

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

3

SENATE BILL 814
Judiciary I Committee Substitute Adopted 5/31/05
Third Edition Engrossed 6/1/05

Short Title: Modernize City/County Planning.

(Public)

Sponsors:

Referred to:

March 23, 2005

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

4 The General Assembly of North Carolina enacts:

5
6 **PART I. GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

20 PART II. SUBDIVISION REGULATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 "**§ 160A-376. Definition.**

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

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

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

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

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

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

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

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

3
4 **PART III. ZONING REGULATION**

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

7 **"§ 160A-381. Grant of power.**

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

18 (b) Expired.

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

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

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

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

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

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

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

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

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

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

10 **"§ 153A-340. Grant of power.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 **"§ 160A-75. Voting.**

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

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

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

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

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

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

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

17 **"§ 160A-382. Districts.**

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

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

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

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

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

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

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

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

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

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

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

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

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

2 "**§ 160A-383. Purposes in view.**

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

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

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

21 "**§ 153A-341. Purposes in view.**

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

28 Zoning regulations shall be designed to promote ~~the public health~~health, safety, and
29 ~~the general welfare; welfare.~~ To that end, the regulations may address, among other
30 things, the following public purposes: to provide adequate light and air; to prevent the
31 overcrowding of land; to avoid undue concentration of population; to lessen congestion
32 in the streets; to secure safety from fire, panic, and dangers; ~~and~~ to facilitate the efficient
33 and adequate provision of transportation, water, sewerage, schools, parks, and other
34 public ~~requirements~~ requirements; and to maintain and improve the quality of
35 neighborhoods and communities. The regulations shall be made with reasonable
36 consideration as to, among other things, the character of the district and its peculiar
37 suitability for particular uses, and with a view to conserving the value of buildings and
38 encouraging the most appropriate use of land throughout the county. In addition, the
39 regulations shall be made with reasonable consideration to expansion and development
40 of any cities within the county, so as to provide for their orderly growth and
41 development."
42

43 **PART IV. INFRASTRUCTURE AGREEMENTS**

44

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 15 **PART V. DEVELOPMENT AGREEMENTS**

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

19 "Part 3D. Development Agreements.

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

21 (a) The General Assembly finds:

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

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

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

9 **"§ 160A-400.21. Definitions.**

10 The following definitions apply in this Part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36
37 **PART VII. EFFECTIVE DATE**

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