

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1478

Short Title: Modernize City/County Planning. (Public)

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Sponsors: Representatives L. Allen; Carney, Harrison, and Justice.

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Referred to: Local Government II.

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April 21, 2005

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

4 The General Assembly of North Carolina enacts:

5  
6 **PART I. GENERAL PROVISIONS**

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

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

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

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

27 (c) A city may adopt ordinances providing that notice of public hearings may be  
28 given through electronic means, including, but not limited to, the city's Internet site.  
29 Electronic notice of public hearings on zoning map amendments may be substituted for

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

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

11 **"§ 153A-323. Procedure for adopting or amending ordinances under this Article**  
12 **and Chapter 160A, Article 19.**

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

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

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

42  
43 **PART II. SUBDIVISION REGULATION**  
44

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

2   "**§ 160A-372. Contents and requirements of ordinance.**

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

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

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

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

1 begun proceedings to condemn the site within 18 months, the subdivider may treat the  
2 land as freed of the reservation.

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

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

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

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

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

34 **"§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

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

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

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

8 **"§ 160A-376. Definition.**

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

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

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

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

33 **"§ 153A-331. Contents and requirements of ordinance.**

34 (a) A subdivision control ordinance may provide for the orderly growth and  
35 development of the county; for the safe and efficient provision of transportation  
36 networks, public utilities, education, and recreation space and facilities, and other public  
37 and community needs; for protection of natural resources and open space; for the  
38 coordination of streets and highways streets, highways, and utilities within proposed  
39 subdivisions with existing or planned streets and highways and with other public  
40 facilities; for the dedication or reservation of recreation areas serving residents of the  
41 immediate neighborhood within the subdivision and of rights-of-way or easements for  
42 street and utility purposes including the dedication of rights-of-way pursuant to  
43 G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a

1 manner that will avoid congestion and overcrowding and will create conditions essential  
2 to ~~that~~ promote public health, safety, and the general welfare.

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

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

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

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

32 The ordinance may provide for the reservation of school sites in accordance with  
33 comprehensive land use plans approved by the board of commissioners or the planning  
34 ~~agency.~~ board. For the authorization to reserve school sites to be effective, the board of  
35 commissioners or planning ~~agency,~~ board, before approving a comprehensive land use  
36 plan, shall determine jointly with the board of education with jurisdiction over the area  
37 the specific location and size of each school site to be reserved, and this information  
38 shall appear in the plan. Whenever a subdivision that includes part or all of a school site  
39 to be reserved under the plan is submitted for approval, the board of commissioners or  
40 the planning ~~agency~~ board shall immediately notify the board of education. That board  
41 shall promptly decide whether it still wishes the site to be reserved and shall notify the  
42 board of commissioners or planning ~~agency~~ board of its decision. If the board of  
43 education does not wish the site to be reserved, no site may be reserved. If the board of  
44 education does wish the site to be reserved, the subdivision may not be approved

1 without the reservation. The board of education must acquire the site within 18 months  
2 after the date the site is reserved, either by purchase or by exercise of the power of  
3 eminent domain. If the board of education has not purchased the site or begun  
4 proceedings to condemn the site within the 18 months, the subdivider may treat the land  
5 as freed of the reservation.

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

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

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

12 **"§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

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

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

29 **"§ 153A-335. "Subdivision" defined.**

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

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

42 (2) The division of land into parcels greater than 10 acres if no street  
43 right-of-way dedication is involved;

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

9 A county may provide for expedited review of specified classes of subdivisions."  
10

### 11 PART III. ZONING REGULATION

12  
13 SECTION 9. G.S. 160A-381 reads as rewritten:

#### 14 "§ 160A-381. Grant of power.

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

25 (b) Expired.

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

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

42 (e) Where appropriate, such conditions may include requirements that street and  
43 utility rights-of-way be dedicated to the public and that provision be made of  
44 recreational space and facilities. ~~When issuing or denying special use permits or~~

1 conditional use permits, the city council shall follow the procedures for boards of  
2 adjustment except that no vote greater than a majority vote shall be required for the city  
3 council to issue such permits, and every such decision of the city council shall be  
4 subject to review by the superior court by proceedings in the nature of certiorari. Any  
5 petition for review by the superior court shall be filed with the clerk of superior court  
6 within 30 days after the decision of the city council is filed in such office as the  
7 ordinance specifies, or after a written copy thereof is delivered to every aggrieved party  
8 who has filed a written request for such copy with the clerk at the time of the hearing of  
9 the case, whichever is later. The decision of the city council may be delivered to the  
10 aggrieved party either by personal service or by registered mail or certified mail return  
11 receipt requested.

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

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

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

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

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

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

7       **"§ 160A-382. Districts.**

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

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

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

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

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

1 **"§ 160A-383. Purposes in view.**

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

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

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

22 **"§ 153A-340. Grant of power.**

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

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

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

41 (3) The definitions set out in G.S. 106-802 apply to this subdivision. A  
42 county may adopt zoning regulations governing swine farms served by  
43 animal waste management systems having a design capacity of  
44 600,000 pounds steady state live weight (SSLW) or greater provided

1 that the zoning regulations may not have the effect of excluding swine  
2 farms served by an animal waste management system having a design  
3 capacity of 600,000 pounds SSLW or greater from the entire zoning  
4 jurisdiction.

5 (c) The regulations may provide that a board of adjustment may determine and  
6 vary their application in harmony with their general purpose and intent and in  
7 accordance with general or specific rules therein ~~contained~~contained, provided no  
8 change in permitted uses may be authorized by variance.

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

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

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

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

41 (g) A member of the board of county commissioners shall not vote on any zoning  
42 map or text amendment where the outcome of the matter being considered is reasonably  
43 likely to have a direct, substantial, and readily identifiable financial impact on the  
44 member. Members of appointed boards providing advice to the board of county

1 commissioners shall not vote on recommendations regarding any zoning map or text  
2 amendment where the outcome of the matter being considered is reasonably likely to  
3 have a direct, substantial, and readily identifiable financial impact on the member.

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

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

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

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

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

36 **"§ 153A-341. Purposes in view.**

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

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

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

17        **"§ 153A-342. Districts; zoning less than entire jurisdiction.**

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

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

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

1 neighboring property owners prior to the submittal of a petition for rezoning to a special  
2 or conditional use district or a conditional zoning district.

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

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

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

15 **"§ 153A-343.1. Changes.**

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

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

26  
27 **PART IV. INFRASTRUCTURE AGREEMENTS**

28  
29 **SECTION 16.** Article 21 of Chapter 160A of the General Statutes is  
30 amended by adding a new section to read:

31 **"§ 160A-499. Reimbursement agreements.**

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

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

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

42 (d) No reimbursement pursuant to an agreement authorized by this act shall be  
43 deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or  
44 to be deemed to be a violation or evasion of any provision of said Article.

1 Notwithstanding the foregoing provisions of this section, a construction contract subject  
2 to a reimbursement agreement authorized by this act shall not be awarded by a  
3 developer or property owner who is a party to such reimbursement agreement without  
4 complying with the requirements of G.S. 143-129 and G.S. 143-128(f) relating to public  
5 advertising and bid opening requirements which would be applicable if the construction  
6 contract had been awarded by the city."

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

9 **"§ 160A-309. Intersection and roadway improvements.**

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

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

22 **"§ 160A-320. Public enterprise improvements.**

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

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

40  
41 **PART V. DEVELOPMENT AGREEMENTS**

42  
43 **SECTION 19.** Article 19 of Chapter 160A of the General Statutes is  
44 amended by adding a new Part to read:

1 "Part 3D. Development Agreements.

2 **"§ 160A-400.20. Authorization for development agreements.**

3 (a) The General Assembly finds:

4 (1) The lack of certainty in the approval of development can result in a  
5 waste of economic and land resources, can discourage sound capital  
6 improvement planning and financing, can cause the cost of housing  
7 and development to escalate, and can discourage commitment to  
8 comprehensive planning.

9 (2) Developers should be assured that upon receipt of a development  
10 permit, they may proceed in accordance with existing laws and  
11 policies, subject to the conditions of a development agreement. A  
12 development agreement should strengthen the public planning process,  
13 encourage sound capital improvement planning and financing, assist in  
14 assuring there are adequate capital facilities for the development,  
15 encourage private participation in comprehensive planning, reduce the  
16 economic costs of development, allow for the orderly planning of  
17 public facilities and services, and allow for the equitable allocation of  
18 the cost of public services.

19 (3) Because the development approval process involves the expenditure of  
20 considerable sums of money, predictability encourages the maximum  
21 efficient utilization of resources at the least economic cost to the  
22 public.

23 (4) Public benefits derived from development agreements may include,  
24 but are not limited to, affordable housing, design standards, and  
25 on- and off-site infrastructure and other improvements. These public  
26 benefits may be negotiated in return for the vesting of development  
27 rights for a specific period.

28 (5) Land planning and development involve review and action by multiple  
29 governmental agencies having jurisdiction over land development.

30 (6) Development agreements will encourage the vesting of property rights  
31 by protecting such rights from the effect of subsequently enacted local  
32 government agencies which may conflict with any term or provision of  
33 the development agreement. Development agreements will provide a  
34 reasonable certainty as to the lawful requirements that must be met in  
35 protecting vested property rights, while maintaining the authority and  
36 duty of government to enforce laws and regulations which promote the  
37 public safety, health, and general welfare of the citizens of our State.

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

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

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

5 **"§ 160A-400.21. Definitions.**

6 The following definitions apply in this Part:

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

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

13 **"§ 160A-400.22. Local governments authorized to enter into development**  
14 **agreements; approval of county or municipal governing body required.**

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

19 **"§ 160A-400.23. Developed property must contain certain number of acres;**  
20 **permissible durations of agreements.**

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

27 **"§ 160A-400.24. Public hearing.**

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

38 **"§ 160A-400.25. What development agreement must provide; what it may provide;**  
39 **major modification requires public notice and hearing.**

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

- 41 (1) A legal description of the property subject to the agreement and the  
42 names of its legal and equitable property owners.

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

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

3 **"§ 160A-400.26. Agreement and development must be consistent with local**  
4 **government comprehensive plan and land development regulations.**

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

7 **"§ 160A-400.27. Law in effect at time of agreement governs development;**  
8 **exceptions.**

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

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

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

18 **"§ 160A-400.28. Periodic review to assess compliance with agreement; material**  
19 **breach by developer; notice of breach; cure of breach or modification or**  
20 **termination of agreement.**

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

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

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

36 **"§ 160A-400.29. Amendment or cancellation of development agreement by mutual**  
37 **consent of parties or successors in interest.**

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

40 **"§ 160A-400.30. Validity and duration of agreement entered into prior to change**  
41 **of jurisdiction; subsequent modification or suspension.**

42 (a) Except as otherwise provided by this Part, any development agreement  
43 entered into by a local government before the effective date of a change of jurisdiction  
44 shall be valid for the duration of the agreement, or eight years from the effective date of

1 the change in jurisdiction, whichever is earlier. The parties to the development  
2 agreement and the local government assuming jurisdiction have the same rights and  
3 obligations with respect to each other regarding matters addressed in the development  
4 agreement as if the property had remained in the previous jurisdiction.

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

10 **"§ 160A-400.31. Developer to record agreement within 14 days; burdens and**  
11 **benefits inure to successors in interest.**

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

17 **"§ 160A-400.32. Agreement to be modified or suspended to comply with**  
18 **later-enacted State or federal laws or regulations.**

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

24 **"§ 160A-400.33. Rights, duties, and privileges of gas and electricity suppliers not**  
25 **affected.**

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

31 **"§ 160A-400.34. Applicability to local government of constitutional and statutory**  
32 **procedures for approval of debt.**

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

38 **"§ 160A-400.35. Agreement may not contravene or supersede building or housing**  
39 **code; compliance with code if subsequently enacted.**

40 Notwithstanding any other provision of law, a development agreement adopted  
41 pursuant to this Chapter must comply with any building or housing codes subsequently  
42 adopted by the governing body of a municipality or county. A development agreement  
43 may not include provisions that supersede or contravene the requirements of any

1 building or housing code adopted by the State or the governing body of a municipality  
2 or county."

## 3 4 **PART VI. APPEALS**

5  
6 **SECTION 20.** Article 19 of Chapter 160A of the General Statutes is  
7 amended by adding a new section to read:

### 8 **"§ 160A-393. Appeals in the nature of certiorari.**

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

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

#### 18 (c) Standing. –

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

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

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

41 a. Any person who resides or owns property in such close  
42 proximity to the property that is the subject of the decision that  
43 the use of the property authorized by the decision would  
44 adversely affect such person's use or enjoyment of his or her

1 residence or property or would adversely affect the value of  
2 such property.

3 b. Any person whose economic interests are directly threatened by  
4 the use authorized by the decision.

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

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

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

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

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

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

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

43 (2) Except as otherwise stated in subdivision (1) of this subsection, an  
44 intervenor must demonstrate that a reasonable person in the position of

1           the intervenor could reasonably believe that the outcome of the appeal  
2           could adversely affect the interests of such person in some real,  
3           substantial, and concrete (i.e., not purely speculative, insignificant, or  
4           philosophical) way that is demonstrably different in nature or degree  
5           than the manner in which the decision affects members of the general  
6           public.

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

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

- 26           (1) Whether a petitioner or intervenor has standing.  
27           (2) Whether, as a result of bias or conflict of interest, the decision-making  
28           body was not sufficiently impartial to comply with due process  
29           principles.  
30           (3) Whether the decision-making body erred for the reasons set forth in  
31           subsection (j) of this section.

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

- 36           (1) In violation of constitutional provisions, including, but not limited to,  
37           those protecting procedural due process rights.  
38           (2) In excess of the statutory authority conferred upon the municipality or  
39           the authority conferred upon the decision-making body by ordinance.  
40           (3) Inconsistent with applicable procedures specified by statute or  
41           ordinance.  
42           (4) Affected by other error of law.  
43           (5) Unsupported by substantial competent evidence in view of the entire  
44           record.

1           (6) Arbitrary or capricious.

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

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

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

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

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

38           (3) If the court concludes that the decision below is not supported by  
39           substantial competent evidence in the record, or is based upon an error  
40           of law, then the court may remand the case with an order that directs  
41           the council, board of adjustment, or planning board to take whatever  
42           action should have been taken had the error not been committed or to  
43           take such other action as is necessary to correct the error. Without  
44           limiting the generality of the foregoing, (i) if the court concludes that a

1           permit was wrongfully denied because the denial was not based on  
2           substantial competent evidence or was otherwise based on an error of  
3           law, the court shall remand with instructions that the permit be issued;  
4           and (ii) if the court concludes that a permit was wrongfully issued  
5           because the issuance was not based on substantial competent evidence  
6           or was otherwise based on an error of law, the court shall remand with  
7           instructions that the permit be revoked.

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

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

17           **§ 153A-349. Appeals in the nature of certiorari.**

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

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

25           **§ 160A-377. Appeals of decisions on subdivision plats.**

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

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

40           (c) For purposes of this section, an ordinance shall be deemed to authorize a  
41           quasi-judicial determination on a preliminary or final plat application if the ordinance (i)  
42           authorizes the council or planning board to decide whether to approve or deny the plat  
43           based not only on whether the application complies with the specific requirements set  
44           forth in the ordinance, but also whether it complies with one or more generally stated

1 standards requiring a discretionary determination to be made by the council or planning  
2 board; or (ii) authorizes the council or planning board to approve the subdivision plat  
3 subject to conditions that impose requirements or limitations on the subdivision beyond  
4 those set forth in the ordinance."

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

7 "**§ 153A-336. Appeals of decisions on subdivision plats.**

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

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

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

33  
34 **PART VII. EFFECTIVE DATES**

35  
36 **SECTION 24.** Sections 1 to 19 of this act become effective October 1, 2005.  
37 Sections 20 to 23 of this act become effective January 1, 2006, and apply to actions filed  
38 on or after that date.