the position of  
3 the intervenor could reasonably believe that the outcome of the appeal  
4 could adversely affect the interests of such person in some real,  
5 substantial, and concrete (i.e., not purely speculative, insignificant, or  
6 philosophical) way that is demonstrably different in nature or degree  
7 than the manner in which the decision affects members of the general  
8 public.

9           (h) The Record. – The record shall consist of all documents and exhibits  
10 submitted to the council, planning board, or board of adjustment whose decision is  
11 challenged, together with the minutes of the meeting or meetings at which the matter  
12 appealed was considered. Upon request of any party, the record shall also contain an  
13 audio or videotape of the meeting or meetings at which the matter appealed was  
14 considered if such a recording was made. Any party may also include in the record a  
15 transcript of such proceedings, which shall be prepared at the cost of the party choosing  
16 to include it. The parties may agree, or the court may direct, that matters unnecessary to  
17 the court's decision be deleted from the record or that matters other than those specified  
18 herein be included. The record shall be bound and paginated or otherwise organized for  
19 the convenience of the parties and the court. A copy of the record shall be served by the  
20 municipal respondent upon all petitioners within three days after it is filed with the  
21 court.

22           (i) Hearing on the Record. – The court shall hear and decide all issues raised by  
23 the petition by reviewing the record submitted in accordance with subsection (h) of this  
24 section, except that the court may, in its discretion, allow the record to be supplemented  
25 with affidavits, testimony of witnesses, or documentary or other evidence if and to the  
26 extent that the record is not adequate to allow an appropriate determination of the  
27 following issues:

28               (1) Whether a petitioner or intervenor has standing.

29               (2) Whether, as a result of bias or conflict of interest, the decision-making  
30 body was not sufficiently impartial to comply with due process  
31 principles.

32               (3) Whether the decision-making body erred for the reasons set forth in  
33 subsection (j) of this section.

34           (j) Scope of Review. – When reviewing the decision of a city council, board of  
35 adjustment, or planning board under the provisions of this section, the trial court shall  
36 ensure that the rights of petitioners have not been prejudiced because the  
37 decision-making body's findings, inferences, conclusions, or decisions were:

38               (1) In violation of constitutional provisions, including, but not limited to,  
39 those protecting procedural due process rights.

40               (2) In excess of the statutory authority conferred upon the municipality or  
41 the authority conferred upon the decision-making body by ordinance.

42               (3) Inconsistent with applicable procedures specified by statute or  
43 ordinance.

44               (4) Affected by other error of law.

1           (5)    Unsupported by substantial competent evidence in view of the entire  
2           record.

3           (6)    Arbitrary or capricious.

4           (7)    When the issue before the trial court is whether the decision-making  
5           body below erred in the interpretation of an ordinance, the trial court  
6           may review that issue de novo and substitute its own judgment for that  
7           of the decision-making body.

8           The term "competent evidence", as used in this subsection, shall not preclude  
9           reliance by the decision-making body on evidence that would not be admissible under  
10          the rules of evidence as applied in the trial division of the General Court of Justice if (i)  
11          the evidence was admitted without objection, or (ii) the evidence appears to be  
12          sufficiently trustworthy and was admitted under such circumstances that were  
13          reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing,  
14          the term "competent evidence" shall not be deemed to include the opinion testimony of  
15          lay witnesses (i.e., persons not qualified by reason of specialized knowledge, skill,  
16          experience, training, or education to testify as an expert) as to matters about which only  
17          expert testimony would generally be admissible under the rules of evidence. By way of  
18          illustration without limitation, the term "competent evidence" shall not be deemed to  
19          include the opinion of lay witnesses as to whether (i) the use of property in a particular  
20          way would affect the value of other property, or (ii) the increase in vehicular traffic  
21          resulting from a proposed development would pose a danger to the public safety.

22          (k)    Decision of the Trial Court. – Following its review of the decision-making  
23          body in accordance with subsection (j) of this section, the trial court may affirm the  
24          decision, reverse the decision and remand the case with appropriate instructions, or  
25          remand the case for further proceedings. If the court does not affirm the decision below  
26          in its entirety, then the court shall be guided by the following in determining what relief  
27          should be granted to the petitioners.

28               (1)    If the court concludes that the error committed by the decision-making  
29               body is procedural only, the court may remand the case for further  
30               proceedings to correct the procedural error.

31               (2)    If the court concludes that the decision-making body has erred by  
32               failing to make findings of fact such that the court cannot properly  
33               perform its function, then the court may remand the case with  
34               appropriate instructions so long as the record contains substantial  
35               competent evidence that could support the decision below with  
36               appropriate findings of fact. However, findings of fact are not  
37               necessary when the record sufficiently reveals the basis for the  
38               decision below or when the material facts are undisputed and the case  
39               presents only an issue of law.

40               (3)    If the court concludes that the decision below is not supported by  
41               substantial competent evidence in the record, or is based upon an error  
42               of law, then the court may remand the case with an order that directs  
43               the council, board of adjustment, or planning board to take whatever  
44               action should have been taken had the error not been committed or to

1 take such other action as is necessary to correct the error. Without  
2 limiting the generality of the foregoing, (i) if the court concludes that a  
3 permit was wrongfully denied because the denial was not based on  
4 substantial competent evidence or was otherwise based on an error of  
5 law, the court shall remand with instructions that the permit be issued;  
6 and (ii) if the court concludes that a permit was wrongfully issued  
7 because the issuance was not based on substantial competent evidence  
8 or was otherwise based on an error of law, the court shall remand with  
9 instructions that the permit be revoked.

10 (l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under  
11 this section, and under appropriate circumstances, the trial court may issue an injunctive  
12 order requiring any other party to such proceeding to take certain action or refrain from  
13 taking action that is consistent with the court's decision on the merits of the appeal. By  
14 way of illustration without limitation, if the court affirms the decision of a board of  
15 adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an  
16 order enjoining the petitioner from continuing the violation."

17 **SECTION 21.** Article 18 of Chapter 153A of the General Statutes is  
18 amended by adding a new section to read:

19 **"§ 153A-349. Appeals in the nature of certiorari.**

20 Whenever appeals to superior court by proceedings in the nature of certiorari are  
21 authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be  
22 applicable to such appeals. In this context, the term "city council", as used in  
23 G.S. 160A-393, shall be deemed to refer to the "board of commissioners", and the term  
24 "municipality" shall be deemed to refer to the "county"."

25 **SECTION 22.** Article 19 of Chapter 160A of the General Statutes is  
26 amended by adding a new section to read:

27 **"§ 160A-377. Appeals of decisions on subdivision plats.**

28 (a) When a subdivision ordinance adopted under this Part provides that the  
29 decision whether to approve or deny a preliminary or final subdivision plat is to be  
30 made by a city council or a designated planning board, and the ordinance authorizes the  
31 council or planning board to make a quasi-judicial determination in deciding whether to  
32 approve the subdivision plat, then the decision of the council or planning board shall be  
33 subject to review by the superior court by proceedings in the nature of certiorari. The  
34 provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to such appeals.

35 (b) When a subdivision ordinance adopted under this Part provides that a city  
36 council, designated planning board, or staff member is authorized to make only an  
37 administrative or ministerial determination in deciding whether to approve a preliminary  
38 or final subdivision plat, then any party aggrieved by such decision may seek to have  
39 the decision reviewed by filing an action in superior court seeking appropriate  
40 declaratory or equitable relief. Such an action must be filed within the time frame  
41 specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

42 (c) For purposes of this section, an ordinance shall be deemed to authorize a  
43 quasi-judicial determination on a preliminary or final plat application if the ordinance (i)  
44 authorizes the council or planning board to decide whether to approve or deny the plat

1 based not only on whether the application complies with the specific requirements set  
2 forth in the ordinance, but also whether it complies with one or more generally stated  
3 standards requiring a discretionary determination to be made by the council or planning  
4 board; or (ii) authorizes the council or planning board to approve the subdivision plat  
5 subject to conditions that impose requirements or limitations on the subdivision beyond  
6 those set forth in the ordinance."

7 **SECTION 23.** Article 18 of Chapter 153A of the General Statutes is  
8 amended by adding a new section to read:

9 **"§ 153A-336. Appeals of decisions on subdivision plats.**

10 (a) When a subdivision ordinance adopted under this Part provides that the  
11 decision whether to approve or deny a preliminary or final subdivision plat is to be  
12 made by a board of commissioners or a designated planning board, and the ordinance  
13 authorizes the board of commissioners or planning board to make a quasi-judicial  
14 determination in deciding whether to approve the subdivision plat, then the decision of  
15 the board of commissioners or planning board shall be subject to review by the superior  
16 court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f) and  
17 G.S. 153A-349 shall apply to such appeals.

18 (b) When a subdivision ordinance adopted under this Part provides that a board  
19 of commissioners, planning board, or staff member is authorized to make only an  
20 administrative or ministerial determination in deciding whether to approve a preliminary  
21 or final subdivision plat, then any party aggrieved by such decision may seek to have  
22 the decision reviewed by filing an action in superior court seeking appropriate  
23 declaratory or equitable relief. Such an action must be filed within the time frame  
24 specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

25 (c) For purposes of this section, an ordinance shall be deemed to authorize a  
26 quasi-judicial determination on a preliminary or final plat application if the ordinance (i)  
27 authorizes the board of commissioners or planning board to decide whether to approve  
28 or deny the plat based not only on whether the application complies with the specific  
29 requirements set forth in the ordinance, but also whether it complies with one or more  
30 generally stated standards requiring a discretionary determination to be made by the  
31 board of commissioners or planning board; or (ii) authorizes the board of  
32 commissioners or planning board to approve the subdivision plat subject to conditions  
33 that impose requirements or limitations on the subdivision beyond those set forth in the  
34 ordinance."

35  
36 **PART VII. EFFECTIVE DATES**

37  
38 **SECTION 24.** Sections 1 to 19 of this act become effective October 1, 2005.  
39 Sections 20 to 23 of this act become effective January 1, 2006, and apply to actions filed  
40 on or after that date.