

Article 9.

Regulation of Particular Uses and Areas.

Part 1. Particular Land Uses.

**§ 160D-901. Regulation of particular uses and areas.**

A local government may regulate the uses and areas set forth in this Article in zoning regulations pursuant to Article 7 of this Chapter, a unified development ordinance, or in separate development regulations adopted under this Article. This shall not be deemed to expand, diminish, or alter the scope of authority granted pursuant to those Articles. In all instances, the substance of the local government regulation shall be consistent with the provisions in this Article. The provisions of this Chapter apply to any regulation adopted pursuant to this Article that substantially affects land use and development. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-902. Adult businesses.**

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A local government may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The local government may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to, the following:

- (1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses.
- (2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages.
- (3) Clothing restrictions for entertainers.
- (4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, local governments may enact moratoria of reasonable

duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Local governments may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, "sexually oriented business" means any business or enterprise that has as one of its principal business purposes or as a significant portion of its business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

### **§ 160D-903. Agricultural uses.**

(a) **Bona Fide Farming Exempt From County Zoning.** – County zoning regulations may not affect property used for bona fide farm purposes; provided, however, that this section does not limit zoning regulation with respect to the use of farm property for nonfarm purposes. Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of this section, "when performed on the farm" in G.S. 106-581.1(6) includes the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this section, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following is sufficient evidence that the property is being used for bona fide farm purposes:

- (1) A farm sales tax exemption certificate issued by the Department of Revenue.
- (2) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.
- (3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- (4) A forest management plan.

A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide farm purpose pursuant to this subsection subjects the building or structure to applicable zoning and development regulation ordinances adopted by a

county pursuant to G.S. 160D-702 in effect on the date the property no longer meets the requirements of this subsection. For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

(b) County Zoning of Residential Uses on Large Lots in Agricultural Districts. – A county zoning regulation shall not prohibit single-family detached residential uses constructed in accordance with the North Carolina State Building Code on lots greater than 10 acres in size and in zoning districts where more than fifty percent (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction does not apply to commercial or industrial districts where a broad variety of commercial or industrial uses are permissible. A zoning regulation shall not require that a lot greater than 10 acres in size have frontage on a public road or county-approved private road or be served by public water or sewer lines in order to be developed for single-family residential purposes.

(c) Agricultural Areas in Municipal Extraterritorial Jurisdiction. – Property that is located in a city's extraterritorial planning and development regulation jurisdiction and that is used for bona fide farm purposes is exempt from the city's zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to this section. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that ceases to be used for bona fide farm purposes becomes subject to exercise of the city's extraterritorial planning and development regulation jurisdiction under this Chapter. For purposes of complying with State or federal law, property that is exempt from municipal zoning pursuant to this subsection is subject to the county's floodplain regulation or all floodplain regulation provisions of the county's unified development ordinance.

(d) Accessory Farm Buildings. – A city may provide in its zoning regulation that an accessory building of a "bona fide farm" has the same exemption from the building code as it would have under county zoning.

(e) City Regulations in Voluntary Agricultural Districts. – A city may amend the development regulations applicable within its planning and development regulation jurisdiction to provide flexibility to farming operations that are located within a city or county, voluntary agricultural district, or enhanced voluntary agricultural district adopted under Article 61 of Chapter 106 of the General Statutes. Amendments to applicable development regulations may include provisions regarding on-farm sales, pick-your-own operations, road signs, agritourism, and other activities incident to farming. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 22, 51(a), (b), (d); 2020-74, s. 20.)

#### **§ 160D-904. Airport zoning.**

Any local government may enact and enforce airport zoning regulations pursuant to this Chapter or as authorized by Article 4 of Chapter 63 of the General Statutes. Airport zoning regulations for real property within 6 miles of any cargo airport complex site subject to regulation by the North Carolina Global TransPark Authority are governed by G.S. 63A-18. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-905. Amateur radio antennas.**

A local government ordinance based on health, safety, or aesthetic considerations that regulates the placement, screening, or height of the antennas or support structures of amateur radio operators must reasonably accommodate amateur radio communications and must represent the minimum practicable regulation necessary to accomplish the purpose of the local government. A local government may not restrict antennas or antenna support structures of amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective of the local government. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-906. Bee hives.**

Restrictions on bee hives in local development regulations shall be consistent with the limitations of G.S. 106-645. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-907. Family care homes.**

(a) The General Assembly finds it is the public policy of this State to provide persons with disabilities with the opportunity to live in a normal residential environment.

(b) As used in this section, the following definitions apply:

- (1) Family care home. – A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities.
- (2) Person with disabilities. – A person with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

(c) A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts. No local government may require that a family care home, its owner, or operator obtain, because of the use, a special use permit or variance from any such zoning regulation; provided, however, that a local government may prohibit a family care home from being located within a one-half mile radius of an existing family care home.

(d) A family care home shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by local governments or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-908. Fence wraps.**

Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the local government may regulate the

signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this section may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-909. Fraternities and sororities.**

A zoning regulation or unified development ordinance may not differentiate in terms of the regulations applicable to fraternities or sororities between those fraternities or sororities that are approved or recognized by a college or university and those that are not. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-910. Manufactured homes.**

(a) The General Assembly finds that manufactured housing offers affordable housing opportunities for low- and moderate-income residents of this State who could not otherwise afford to own their own home. The General Assembly further finds that some local governments have adopted zoning regulations that severely restrict the placement of manufactured homes. It is the intent of the General Assembly in enacting this section that local governments reexamine their land-use practices to assure compliance with applicable statutes and case law and consider allocating more residential land area for manufactured homes based upon local housing needs.

(b) For purposes of this section, the term "manufactured home" is defined as provided in G.S. 143-145(7).

(c) A local government may not adopt or enforce zoning regulations or other provisions that have the effect of excluding manufactured homes from the entire zoning jurisdiction or that exclude manufactured homes based on the age of the home.

(d) A local government may adopt and enforce appearance and dimensional criteria for manufactured homes. Such criteria shall be designed to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community, and to promote the health, safety, and welfare of area residents. The criteria shall be adopted by ordinance.

(e) In accordance with the local government's comprehensive plan and based on local housing needs, a local government may designate a manufactured home overlay district within a residential district. Such overlay district may not consist of an individual lot or scattered lots but shall consist of a defined area within which additional requirements or standards are placed upon manufactured homes.

(f) Nothing in this section shall be construed to preempt or supersede valid restrictive covenants running with the land. The terms "mobile home" and "trailer" in any valid restrictive covenants running with the land shall include the term "manufactured home" as defined in this section. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-911. Modular homes.**

Modular homes, as defined in G.S. 105-164.3(143), shall comply with the design and construction standards set forth in G.S. 143-139.1. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-912. Outdoor advertising.**

(a) As used in this section, the term "off-premises outdoor advertising" includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A local government may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within its planning and development regulation jurisdiction in accordance with the applicable provisions of this Chapter and subject to G.S. 136-131.1 and G.S. 136-131.2.

(c) A local government shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(d) No local government may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising, except as provided below. The payment of monetary compensation is not required if:

- (1) The local government and the owner of the nonconforming off-premises outdoor advertising enter into a relocation agreement pursuant to subsection (g) of this section.
- (2) The local government and the owner of the nonconforming off-premises outdoor advertising enter into an agreement pursuant to subsection (k) of this section.
- (3) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace.
- (4) The removal is required for opening, widening, extending, or improving streets or sidewalks, or for establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311, and the local government allows the off-premises outdoor advertising to be relocated to a comparable location.
- (5) The off-premises outdoor advertising is subject to removal pursuant to statutes, ordinances, or regulations generally applicable to the demolition or removal of damaged structures.

This subsection shall be construed subject to and without any reduction in the rights afforded to owners of outdoor advertising signs along interstate and federal-aid primary highways in this State as provided in Article 13 of Chapter 136 of the General Statutes.

(e) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal. Monetary compensation shall be determined based on the following:

- (1) The factors listed in G.S. 105-317.1(a).
- (2) The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(f) If the parties are unable to reach an agreement under subsection (e) of this section on monetary compensation to be paid by the local government to the owner of the nonconforming off-premises outdoor advertising sign for its removal and the local government elects to proceed with the removal of the sign, the local government may bring an action in superior court for a determination of the monetary compensation to be paid. In determining monetary compensation,

the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the local government shall own the sign.

(g) In lieu of paying monetary compensation, a local government may enter into an agreement with the owner of a nonconforming off-premises outdoor advertising sign to relocate and reconstruct the sign. The agreement shall include the following:

- (1) Provision for relocation of the sign to a site reasonably comparable to or better than the existing location. In determining whether a location is comparable or better, the following factors shall be taken into consideration:
  - a. The size and format of the sign.
  - b. The characteristics of the proposed relocation site, including visibility, traffic count, area demographics, zoning, and any uncompensated differential in the sign owner's cost to lease the replacement site.
  - c. The timing of the relocation.
- (2) Provision for payment by the local government of the reasonable costs of relocating and reconstructing the sign, including the following:
  - a. The actual cost of removing the sign.
  - b. The actual cost of any necessary repairs to the real property for damages caused in the removal of the sign.
  - c. The actual cost of installing the sign at the new location.
  - d. An amount of money equivalent to the income received from the lease of the sign for a period of up to 30 days if income is lost during the relocation of the sign.

(h) For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, a local government, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it deems appropriate.

(i) If a local government has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section and within 120 days after the initial notice by the local government the parties have not been able to agree that the site or sites offered by the local government for relocation of the sign are reasonably comparable to or better than the existing site, the parties shall enter into binding arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall select one arbitrator, and the two arbitrators chosen by the parties shall select the third member of the panel. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise.

(j) If the arbitration results in a determination that the site or sites offered by the local government for relocation of the nonconforming sign are not comparable to or better than the existing site, and the local government elects to proceed with the removal of the sign, the parties shall determine the monetary compensation under subsection (e) of this section to be paid to the owner of the sign. If the parties are unable to reach an agreement regarding monetary compensation within 30 days of the receipt of the arbitrators' determination and the local government elects to proceed with the removal of the sign, then the local government may bring an action in superior court for a determination of the monetary compensation to be paid by the local government to the

owner for the removal of the sign. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the local government shall own the sign.

(k) Notwithstanding the provisions of this section, a local government and an off-premises outdoor advertising sign owner may enter into a voluntary agreement allowing for the removal of the sign after a set period of time in lieu of monetary compensation. A local government may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(l) A local government has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(m) This section does not apply to any ordinance in effect on July 1, 2004. A local government may amend an ordinance in effect on July 1, 2004, to extend application of the ordinance to off-premises outdoor advertising located in territory acquired by annexation or located in the extraterritorial jurisdiction of the city. A local government may repeal or amend an ordinance in effect on July 1, 2004, so long as the amendment to the existing ordinance does not reduce the period of amortization in effect on June 19, 2020.

(n) The provisions of this section shall not be used to interpret, construe, alter, or otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter 40A or Chapter 136 of the General Statutes.

(o) Nothing in this section shall limit a local government's authority to use amortization as a means of phasing out nonconforming uses other than off-premises outdoor advertising. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a)-(d).)

#### **§ 160D-913. Public buildings.**

All local government zoning regulations are applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions.

Notwithstanding the provisions of any general or local law or ordinance, except as provided in Part 4 of Article 9 of this Chapter, no land owned by the State of North Carolina may be included within an overlay district or a conditional zoning district without approval of the Council of State or its delegate. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### **§ 160D-914. Solar collectors.**

(a) Except as provided in subsection (c) of this section, no local government development regulation shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission by a local government to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit a development regulation regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the regulation does not have the effect of preventing the reasonable use of a solar collector for a residential property.



(c) This section does not prohibit a development regulation that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground and that are any of the following:

- (1) On the facade of a structure that faces areas open to common or public access.
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces.
- (3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

### **§ 160D-915. Temporary health care structures.**

(a) The following definitions apply in this section:

- (1) Activities of daily living. – Bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
- (2) Caregiver. – An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first- or second-degree relative of the mentally or physically impaired person for whom the individual is caring.
- (3) First- or second-degree relative. – A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.
- (4) Mentally or physically impaired person. – A person who is a resident of this State and who requires assistance with two or more activities of daily living as certified in writing by a physician licensed to practice in this State.
- (5) Temporary family health care structure. – A transportable residential structure providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

(b) A local government shall consider a temporary family health care structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings.

(c) A local government shall consider a temporary family health care structure used by an individual who is the named legal guardian of the mentally or physically impaired person a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings in accordance with this section if the temporary family health care structure is placed on the property of the residence of the individual and is used to provide care for the mentally or physically impaired person.

(d) Only one temporary family health care structure shall be allowed on a lot or parcel of land. The temporary family health care structures under subsections (b) and (c) of this section shall not require a special use permit or be subjected to any other local zoning requirements beyond those imposed upon other authorized accessory use structures, except otherwise provided in this section. Such temporary family health care structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure.

(e) Any person proposing to install a temporary family health care structure shall first obtain a permit from the local government. The local government may charge a fee of up to one hundred dollars (\$100.00) for the initial permit and an annual renewal fee of up to fifty dollars (\$50.00). The local government may not withhold a permit if the applicant provides sufficient proof of compliance with this section. The local government may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the local government of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation and annual renewal of the doctor's certification.

(f) Notwithstanding subsection (i) of this section, any temporary family health care structure installed under this section may be required to connect to any water, sewer, and electric utilities serving the property and shall comply with all applicable State law, local ordinances, and other requirements, including Article 11 of this Chapter, as if the temporary family health care structure were permanent real property.

(g) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.

(h) Any temporary family health care structure installed pursuant to this section shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section. If the temporary family health care structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used or may be reinstated on the property within 60 days of its removal, as applicable.

(i) The local government may revoke the permit granted pursuant to subsection (e) of this section if the permit holder violates any provision of this section or G.S. 160A-202. The local government may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or G.S. 160A-202.

(j) Temporary family health care structures shall be treated as tangible personal property for purposes of taxation. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### **§ 160D-916. Streets and transportation.**

(a) Street Setbacks and Curb Cut Regulations. – Local governments may establish street setback and driveway connection regulations pursuant to G.S. 160A-306 and G.S. 160A-307 or as a part of development regulations adopted pursuant to this Chapter. If adopted pursuant to this Chapter, the regulations are also subject to the provisions of G.S. 160A-306 and G.S. 160A-307.

(b) Repealed by Session Laws 2020-25, s. 23, effective June 19, 2020. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 23, 51(a), (b), (d).)

§ 160D-917. Reserved for future codification purposes.

§ 160D-918. Reserved for future codification purposes.

§ 160D-919. Reserved for future codification purposes.

## Part 2. Environmental Regulation.

### § 160D-920. Local environmental regulations.

(a) Local governments are authorized to exercise the powers conferred by Article 8 of Chapter 160A of the General Statutes and Article 6 of Chapter 153A of the General Statutes to adopt and enforce local ordinances pursuant to this Part to the extent necessary to comply with State and federal law, rules, and regulations or permits consistent with the interpretations and directions of the State or federal agency issuing the permit.

(b) Local environmental regulations adopted pursuant to this Part are not subject to the variance provisions of G.S. 160D-705 unless that is specifically authorized by the local ordinance. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

### § 160D-921. Forestry activities.

(a) The following definitions apply to this section:

- (1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.
- (2) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.
- (3) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.
- (4) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.
- (5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A local government shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either of the following:

- (1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.
- (2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a local government to:

- (1) Regulate activity associated with development. A local government may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:
  - a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under local government regulations governing development from the tract of land for which the permit or approval is sought.
  - b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under local government regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the local government regulations.
- (2) Regulate trees pursuant to any local act of the General Assembly.
- (3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.
- (4) Exercise its planning or zoning authority under this Chapter.
- (5) Regulate and protect streets. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-922. Erosion and sedimentation control.**

Any local government may enact and enforce erosion and sedimentation control regulations as authorized by Article 4 of Chapter 113A of the General Statutes and shall comply with all applicable provisions of that Article and, to the extent not inconsistent with that Article, with this Chapter. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-923. Floodplain regulations.**

Any local government may enact and enforce floodplain regulation or flood damage prevention regulations as authorized by Part 6 of Article 21 of Chapter 143 of the General Statutes and shall comply with all applicable provisions of that Part and, to the extent not inconsistent with that Article, with this Chapter. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-924. Mountain ridge protection.**

Any local government may enact and enforce a mountain ridge protection regulation pursuant to Article 14 of Chapter 113A of the General Statutes and shall comply with all applicable provisions of that Article and, to the extent not inconsistent with that Article, with this Chapter, unless the local government has removed itself from the coverage of Article 14 of Chapter 113A of the General Statutes through the procedure provided by law. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-925. Stormwater control.**

(a) A local government may adopt and enforce a stormwater control regulation to protect water quality and control water quantity. A local government may adopt a stormwater management

regulation pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a local government stormwater control regulation unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A local government may take enforcement action to compel a State or local government agency to comply with a stormwater control regulation that implements the NPDES stormwater permit issued to the local government. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a local government may take enforcement action to compel a federal government agency to comply with a stormwater control regulation.

(c) A local government may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A local government that holds an NPDES permit issued pursuant to G.S. 143-214.7 may adopt a regulation, applicable within its planning and development regulation jurisdiction, to establish the stormwater control program necessary for the local government to comply with the permit. A local government may adopt a regulation that bans illicit discharges within its planning and development regulation jurisdiction. A local government may adopt a regulation, applicable within its planning and development regulation jurisdiction, that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project.

(e) Unless the local government requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of an NPDES stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal Regulations § 122.34(b)(3)(1 July 2003 Edition) in its extraterritorial jurisdiction. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### **§ 160D-926. Water supply watershed management.**

A local government may enact and enforce a water supply watershed management and protection regulation pursuant to G.S. 143-214.5 and shall comply with all applicable provisions of that statute and, to the extent not inconsistent with that statute, with this Chapter. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-927.** Reserved for future codification purposes.

**§ 160D-928.** Reserved for future codification purposes.

**§ 160D-929.** Reserved for future codification purposes.

### Part 3. Wireless Telecommunication Facilities.

**§ 160D-930. Purpose and compliance with federal law.**

(a) The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

(b) The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and, consistent with section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), create a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures. Therefore, it is the policy of this State to facilitate the placement of wireless communications support structures in all areas of North Carolina. The following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(c) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332, as amended, section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

(d) Nothing in this Part shall be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-931. Definitions.**

The following definitions apply in this Part:

- (1) **Antenna.** – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (2) **Applicable codes.** – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.
- (3) **Application.** – A request submitted by an applicant to the local government for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or a wireless support structure.
- (4) **Base station.** – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.
- (5) **Building permit.** – An official administrative authorization issued by the local government prior to beginning construction consistent with the provisions of G.S. 160D-1110.
- (6) **City right-of-way.** – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

- (7) City utility pole. – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.
- (8) Collocation. – The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term does not include the installation of new utility poles, city utility poles, or wireless support structures.
- (9) Communications facility. – The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.
- (10) Communications service. – Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.
- (11) Communications service provider. – A cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.
- (12) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.
- (13) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.
- (14) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (15) Land development regulation. – Any ordinance enacted pursuant to this Chapter.
- (16) Micro wireless facility. – A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- (17) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.
- (18) Small wireless facility. – A wireless facility that meets the following qualifications:
  - a. Each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than 6 cubic feet.
  - b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For the purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes,

- ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.
- (19) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the following criteria:
- a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
  - b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
  - c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.
- (20) Utility pole. – A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services.
- (21) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.
- (22) Wireless facility. – Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include any of the following:
- a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
  - b. Wireline backhaul facilities.
  - c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- (23) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.



- (24) Wireless provider. – A wireless infrastructure provider or a wireless services provider.
- (25) Wireless services. – Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.
- (26) Wireless services provider. – A person who provides wireless services.
- (27) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-932. Local authority.**

A local government may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a local government from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160D-930. For purposes of this Part, public safety includes, without limitation, federal, State, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-933. Construction of new wireless support structures or substantial modifications of wireless support structures.**

(a) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure within the planning and development regulation jurisdiction of a local government must do both of the following:

- (1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.
- (2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(b) A local government's review of an application for the placement or construction of a new wireless support structure or substantial modification of a wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the local government may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. A local government may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. A local government may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the local government may review the following:

- (1) Applicable public safety, land-use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (2) Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the wireless facility placement instead of the construction of a new wireless support structure that residential, historic, and designated scenic areas cannot be served from outside the area or that the proposed height of a new wireless support structure or initial wireless facility placement or a proposed height increase of a substantially modified wireless support structure or replacement wireless support structure is necessary to provide the applicant's designed service.
- (3) A local government may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value. Local governments may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

(c) The local government shall issue a written decision approving or denying an application under this section within a reasonable period of time consistent with the issuance of other development approvals in the case of other applications, each as measured from the time the application is deemed complete.

(d) A local government may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a local government on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the local government in connection with the regulatory review authorized under this section. The foregoing does not prohibit a local government from imposing additional reasonable and cost-based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by a local government for review of the application may not be used for either of the following:

- (1) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.
- (2) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

(e) The local government may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A local

government shall not deny an initial development approval based on such documentation. A local government may condition a development approval on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(f) The local government may not require the placement of wireless support structures or wireless facilities on local government owned or leased property but may develop a process to encourage the placement of wireless support structures or facilities on local government owned or leased property, including an expedited approval process.

(g) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to this Article. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-934. Collocation and eligible facilities requests of wireless support structures.**

(a) Pursuant to section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), a local government may not deny and shall approve any eligible facilities request as provided in this section. Nothing in this Part requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities. Routine maintenance includes activities associated with regular and general upkeep of transmission equipment, including the replacement of existing wireless facilities with facilities of the same size. A local government may require an application for collocation or an eligible facilities request.

(b) A collocation or eligible facilities request application is deemed complete unless the local government provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. A local government may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, State, and local safety requirements. A local government may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

(c) The local government shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the local government shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

(d) A local government may impose a fee not to exceed one thousand dollars (\$1,000) for technical consultation and the review of a collocation or eligible facilities request application. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. A local government may engage a third-party consultant for technical consultation and the review of a collocation application. The fee imposed by a local government for the review of the application may not be used for either of the following:

- (1) Travel expenses incurred in a third-party review of a collocation application.
- (2) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-935. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not establish a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160D-936(b)(2) shall only be subject to administrative review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of city rights-of-way on property other than single-family residential property.

(d) A city may require an applicant to obtain a permit to collocate a small wireless facility. A city shall receive applications for, process, and issue such permits subject to the following requirements:

- (1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.
- (2) The wireless provider shall complete an application as specified in form and content by the city. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.
- (3) A permit application shall be deemed complete unless the city provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed-upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
- (4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the city and the applicant.
- (5) A city may deny an application only on the basis that it does not meet any of the following: (i) the city's applicable codes, (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment, (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way, or (iv) the historic preservation requirements in G.S. 160D-936(i). The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an

additional application fee. The city shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

- (6) An application shall include an attestation that the small wireless facilities must be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities must be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- (7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed, at the applicant's discretion, to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. A city may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The city may issue a separate permit for each collocation that is approved.
- (8) The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(e) Subject to the limitations provided in G.S. 160A-296(a)(6), a city may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities, (ii) the amount charged by the city for permitting of any similar activity, or (iii) one hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars (\$50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(f) Subject to the limitations provided in G.S. 160A-296(a)(6), a city may impose a technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. A city may engage an outside consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:

- (1) Travel expenses incurred in the review of a collocation application by an outside consultant or other third party.
- (2) Direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(g) A city may require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely

remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) A city shall not require an application or permit or charge fees for (i) routine maintenance, (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller, or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the city rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

(i) Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### **§ 160D-936. Use of public right-of-way.**

(a) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

(b) Subject to the requirements of G.S. 160D-935, a wireless provider may collocate small wireless facilities along, across, upon, or under any city right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any city right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall be subject only to review or approval under G.S. 160D-935(d) if the wireless provider meets all of the following requirements:

- (1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed 50 feet above ground level.
- (2) Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.

(c) Nothing in this section shall be construed to prohibit a city from allowing utility poles, city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of subsection (b) of this section.

(d) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting the installation of above-ground structures in the city rights-of-way without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements, and (iii) have a waiver process.

(e) Notwithstanding subsection (d) of this section, in no instance in an area zoned single-family residential where the existing utilities are installed underground may a utility pole,

city utility pole, or wireless support structure exceed 40 feet above ground level, unless the city grants a waiver or variance approving a taller utility pole, city utility pole, or wireless support structure.

(f) Except as provided in this Part, a city may assess a right-of-way charge under this section for use or occupation of the right-of-way by a wireless provider, subject to the restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet all of the following requirements:

- (1) The right-of-way charge shall not exceed the direct and actual cost of managing the city rights-of-way and shall not be based on the wireless provider's revenue or customer counts.
- (2) The right-of-way charge shall not exceed that imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.
- (3) The right-of-way charge shall be reasonable and nondiscriminatory.

Nothing in this subsection is intended to establish or otherwise affect rates charged for attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a city may provide free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(g) Nothing in this section is intended to authorize a person to place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

(h) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The city may maintain an action to recover the costs of the repairs.

(i) This section shall not be construed to limit local government authority to enforce historic preservation zoning regulations consistent with Part 4 of Article 9 of this Chapter, the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. § 300101, et seq., as amended, and the regulations, local acts, and city charter provisions adopted to implement those laws.

(j) A wireless provider may apply to a city to place utility poles in the city rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of-way, to support the collocation of small wireless facilities. A city shall accept and process the application in accordance with the provisions of G.S. 160D-935(d), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the city rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

### **§ 160D-937. Access to city utility poles to install small wireless facilities.**

(a) A city may not enter into an exclusive arrangement with any person for the right to collocate small wireless facilities on city utility poles. A city shall allow any wireless provider to collocate small wireless facilities on its city utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed fifty dollars (\$50.00) per city utility pole per year. The North Carolina Utilities Commission shall not consider this subsection as evidence in a proceeding initiated pursuant to G.S. 62-350(c).

(b) A request to collocate under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the city to be reimbursed by the wireless provider. In granting a request under this section, a city shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(c) If a city that operates a public enterprise as permitted by Article 16 of Chapter 160A of the General Statutes has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject to termination provisions, that attachment rate, fee, or other term shall apply to collocations by that entity or its related entities on city utility poles.

(d) Following receipt of the first request from a wireless provider to collocate on a city utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the city utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(e) In any controversy concerning the appropriateness of a rate for a collocation attachment to a city utility pole, the city has the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

(f) The city shall provide a good-faith estimate for any make-ready work necessary to enable the city utility pole to support the requested collocation, including pole replacement, if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant. For purposes of this section, the term "make-ready work" means any modification or replacement of a city utility pole necessary for the city utility pole to support a small wireless facility in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.

(g) The city shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

(h) Nothing in this Part shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended, or under G.S. 62-350.

(i) This section shall not apply to an excluded entity. Nothing in this section shall be construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the rates, fees, terms, and conditions for the use of or attachment to its utility poles, city utility poles, or wireless support structures by a wireless provider. This section shall not be construed to alter or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles, ducts, or conduits by communications service providers, as defined in G.S. 62-350, are governed solely



by G.S. 62-350. For purposes of this section, "excluded entity" means (i) a city that owns or operates a public enterprise pursuant to Article 16 of Chapter 160A of the General Statutes consisting of an electric power generation, transmission, or distribution system or (ii) an electric membership corporation organized under Chapter 117 of the General Statutes that owns or controls poles, ducts, or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-938. Applicability.**

(a) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the city. This subsection does not prohibit the enforcement of applicable codes.

(b) Nothing contained in this Part shall amend, modify, or otherwise affect any easement between private parties. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to an easement between private parties.

(c) Except as provided in this Part or otherwise specifically authorized by the General Statutes, a city may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way of State-maintained highways or city rights-of-way by a provider authorized by State law to operate in the rights-of-way of State-maintained highways or city rights-of-way and may not regulate any communications services.

(d) Except as provided in this Part or specifically authorized by the General Statutes, a city may not impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

(e) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this Part does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-939.** Reserved for future codification purposes.

Part 4. Historic Preservation.

**§ 160D-940. Legislative findings.**

The heritage of our State is one of our most valued and important assets. The conservation and preservation of historic districts and landmarks stabilize and increase property values and strengthen the overall economy of the State. This Part authorizes local governments within their respective planning and development regulation jurisdictions and by means of listing, regulation, and acquisition to do the following:

- (1) To safeguard the heritage of the city or county by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory.

- (2) To promote the use and conservation of such district or landmark for the education, pleasure, and enrichment of the residents of the city or county and the State as a whole. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-941. Historic preservation commission.**

Before it may designate one or more landmarks or historic districts, a local government shall establish or designate a historic preservation commission in accordance with G.S. 160D-303. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-942. Powers of the historic preservation commission.**

A preservation commission established pursuant to this Chapter may, within the planning and development regulation jurisdiction of the local government, do any of the following:

- (1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.
- (2) Recommend to the governing board areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks."
- (3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks to hold, manage, preserve, restore, and improve such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.
- (4) Restore, preserve, and operate historic properties.
- (5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.
- (6) Conduct an educational program regarding historic properties and districts within its jurisdiction.
- (7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission, when authorized by the governing board, may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law.
- (8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (9) Prepare and recommend the official adoption of a preservation element as part of the local government's comprehensive plan.
- (10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part.

- (11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-943. Appropriations.**

A governing board is authorized to make appropriations to a historic preservation commission established pursuant to this Chapter in any amount determined necessary for the expenses of the operation of the commission and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation, and management of historic buildings, structures, sites, areas, or objects designated as historic landmarks, or within designated historic districts, or of land on which such buildings or structures are located, or to which they may be removed. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-944. Designation of historic districts.**

(a) Any local government may, as part of a zoning regulation adopted pursuant to Article 7 of this Chapter or as a development regulation enacted or amended pursuant to Article 6 of this Chapter, designate and from time to time amend one or more historic districts within the area subject to the regulation. Historic districts established pursuant to this Part shall consist of areas that are deemed to be of special significance in terms of their history, prehistory, architecture, or culture and to possess integrity of design, setting, materials, feeling, and association.

Such development regulation may treat historic districts either as a separate use district classification or as districts that overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning regulation may include as uses by right or as special uses those uses found by the preservation commission to have existed during the period sought to be restored or preserved or to be compatible with the restoration or preservation of the district.

(b) No historic district or districts shall be designated under subsection (a) of this section until all of the following occur:

- (1) An investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in any such proposed district and a description of the boundaries of such district has been prepared.
- (2) The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the governing board within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the governing board of any responsibility for awaiting such analysis, and the governing board may at any time thereafter take any necessary action to adopt or amend its zoning regulation.

(c) The governing board may also, in its discretion, refer the report and proposed boundaries under subsection (b) of this section to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning regulation. With respect to any changes in the boundaries of such district, subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared by the

preservation commission and shall be referred to the planning board for its review and comment according to procedures set forth in the zoning regulation. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

On receipt of these reports and recommendations, the local government may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning regulation.

(d) The provisions of G.S. 160D-910 apply to zoning or other development regulations pertaining to historic districts, and the authority under G.S. 160D-910(b) for the ordinance to regulate the location or screening of solar collectors may encompass requiring the use of plantings or other measures to ensure that the use of solar collectors is not incongruous with the special character of the district. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### **§ 160D-945. Designation of landmarks.**

Upon complying with G.S. 160D-946, the governing board may adopt and amend or repeal a regulation designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the preservation commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling, and/or association.

The regulation shall describe each property designated in the regulation, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the regulation shall require that the waiting period set forth in this Part be observed prior to its demolition. For each designated landmark, the regulation may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### **§ 160D-946. Required landmark designation procedures.**

As a guide for the identification and evaluation of landmarks, the preservation commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Office of Archives and History. No regulation designating a historic building, structure, site, area, or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a preservation commission or the governing board, until all of the following procedural steps have been taken:

- (1) The preservation commission shall (i) prepare and adopt rules of procedure and (ii) prepare and adopt principles and guidelines, not inconsistent with this Part, for altering, restoring, moving, or demolishing properties designated as landmarks.

- (2) The preservation commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational, or cultural significance of each building, structure, site, area, or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Office of Archives and History, North Carolina Department of Cultural Resources.
- (3) The Department of Cultural Resources, acting through the State Historic Preservation Officer, shall, upon request of the department or at the initiative of the preservation commission, be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Part. Any comments shall be provided in writing. If the Department does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the Department of the investigation and report of the preservation commission, the commission and any governing board shall be relieved of any responsibility to consider such comments.
- (4) The preservation commission and the governing board shall hold a joint legislative hearing or separate legislative hearings on the proposed regulation. Notice of the hearing shall be made as provided by G.S. 160D-601.
- (5) Following the hearings, the governing board may adopt the regulation as proposed, adopt the regulation with any amendments it deems necessary, or reject the proposed regulation.
- (6) Upon adoption of the regulation, the owners and occupants of each designated landmark shall be given written notice of such designation within a reasonable time. One copy of the regulation and all amendments thereto shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark or landmarks are located. In the case of any landmark property lying within the planning and development regulation jurisdiction of a city, a second copy of the regulation and all amendments thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the regulation and any amendments shall be given to the local government building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the local government for such period as the designation remains in effect.
- (7) Upon the adoption of the landmark regulation or any amendment thereto, it shall be the duty of the preservation commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-947. Certificate of appropriateness required.**

(a) Certificate Required. – After the designation of a landmark or a historic district, no exterior portion of any building or other structure, including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features, nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on the

landmark or within the district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The local government shall require such a certificate to be issued by the commission prior to the issuance of a building permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness is required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Except as provided in subsection (b) of this section, the commission has no jurisdiction over interior arrangement. The commission shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district that would be incongruous with the special character of the landmark or district. In making decisions on certificates of appropriateness, the commission shall apply the rules and standards adopted pursuant to subsection (c) of this section.

(b) Interior Spaces. – Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces is limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner. The consent of an owner for interior review binds future owners and/or successors in if the consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(c) Rules and Standards. – Prior to any action to enforce a landmark or historic district regulation, the commission shall (i) prepare and adopt rules of procedure and (ii) prepare and adopt principles and standards not inconsistent with this Part to guide the commission in determining congruity with the special character of the landmark or district for new construction, alterations, additions, moving, and demolition. The landmark or historic district regulation may provide, subject to prior adoption by the preservation commission of detailed standards, for staff review and approval as an administrative decision of applications for a certificate of appropriateness for minor work or activity as defined by the regulation; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission. Other than these administrative decisions on minor works, decisions on certificates of appropriateness are quasi-judicial and shall follow the procedures of G.S. 160D-406.

(d) Time for Review. – All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the regulation or the commission's rules of procedure. As part of its review procedure, the commission may view the

premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) Appeals. –

- (1) Appeals of administrative decisions allowed by regulation may be made to the commission.
- (2) All decisions of the commission in granting or denying a certificate of appropriateness may, if so provided in the regulation, be appealed to the board of adjustment in the nature of certiorari within times prescribed for appeals of administrative decisions in G.S. 160D-405(d). To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the board of adjustment.
- (3) Appeals from the board of adjustment may be made pursuant to G.S. 160D-1402.
- (4) If the regulation does not provide for an appeal to the board of adjustment, appeals of decisions on certificates of appropriateness may be made to the superior court as provided in G.S. 160D-1402.
- (5) Petitions for judicial review shall be taken within times prescribed for appeal of quasi-judicial decisions in G.S. 160D-1405. Appeals in any such case shall be heard by the superior court of the county in which the local government is located.

(f) Public Buildings. – All of the provisions of this Part are hereby made applicable to construction, alteration, moving, and demolition by the State of North Carolina, its political subdivisions, agencies, and instrumentalities, provided, however, they do not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies may appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The North Carolina Historical Commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the North Carolina Historical Commission is final and binding upon both the State and the preservation commission. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 24, 51(a), (b), (d).)

#### **§ 160D-948. Certain changes not prohibited.**

Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark that does not involve a change in design, material, or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing in this Part shall be construed to prevent a property owner from making any use of his or her property that is not prohibited by other law. Nothing in this Part shall be construed to prevent the maintenance or, in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the preservation commission. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-949. Delay in demolition of landmarks and buildings within historic district.**

(a) An application for a certificate of appropriateness authorizing the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within the district may not be denied, except as provided in subsection (c) of this section. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the preservation commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period, the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

If the preservation commission or planning board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the preservation commission or planning board for a period of up to 180 days or until the governing board takes final action on the designation, whichever occurs first.

(b) The governing board may enact a regulation to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such regulation shall provide appropriate safeguards to protect property owners from undue economic hardship.

(c) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the preservation commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-950. Demolition by neglect to contributing structures outside local historic districts.**

Notwithstanding G.S. 160D-949 or any other provision of law, the governing board may apply its demolition-by-neglect regulations to contributing structures located outside the local historic district within an adjacent central business district. The governing board may modify and revise its demolition-by-neglect regulations as necessary to implement this section and to further its intent. This section is applicable to any local government provided such local government (i) has designated portions of the central business district and its adjacent historic district as an Urban Progress Zone as defined in G.S. 143B-437.09 and (ii) is recognized by the State Historic Preservation Office and the U.S. Department of the Interior as a Certified Local Government in accordance with the National Historic Preservation Act of 1966, as amended by 16 U.S.C. § 470, et seq., and the applicable federal regulations 36 C.F.R. Part 61, but is located in a county that has not received the same certification. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-951. Conflict with other laws.**



Whenever any regulation adopted pursuant to this Part requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or district than are established under any other statute, charter provision, or regulation, this Part shall govern. Whenever the provisions of any other statute, charter provision, ordinance, or regulation require a longer waiting period or impose other higher standards than are established under this Part, such other statute, charter provision, ordinance, or regulation shall govern. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

§ 160D-952. Reserved for future codification purposes.

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§ 160D-958. Reserved for future codification purposes.

§ 160D-959. Reserved for future codification purposes.

#### Part 5. Community Appearance Commissions.

##### § 160D-960. Powers and duties of commission.

A community appearance commission shall make careful study of the visual problems and needs of the local government within its planning and development regulation jurisdiction and shall make any plans and carry out any programs that will, in accordance with the provisions of this Part, enhance and improve the visual quality and aesthetic characteristics of the local government. To this end, the governing board may confer upon the appearance commission the following powers and duties:

- (1) To initiate, promote, and assist in the implementation of programs of general community beautification in the local government.
- (2) To coordinate the activities of individuals, agencies, and organizations, public and private, whose plans, activities, and programs bear upon the appearance of the local government.
- (3) To provide leadership and guidance in matters of area or community design and appearance to individuals, to public and private organizations, and to agencies.

- (4) To make studies of the visual characteristics and problems of the local government, including surveys and inventories of an appropriate nature, and to recommend standards and policies of design for the entire area, any portion or neighborhood thereof, or any project to be undertaken.
- (5) To prepare both general and specific plans for the improved appearance of the local government. These plans may include the entire area or any part thereof and may include private as well as public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the local government or any part thereof within its area of planning and development regulation jurisdiction, including public ways and areas, open spaces, and public and private buildings and projects.
- (6) To participate, in any way deemed appropriate by the governing board of the local government and specified in the ordinance establishing the commission, in the implementation of its plans. To this end, the governing board may include in the ordinance the following powers:
  - a. To request from the proper officials of any public agency or body, including agencies of the State and its political subdivisions, its plans for public buildings, facilities, or projects to be located within the local government's planning and development regulation jurisdiction.
  - b. To review these plans and to make recommendations regarding their aesthetic suitability to the appropriate agency or to the planning or governing board. All plans shall be reviewed by the commission in a prompt and expeditious manner, and all recommendations of the commission with regard to any public project shall be made in writing. Copies of the recommendations shall be transmitted promptly to the planning or governing board and to the appropriate agency.
  - c. To formulate and recommend to the appropriate planning or governing board the adoption or amendment of ordinances, including zoning regulations, subdivision regulations, and other local development regulations, that will, in the opinion of the commission, serve to enhance the appearance of the city or county and surrounding areas.
  - d. To direct the attention of local government officials to needed enforcement of any ordinance that may in any way affect the appearance of the city or county.
  - e. To seek voluntary adherence to the standards and policies of its plans.
  - f. To enter, in the performance of its official duties and at reasonable times, upon private lands and make examinations or surveys.
  - g. To promote public interest in and an understanding of its recommendations, studies, and plans, and, to that end, prepare, publish, and distribute to the public such studies and reports that will, in the opinion of the commission, advance the cause of improved appearance.
  - h. To conduct public meetings and hearings, giving reasonable notice to the public thereof. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-961. Staff services; advisory council.**

The commission may recommend to the governing board suitable arrangements for the procurement or provision of staff or technical services for the commission, and the governing board may appropriate such amount as it deems necessary to carry out the purposes for which it was created. The commission may establish an advisory council or other committees. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-962. Annual report.**

The commission shall, no later than April 15 of each year, submit to the governing board a written report of its activities, a statement of its expenditures to date for the current fiscal year, and its requested budget for the next fiscal year. All accounts and funds of the commission shall be administered substantially in accordance with the requirements of the Municipal Fiscal Control Act or the County Fiscal Control Act. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-963. Receipt and expenditure of funds.**

The commission may receive contributions from private agencies, foundations, organizations, individuals, the State or federal government, or any other source, in addition to any sums appropriated for its use by the governing board. It may accept and disburse these funds for any purpose within the scope of its authority as herein specified. All sums appropriated by the local government to further the work and purposes of the commission are deemed to be for a public purpose. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

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**§ 160D-968.** Reserved for future codification purposes.

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