Chapter 160A.

Cities and Towns.

Article 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Chapter.

(1) "Charter" means the entire body of local acts currently in force applicable to a particular city, including articles of incorporation issued to a city by an administrative agency of the State, and any amendments thereto adopted pursuant to 1917 Public Laws, Chapter 136, Subchapter 16, Part VIII, sections 1 and 2, or Article 5, Part 4, of this Chapter.

(2) "City" means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term "city" does not include counties or municipal corporations organized for a special purpose. "City" is interchangeable with the terms "town" and "village," is used throughout this Chapter in preference to those terms, and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage. The terms "city" or "incorporated municipality" do not include a municipal corporation that, without regard to its date of incorporation, would be disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a), except that the end of status as a city under this sentence shall not affect the levy or collection of any tax or assessment, or any criminal or civil liability, and shall not serve to escheat any property until five years after the end of such status as a city, or until September 1, 1991, whichever comes later.

(3) "Council" means the governing board of a city. "Council" is interchangeable with the terms "board of aldermen" and "board of commissioners," is used throughout this Chapter in preference to those terms, and shall mean any city council as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(4) "General law" means an act of the General Assembly applying to all units of local government, to all cities, or to all cities within a class defined by population or other criteria, including a law that meets the foregoing standards but contains a clause or section exempting from its effect one or more cities or all cities in one or more counties.

(5) "Local act" means an act of the General Assembly applying to one or more specific cities by name, or to all cities within one or more specifically named counties. "Local act" is interchangeable with the terms "special act," "public-local act," and "private act," is used throughout this Chapter in preference to those terms, and shall mean a local act as defined in this

subdivision without regard to the terminology employed in charters, local acts, or other portions of the General Statutes.

(6) "Mayor" means the chief executive officer of a city by whatever title known.

(7) "Publish," "publication," and other forms of the verb "to publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the city is located.

(8) "Rural Fire Department" means, for the purpose of Articles 4A or 14 of this Chapter, a bona fide department which, as determined by the Commissioner of Insurance, is classified as not less than class "9" in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to Article 36 or Article 40 of Chapter 58 of the General Statutes, and which operates fire apparatus and equipment of the value of five thousand dollars ($5,000) or more; but it does not include a municipal fire department. (1971, c. 698, s. 1; 1973, c. 426, s. 3; 1983, c. 636, s. 17.1; 1985 (Reg. Sess., 1986), c. 934, s. 1.)

§ 160A-2. Effect upon prior laws.

Nothing in this Chapter shall repeal or amend any city charter in effect as of January 1, 1972, or any portion thereof, unless this Chapter or a subsequent enactment of the General Assembly shall clearly show a legislative intent to repeal or supersede all local acts. The provisions of this Chapter, insofar as they are the same in substance as laws in effect as of December 31, 1971, are intended to continue such laws in effect and not to be new enactments. The enactment of this Chapter shall not require the readoption of any city ordinance enacted pursuant to laws that were in effect before January 1, 1972, and are restated or revised herein. The provisions of this Chapter shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued as of January 1, 1972. (1971, c. 698, s. 1.)

§ 160A-3. General laws supplementary to charters.

(a) When a procedure that purports to prescribe all acts necessary for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, the two procedures may be used as alternatives, and a city may elect to follow either one.

(b) When a procedure for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, but the charter procedure does not purport to contain all acts necessary to carry the power, duty, function, privilege, or immunity into execution, the charter procedure shall be supplemented by the general law procedure; but in case of conflict or inconsistency between the two procedures, the charter procedure shall control.

(c) When a power, duty, function, privilege, or immunity is conferred on cities by a general law, and a charter enacted earlier than the general law omits or expressly denies or limits the same power, duty, function, privilege or immunity, the general laws shall supersede the charter. (1971, c. 698, s. 1.)

§ 160A-4. Broad construction.

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State. (1971, c. 698, s. 1.)

§ 160A-4.1. (Repealed effective January 1, 2021) Notice of new fees and fee increases; public comment period.

(a) A city shall provide notice to interested parties of the imposition of or increase in fees or charges applicable solely to the construction of development subject to the provisions of Part 2 of Article 19 of this Chapter at least seven days prior to the first meeting where the imposition of or increase in the fees or charges is on the agenda for consideration. The city shall employ at least two of the following means of communication in order to provide the notice required by this section:

(1) Notice of the meeting in a prominent location on a Web site managed or maintained by the city.

(2) Notice of the meeting in a prominent physical location, including, but not limited to, any government building, library, or courthouse within the city.

(3) Notice of the meeting by electronic mail to a list of interested parties that is created by the city for the purpose of notification as required by this section.

(4) Notice of the meeting by facsimile to a list of interested parties that is created by the city for the purpose of notification as required by this section.

(a1) If a city does not maintain its own Web site, it may employ the notice option provided by subdivision (1) of subsection (a) of this section by submitting a request to a county or counties in which the city is located to post such notice in a prominent location on a Web site that is maintained by the county or counties. Any city that elects to provide such notice shall make its request to the county or counties at least 15 days prior to the date of the first meeting where the imposition of or increase in the fees or charges is on the agenda for consideration.

(b) During the consideration of the imposition of or increase in fees or charges as provided in subsection (a) of this section, the governing body of the city shall permit a period of public comment.

(c) This section shall not apply if the imposition of or increase in fees or charges is contained in a budget filed in accordance with the requirements of G.S. 159-12. (2009-436, s. 2; 2010-180, s. 11(b); 2019-111, s. 2.6(b).)

§ 160A-5. Statutory references deemed amended to conform to Chapter.

Whenever a reference is made in another portion of the General Statutes or any local act, or any city ordinance, resolution, or order, to a portion of Chapter 160 of the General Statutes that is

repealed or superseded by this Chapter, the reference shall be deemed amended to refer to that portion of this Chapter which most nearly corresponds to the repealed or superseded portion of Chapter 160. (1971, c. 698, s. 1; 1973, c. 426, s. 2.)

Article 1A.

Municipal Board of Control.

§§ 160A-6 through 160A-10. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 63.

Article 2.

General Corporate Powers.

§ 160A-11. Corporate powers.

The inhabitants of each city heretofore or hereafter incorporated by act of the General Assembly or by the Municipal Board of Control shall be and remain a municipal corporation by the name specified in the city charter. Under that name they shall be vested with all of the property and rights in property belonging to the corporation; shall have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will; and shall have and may exercise in conformity with the city charter and the general laws of this State all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

All documents required or permitted by law to be executed by municipal corporations will be legally valid and binding in this respect when a legible corporate stamp, which is a facsimile of its seal, is used in lieu of an imprinted or embossed corporate or common seal. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C.S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1973, c. 170; c. 426, s. 7; 2011-284, s. 110.)

§ 160A-12. Exercise of corporate power.

All powers, functions, rights, privileges, and immunities of the corporation shall be exercised by the city council and carried into execution as provided by the charter or the general law. A power, function, right, privilege, or immunity that is conferred or imposed by charter or general law without directions or restrictions as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the city council. (Code, s. 703; Rev., s. 2917; C.S., s. 2624; 1971, c. 698, s. 1.)

§§ 160A-13 through 160A-15. Reserved for future codification purposes.

Article 3.

Contracts.

§ 160A-16. Contracts to be in writing; exception.

All contracts made by or on behalf of a city shall be in writing. A contract made in violation of this section shall be void and unenforceable unless it is expressly ratified by the council. (1917, c. 136, subch. 13, s. 8; C.S., s. 2831; 1971, c. 698, s. 1.)

§ 160A-17. Continuing contracts.

A city is authorized to enter into continuing contracts, some portion or all of which are to be performed in ensuing fiscal years. Sufficient funds shall be appropriated to meet any amount to be paid under the contract in the fiscal year in which it is made, and in each ensuing fiscal year, the council shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into. (1971, c. 698, s. 1.)

§ 160A-17.1. Grants from other governments.

(a) Federal and State. – The governing body of any city or county is hereby authorized to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

In order to exercise the authority granted by this section, the governing body of any city or county may:

(1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the city or county;

(2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;

(3) Agree to and comply with any lawful and reasonable conditions which are imposed upon such grants or loans;

(3a) Agree to and comply with minimum minority business enterprise participation requirements established by the federal government and its agencies in projects financed by federal grants-in-aid or loans, by including such minimum requirements in the specifications for contracts to perform all or part of such projects and awarding bids pursuant to G.S. 143-129 and 143-131, if applicable, to the lowest responsible bidder or bidders meeting these and any other specifications.

(4) Make expenditures from any funds so granted.

(b) Expired effective December 31, 2010. (1971, c. 896, s. 10; c. 937, ss. 1, 1.5; 1973, c. 426, s. 8; 1981, c. 827; 2007-91, s. 1.)

§ 160A-17.2. Security interests in United States Department of Agriculture loans.

(a) A county or municipality may pledge a security interest in an escrow account funded with loan proceeds, or a certificate of deposit, to secure repayment of the loan, only if the loan is an interest-free loan agreement entered into with the United States Department of Agriculture or an authorized intermediary acting on behalf of the United States Department of Agriculture. Any such escrow account must be substantiated by a written escrow agreement, and the funds must be deposited in accordance with G.S. 159-30 and G.S. 159-31. Any certificate of deposit shall comply with the requirements of G.S. 159-30.

(b) An interest-free loan agreement entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes, unless exempted in G.S. 159-148(b).

(c) No deficiency judgment may be rendered against any county or municipality in any action for breach of a contractual obligation authorized by this section. The taxing power of a county or municipality is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. (2015-207, s. 3.)

§ 160A-18. Certain deeds validated.

(a) All deeds made, executed, and delivered by any city before July 1, 1970, for a good and valuable consideration are hereby in all respects validated, ratified, and confirmed notwithstanding any lack of authority to make the deed or any irregularities in the procedures by which conveyance of the land or premises described therein was authorized by the city council.

(b) All conveyances and sales of any interest in real property by private sale, including conveyances in fee and releases of vested or contingent future interests, made by the governing body of any city, school district, or school administrative unit before July 1, 1970, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances or releases were made by private sale and not after notice and public outcry.

(b1) All conveyances of any interest in real property by private sale, including conveyance in fee, made by the governing body of any county before January 1, 1977, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances were made by private sale, without advertisement, and not after notice and public outcry.

(c) Nothing in this section shall affect any action or proceeding begun before January 1, 1977. (Ex. Sess. 1924, c. 95; 1951, c. 44; 1959, c. 487; 1971, c. 698, s. 1; 1977, c. 1103.)

§ 160A-19. Leases.

A city is authorized to lease as lessee, with or without option to purchase, any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Article 8 of Chapter 143 of the General Statutes. (1973, c. 426, s. 9.)

§ 160A-20. Security interests.

(a) Purchase. – A unit of local government may purchase, or finance or refinance the purchase of, real or personal property by installment contracts that create in some or all of the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Improvements. – A unit of local government may finance or refinance the construction or repair of fixtures or improvements on real property by contracts that create

in some or all of the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for the construction or repair.

(c) Accounts. – A unit of local government may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of the advance funding are invested pending disbursement. A unit of local government may also use other accounts, such as debt service payment accounts and debt service reserve accounts, to facilitate transactions authorized by this section. To secure transactions authorized by this section, a unit of local government may also create security interests in these accounts.

(d) Nonsubstitution. – No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any fixture, improvement, project, or property financed, refinanced, or purchased pursuant to the contract.

(e) Oversight. – A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

(1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and

(2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(e1) Public Hospitals. – A nonprofit entity operating or leasing a public hospital may enter into a contract pursuant to this section only if the nonprofit entity will have an ownership interest in the property being financed or refinanced, including a leasehold interest. The security interest granted in the property shall be only to the extent of the nonprofit entity's property interest. In addition, any contract entered into by a nonprofit entity operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority that owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by the nonprofit entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank-eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material, adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or would otherwise materially interfere with an anticipated financing by the nonprofit entity.

(f) Limit of Security. – No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section. The taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Public Hearing. – Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) Local Government Defined. – As used in this section, the term "unit of local government" means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

(3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

(3c) A county water and sewer district created under Article 6 of Chapter 162A of the General Statutes.

(3d) A metropolitan water district created under Article 4 of Chapter 162A of the General Statutes.

(3e) A metropolitan water and sewerage district created under Article 5A of Chapter 162A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995, except that the authority granted by this subdivision may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(5b) A local airport authority that was created pursuant to a local act of the General Assembly.

(6) A local school administrative unit whose board of education is authorized to levy a school tax.

(6a) Any other local school administrative unit, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(6b) A community college, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1).

(9) Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.

(10) A regional natural gas district, as defined by Article 28 of this Chapter.

(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter.

(12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39.

(13) A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes.

(14) A special district created under Article 43 of Chapter 105 of the General Statutes.

(15) A Ferry Transportation Authority created pursuant to Article 29 of this Chapter. (1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Reg. Sess., 1996), c. 644, s. 2; 1997-380, s. 3; 1997-426, s. 7; 1997-426, s. 7.1; 1998-70, s. 1; 1998-117, s. 1; 1999-386, ss. 1, 2; 2001-414, s. 52; 2002-161, s. 10; 2003-259, s. 1; 2003-388, s. 3; 2007-226, s. 1; 2007-229, s. 3; 2009-527, s. 2(g); 2015-207, s. 5(a); 2017-120, s. 4.)

§ 160A-20.1. Contracts with private entities; contractors must use E-Verify.

(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract.

(b) Repealed by Session Laws 2015-294, s. 1(b), effective October 1, 2015, and applicable to contracts entered into on or after that date. (1985, c. 271, s. 1; 2013-413, s. 5(d); 2013-418, s. 2(b); 2014-119, s. 13(a); 2015-294, s. 1(b); 2016-3, 2nd Ex. Sess., s. 2.3; 2017-4, s. 1.)

Article 4.

Corporate Limits.

Part 1. General Provisions.

§ 160A-21. Existing boundaries.

The boundaries of each city shall be those specified in its charter with any alterations that are made from time to time in the manner provided by law or by local act of the General Assembly. (1971, c. 698, s. 1.)

§ 160A-22. Map of corporate limits.

The current city boundaries shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This delineation shall be retained permanently in the office of the city clerk. Alterations in these established boundaries shall be indicated by appropriate entries upon or additions to the map or description made by or under the direction of the officer charged with that duty by the city charter or by the council. Copies of the map or description reproduced by any method of reproduction that gives legible and permanent copies, when certified by the city clerk, shall be admissible in evidence in all courts and shall have the same force and effect as would the original map or description. The council may provide for revisions in any map or other description of the city boundaries. A revised map or description shall supersede for all purposes the earlier map or description that it is designated to replace. (1971, c. 698, s. 1; 1973, c. 426, s. 10.)

§ 160A-23. District map; reapportionment.

(a) If the city is divided into electoral districts for the purpose of electing the members of the council, the map or description required by G.S. 160A-22 shall also show the boundaries of the several districts.

(b) The council shall have authority to revise electoral district boundaries from time to time. If district boundaries are set out in the city charter and the charter does not provide a method for revising them, the council may revise them only for the purpose of (i) accounting for territory annexed to or excluded from the city, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. When district boundaries have been established in conformity with the federal Constitution, the council shall not be required to revise them again until a new federal census of population is taken or territory is annexed to or excluded from the city, whichever event first occurs. In establishing district boundaries, the council may use data derived from the most recent federal census and shall not be required to use any other population estimates. (1969, c. 629; 1971, c. 698, s. 1.)

§ 160A-23.1. Special rules for redistricting after a federal decennial census.

(a) As soon as possible after receipt of federal decennial census information, the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes

(and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in the two years following a federal decennial census.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in the second year following a federal decennial census, the second primary, if necessary, shall be held on the second primary election date for county officers in that year, and the general election shall be held on the general election date for county officers in that year.

(2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in the second year following a federal decennial census, and the election

shall be held on the date for the second primary for county officers in that year.

(3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in the second year following a federal decennial census.

(4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in the second year following a federal decennial census, and the runoffs, if necessary, shall be held on the date for the second primary for county officers in that year.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in November of the second year following a federal decennial census, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of the second year following a federal decennial census.

(e) This section does not apply to any municipality that, under its charter, is not scheduled to hold an election in the year following a federal decennial census. (1989 (Reg. Sess., 1990), c. 1012, s. 2; 1999-227, s. 4; 2000-140, s. 34; 2002-159, s. 52; 2009-414, s. 1; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

Article 4A.

Extension of Corporate Limits.

Part 1. Extension by Petition.

§§ 160A-24 through 160A-28: Repealed by Session Laws 1983, c. 636, s. 26.

§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.

Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this Article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census. (1947, c. 725, s. 6; 1973, c. 426, s. 74; 1987, c. 715, s. 6, c. 879, s. 3; 1989, c. 440, s. 7; 1991, c. 586, s. 1.)

§ 160A-30. Surveys of proposed new areas.

The governing bodies of the cities and towns after five days' written notice to the owner of record or persons in possession of the premises are hereby authorized to enter upon any lands to make surveys or examinations as may be necessary in carrying out the mapping requirements of proposed annexations under any provision of Article 4A of Chapter 160A; provided, the city or town authorizing such entry shall make reimbursement for any damage resulting from such activity. (1947, c. 725, s. 7; 1973, c. 426, s. 74; 1975, c. 312.)

§ 160A-31. Annexation by petition.

(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.

(b) The petition shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____
2. The area to be annexed is contiguous to the (City or Town) of _____ and the boundaries of such territory are as follows:

(b1) Notwithstanding the provisions of subsections (a) and (b) of this section, if fifty-one percent (51%) of the households in an area petitioning for annexation pursuant to this section have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds, the governing board of any municipality shall annex by ordinance any area the population of which is no more than ten percent (10%) of that of the municipality and one-eighth of the aggregate external boundaries of which are contiguous to its boundaries, upon presentation to the governing board of a petition signed by the owners of at least seventy-five percent (75%) of the parcels of real property in that area. A municipality shall not be required to adopt more than one ordinance under this subsection within a 36-month period.

(b2) The petition under subsection (b1) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(b1) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.
2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of the investigation. For petitions received under subsection (b1) or (j) of this section, the clerk shall receive the evidence provided under subsection (l) of this section before certifying the sufficiency of the petition. Upon receipt of the certification, the municipal governing

board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least 10 days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within the area to be annexed and three or more public places within the municipality.

(d) At the public hearing persons resident or owning property in the area described in the petition and persons resident or owning property in the municipality shall be given an opportunity to be heard. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition that was not submitted under subsection (b1) or (j) of this section meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on the June 30 after the date of the passage of the ordinance or the June 30 of the following year after the date of passage of the ordinance.

(d1) Upon a finding that a petition submitted under subsection (j) of this section meets the requirements of this section, the governing body shall have the authority to adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(d2) Upon a finding that a petition submitted under subsection (b1) of this section meets the requirements of this section, the governing body shall, within 60 days of the finding, estimate the capital cost to the municipality of extending water and sewer lines to all parcels within the area covered by the petition and estimate the annual debt service payment that would be required if those costs were financed by a 20-year revenue bond. If the estimated annual debt service payment is less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance. If the estimated annual debt service payment is greater than or equal to five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body may adopt a resolution declining to annex the area. If such a resolution is adopted, the governing body shall immediately submit a request to the Local Government Commission to certify that its estimate of the annual debt service payment is reasonable based on established governmental accounting principles.

(1) If the Local Government Commission certifies the estimate, the municipality is not required to annex the area and no petition to annex the area may be submitted under subsection (b1) of this section for 36 months following the certification. During the 36-month period, the municipality shall make ongoing, annual good faith efforts to secure Community Development Block Grants or other grant funding for extending water and sewer service to all parcels in the areas covered by the petition. If sufficient funding is secured so that the estimated capital cost to the municipality for extending water and sewer service, less the funds

secured, would result in an annual debt service payment cost to the municipality of less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(2) If the Local Government Commission notifies the governing board that the estimates are not reasonable based on established governmental accounting principles and that a reasonable estimate of the annual debt service payment is less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days of the notification adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(d3) Municipal services shall be provided to an area annexed under subsections (b1) and (j) of this section in accordance with the requirements of Part 7 of this Article.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by the width of a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of a street or street right-of-way may not be used to establish contiguity. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation.

(g) The governing board may initiate annexation of contiguous property owned by the municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The resolution shall contain an adequate description of the property, state that the property is contiguous to the municipal boundaries and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published as provided in subsection (c) of this section. The governing board may hold the public hearing and adopt the annexation ordinance as provided in subsection (d) of this section.

(h) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested right shall be terminated.

(i) A municipality has no authority to adopt a resolution or petition itself under this Part for annexation of property it does not own or have any legal interest in. For the purpose of this subsection, a municipality has no legal interest in a State-maintained street unless it owns the underlying fee and not just an easement.

(j) Using the procedures under this section, the governing board of any municipality may annex by ordinance any distressed area contiguous to its boundaries upon presentation to the governing board of a petition signed by at least one adult resident of at least two-thirds of the resident households located within such area. For purposes of this subsection, a "distressed area" is defined as an area in which at least fifty-one percent (51%) of the households in the area petitioning to be annexed have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds. The municipality may require reasonable proof that the petitioner in fact resides at the address indicated.

(k) The petition under subsection (j) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned residents of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(j) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.
2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(l) For purposes of determining whether the percentage of households in the area petitioning for annexation meets the poverty thresholds under subsections (b1) and (j) of this section, the petitioners shall submit to the municipal governing board any reasonable evidence that demonstrates the area in fact meets the income requirements of that subsection. The evidence presented may include data from the most recent federal decennial census, other official census documents, signed affidavits by at least one adult resident of the household attesting to the household size and income level, or any other documentation verifying the incomes for a majority of the households within the petitioning area. Petitioners may select to submit name, address, and social security number to the clerk, who shall in turn submit the information to the Department of Revenue. Such information shall be kept confidential and is not a public record. The Department shall provide the municipality with a summary report of income for households in the petitioning

area. Information for the report shall be gleaned from income tax returns, but the report submitted to the municipality shall not identify individuals or households. (1947, c. 725, s. 8; 1959, c. 713; 1973, c. 426, s. 74; 1975, c. 576, s. 2; 1977, c. 517, s. 4; 1987, c. 562, s. 1; 1989 (Reg. Sess., 1990), c. 996, s. 3; 2011-57, s. 3; 2011-396, s. 10.)

§ 160A-31.1. Assumption of debt.

(a) If the city has annexed under this Part any area which is served by a rural fire department and which is in:

(1) An insurance district defined under G.S. 153A-233;

(2) A rural fire protection district under Article 3A of Chapter 69 of the General Statutes; or

(3) A fire service district under Article 16 of Chapter 153A of the General Statutes,

then beginning with the effective date of annexation the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of submission of the petition for annexation to the city under this Part. The rural fire department shall make available to the city not later than 30 days following a written request from the city, information concerning such debt. The rural fire department forfeits its rights under this section if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) The annual payments from the city to the rural fire department on such shared debt service shall be calculated as follows:

(1) The rural fire department shall certify to the city each year the amount that will be expended for debt service subject to be shared by the city as provided by subsection (a) of this section; and

(2) The amount determined under subdivision (1) of this subsection shall be multiplied by the percentage determined by dividing the assessed valuation of the area of the district annexed by the assessed valuation of the entire district, each such valuation to be fixed as of the date the annexation ordinance becomes effective.

(c) This section does not apply in any year as to any annexed area(s) for which the payment calculated under this section as to all annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars ($100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement. (1989, c. 598, s. 2.)

§ 160A-32. Repealed by Session Laws 1983, c. 636, s. 26.1, effective June 29, 1983.

Part 2. Annexation by Cities of Less Than 5,000.

§ 160A-33: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-34: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-35: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-35.1: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-36: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-37: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-37.1: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-37.2: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-37.3: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-38: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-39: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-40: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-41: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§ 160A-42: Repealed by Session Laws 2011-396, s. 1, effective July 1, 2011. For applicability, see editor's note.

§§ 160A-43 through 160A-44. Repealed by Session Laws 1983, c. 636, s. 27, effective June 29, 1983.

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-46: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-47: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-47.1: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-48: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-49: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-49.1: Recodified to G.S. 160A-58.57 by Session Laws 2011-396, s. 2, effective July 1, 2011.

§ 160A-49.2: Recodified to G.S. 160A-58.58 by Session Laws 2011-396, s. 3, effective July 1, 2011.

§ 160A-49.3: Recodified to G.S. 160A-58.59 by Session Laws 2011-396, s. 4, effective July 1, 2011.

§ 160A-50: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-51: Recodified to G.S. 160A-58.61 by Session Laws 2011-396, s. 5, effective July 1, 2011.

§ 160A-52: Recodified to G.S. 160A-58.62 by Session Laws 2011-396, s. 6, effective July 1, 2011.

§ 160A-53: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§ 160A-54: Repealed by Session Laws 2011-396, s. 7, effective July 1, 2011. For applicability, see editor's note.

§§ 160A-55 through 160A-56. Repealed by Session Laws 1983, c. 636, s. 27, effective June 29, 1983.

§ 160A-57. Reserved for future codification purposes.

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Part unless the context clearly requires another meaning:

(1) "City" means any city, town, or village without regard to population, except cities not qualified to receive gasoline tax allocations under G.S. 136-41.2.

(2) "Primary corporate limits" means the corporate limits of a city as defined in its charter, enlarged or diminished by subsequent annexations or exclusions of contiguous territory pursuant to Parts 1, 2, and 3 of this Article or local acts of the General Assembly.

(3) "Satellite corporate limits" means the corporate limits of a noncontiguous area annexed pursuant to this Part or a local act authorizing or effecting noncontiguous annexations. (1973, c. 1173, s. 2.)

§ 160A-58.1. Petition for annexation; standards.

(a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations. A petition is not valid in any of the following circumstances:

(1) It is unsigned.

(2) It is signed by the city for the annexation of property the city does not own or have a legal interest in. For the purpose of this subdivision, a city has no legal interest in a State-maintained street unless it owns the underlying fee and not just an easement.

(3) It is for the annexation of property for which a signature is not required and the property owner objects to the annexation.

(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate

limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Asheboro, Belmont, Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Saluda, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Apex, Ayden, Benson, Bladenboro, Bridgeton, Bunn, Burgaw, Calabash, Carthage, Catawba, China Grove, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Franklin, Franklinton, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Harrisburg, Holly Ridge, Holly Springs, Hookerton, Hope Mills, Huntersville, Jamestown, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Maysville, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Ocean Isle Beach, Pembroke, Pine Level, Pollocksville, Princeton, Ranlo, Richlands, Rolesville, Rutherfordton, Shallotte, Siler City, Smithfield, Spencer, Spring Lake, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, West Jefferson, Wilson's Mills, Windsor, Yadkinville, Youngsville, and Zebulon.

(b1) Repealed by Session Laws 2004-203, ss. 13(a) and 13(d), effective August 17, 2004.

(b2) A city may annex a noncontiguous area that does not meet the standard set out in subdivision (b)(2) of this section if the city has entered into an annexation agreement pursuant to Part 6 of this Article with the city to which a point on the proposed satellite corporate limits is closer and the agreement states that the other city will not annex the area but does not say that the annexing city will not annex the area. The annexing city shall comply with all other requirements of this section.

(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation

with relation to the primary corporate limits of the annexing city. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition.

(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested rights shall be terminated. (1973, c. 1173, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 4; 1997-2, s. 1; 2001-37, s. 1; 2001-72, s. 1; 2001-438, s. 1; 2002-121, s. 1; 2003-30, s. 1; 2004-203, s. 13(a), (c); 2004-57, s. 1; 2004-99, s. 1; 2004-203, ss. 13(a)-(d); 2005-52, s. 1; 2005-71, s. 1; 2005-79, s. 1; 2005-173, s. 1; 2005-433, s. 9; 2006-62, s. 1; 2006-122, s. 1; 2006-130, s. 1; 2007-17, s. 1; 2007-26, ss. 1, 2(a); 2007-62, s. 1; 2007-225, s. 1; 2007-311, s. 1; 2007-342, s. 1; 2008-24, s. 1; 2008-30, s. 1; 2009-40, s. 2; 2009-53, s. 1; 2009-111, s. 1; 2009-156, s. 1; 2009-298, s. 1; 2009-323, s. 1; 2011-57, s. 1; 2012-96, s. 1; 2013-248, s. 1; 2014-30, s. 2(a); 2015-80, s. 1; 2015-81, s. 2(a); 2015-172, s. 2; 2016-48, s. 2; 2018-56, s. 1; 2019-58, s. 1; 2019-103, s. 1; 2019-160, s. 1.)

§ 160A-58.2. Public hearing.

Upon receipt of a petition for annexation under this Part, the city council shall cause the city clerk to investigate the petition, and to certify the results of his investigation. If the clerk certifies that upon investigation the petition appears to be valid, the council shall fix a date for a public hearing on the annexation. Notice of the hearing shall be published once at least 10 days before the date of hearing.

At the hearing, any person residing in or owning property in the area proposed for annexation and any resident of the annexing city may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If the council then finds and determines that (i) the area described in the petition meets all of the standards set out in G.S. 160A-58.1(b), (ii) the petition bears the signatures of all of the owners of real property within the area proposed for annexation (except those not required to sign by G.S. 160A-58.1(a)), (iii) the petition is otherwise valid, and (iv) the public health, safety and welfare of the inhabitants of the city and of the area proposed for annexation will be best served by the annexation, the council may adopt an ordinance annexing the area described in the petition. The ordinance may be made effective immediately or on any specified date within six months from the date of passage. (1973, c. 1173, s. 2.)

§ 160A-58.2A. Assumption of debt.

(a) If the city has annexed under this Part any area which is served by a rural fire department and which is in:

(1) An insurance district defined under G.S. 153A-233;

(2) A rural fire protection district under Article 3A of Chapter 69 of the General Statutes; or

(3) A fire service district under Article 16 of Chapter 153A of the General Statutes,

then beginning with the effective date of annexation the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of submission of the petition for annexation to the city under this Part. The rural fire department shall make available to the city not later than 30 days following a written request from the city, information concerning such debt. The rural fire department forfeits its rights under this section if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) The annual payments from the city to the rural fire department on such shared debt service shall be calculated as follows:

(1) The rural fire department shall certify to the city each year the amount that will be expended for debt service subject to be shared by the city as provided by subsection (a) of this section; and

(2) The amount determined under subdivision (1) of this subsection shall be multiplied by the percentage determined by dividing the assessed valuation of the area of the district annexed by the assessed valuation of the entire district, each such valuation to be fixed as of the date the annexation ordinance becomes effective.

(c) This section does not apply in any year as to any annexed area(s) for which the payment calculated under this section as to all annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars ($100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement. (1989, c. 598, s. 3.)

§ 160A-58.3. Annexed area subject to city taxes and debts.

From and after the effective date of the annexation ordinance, the annexed area and its citizens and property are subject to all debts, laws, ordinances and regulations of the annexing city, and are entitled to the same privileges and benefits as other parts of the city. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the privilege licenses of the annexing city are due on June 1, then businesses in the annexed area are liable for privilege license taxes at the full-year rate. (1973, c. 1173, s. 2; 1975, c. 576, s. 5; 1977, c. 517, s. 7.)

§ 160A-58.4. Extraterritorial powers.

Satellite corporate limits shall not be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360, or abatement of public health nuisances pursuant to G.S. 160A-193. However, a city's power to regulate land use pursuant to Chapter 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A-193, shall be the same within satellite corporate limits as within its primary corporate limits. (1973, c. 1173, s. 2.)

§ 160A-58.5. Special rates for water, sewer and other enterprises.

For the purposes of G.S. 160A-314, provision of public enterprise services within satellite corporate limits shall be considered provision of service for special classes of service distinct from the classes of service provided within the primary corporate limits of the city, and the city may fix and enforce schedules of rents, rates, fees, charges and penalties in excess of those fixed and enforced within the primary corporate limits. A city providing enterprise services within satellite corporate limits shall annually review the cost thereof, and shall take such steps as may be necessary to insure that the current operating costs of such services, excluding debt service on bonds issued to finance services within satellite corporate limits, does not exceed revenues realized therefrom. (1973, c. 1173, s. 2.)

§ 160A-58.6. Transition from satellite to primary corporate limits.

An area annexed pursuant to this Part ceases to constitute satellite corporate limits and becomes a part of the primary corporate limits of a city when, through annexation of intervening territory, the two boundaries touch. (1973, c. 1173, s. 2.)

§ 160A-58.7. Annexation of municipal property.

(a) The city council may initiate annexation of property not contiguous to the primary corporate limits and owned by the city by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The property must satisfy the requirements of G.S. 160A-58.1. The resolution shall contain an adequate description of the property and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published once at least 10 days before the date of the hearing. At the hearing, any resident of the city may appear and be heard on the question of the desirability of the annexation. If the council finds that annexation is in the public interest, it may adopt an ordinance annexing the property. The ordinance may be made effective immediately or on any specified date within six months from the date of passage.

(b) A city has no authority to adopt a resolution or petition itself under this Part for annexation of property it does not own or have any legal interest in. For the purpose of this subsection, a city has no legal interest in a State-maintained street unless it owns the underlying fee and not just an easement. (1987, c. 562, s. 2; 2011-57, s. 2.)

§ 160A-58.8. Recording and Reporting.

Annexations made under this part shall be recorded and reported in the same manner as under G.S. 160A-29. (1987, c. 879, s. 4.)

Part 4A. Effective Dates of Certain Annexation Ordinances.

§ 160A-58.9. Effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987.

(a) In the case of any annexation ordinance adopted during the period beginning January 1, 1987, and ending on August 3, 1987, if the effective date of the annexation under the ordinance is during 1988, the governing board of the municipality may, notwithstanding G.S. 160A-37(j) or G.S. 160A-49(j), amend the ordinance to provide for an effective date of December 31, 1987. The board must give notice by publication of its intent to consider adoption of such ordinance, such notice to be published at least 10 days before the meeting at which the ordinance is adopted. Copies of the adopted ordinance shall be recorded in accordance with the provisions of G.S. 160A-39 or G.S. 160A-51, as applicable.

(b) This section applies only to territory located in counties with a population of 55,000 or over, according to the 1980 decennial federal census. (1987, c. 715, s. 2.)

§ 160A-58.9A. Effective date of certain annexation ordinances adopted under Article 4A of Chapter 160A.

(a) No annexation ordinance adopted under Article 4A of Chapter 160A of the General Statutes may become effective during the period beginning November 1, 1989, and ending January 1, 1990. If because of the operation of G.S. 160A-37.1(h), G.S. 160A-37.3(g), G.S. 160A-38, G.S. 160A-58.57(h), G.S. 160A-58.59(g), G.S. 160A-50, the order of any court, or the operation of Section 5 of the Voting Rights Act of 1965, an annexation ordinance is to become effective during the period beginning November 1, 1989, and ending January 1, 1990, it shall instead become effective on a date during the period beginning January 2, 1990, and ending December 31, 1990, set by ordinance of the governing board of the city.

(b) If the final date upon which an annexation ordinance adopted under Article 4A of Chapter 160A of the General Statutes, may be made effective occurs during the period beginning November 1, 1989, and ending January 1, 1990, the effective date of the annexation may be set in the annexation ordinance as any date during the period beginning January 2, 1990, and ending December 31, 1990, in addition to any date permitted by law before November 1, 1989.

(c) This section applies to territory located in counties with a population of 55,000 or over, according to the 1980 decennial federal census, and to territory located in all other counties subject to Part 2 of Article 12A of Chapter 163 of the General Statutes, pursuant to G.S. 163-132.6. (1987, c. 715, s. 3; 1989, c. 440, s. 6; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

Part 5. Property Tax Liability of Newly Annexed Territory.

§ 160A-58.10. Tax of newly annexed territory.

(a) Applicability of Section. – Real and personal property in territory annexed pursuant to this Article is subject to municipal taxes as provided in this section.

(b) Prorated Taxes. – Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to prorated municipal taxes levied for that fiscal year as provided in this subsection. The amount of municipal taxes that would have been due on the property had it been

within the municipality for the full fiscal year shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year, following the day on which the annexation becomes effective. The product of the multiplication is the amount of prorated taxes due. The lien for prorated taxes levied on a parcel of real property shall attach to the parcel taxed on the listing date, as provided in G.S. 105-285, immediately preceding the fiscal year in which the annexation becomes effective. The lien for prorated taxes levied on personal property shall attach on the same date to all real property of the taxpayer in the taxing unit, including the newly annexed territory. If the annexation becomes effective after June 30 and before September 2, the prorated taxes shall be due and payable on the first day of September of the fiscal year for which the taxes are levied. If the annexation becomes effective after September 1 and before the following July 1, the prorated taxes shall be due and payable on the first day of September of the next succeeding fiscal year. The prorated taxes are subject to collection and foreclosure in the same manner as other taxes levied for the fiscal year in which the prorated taxes become due.

(c) Taxes in Subsequent Fiscal Years. – In fiscal years subsequent to the fiscal year in which an annexation becomes effective, real and personal property in the newly annexed territory is subject to municipal taxes on the same basis as is the preexisting territory of the municipality.

(d) Transfer of Tax Records. – For purposes of levying prorated taxes the municipality shall obtain from the county a record of property in the area being annexed that was listed for taxation on the January 1 immediately preceding the fiscal year for which the prorated taxes are levied. In addition, if the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed that was listed for taxation as of said January 1. (1977, c. 517, s. 9.)

§§ 160A-58.11 through 160A-58.20. Reserved for future codification purposes.

Part 6. Annexation Agreements.

§ 160A-58.21. Purpose.

It is the purpose of this Part to authorize cities to enter into binding agreements concerning future annexation in order to enhance orderly planning by such cities as well as residents and property owners in areas adjacent to such cities. (1989, c. 143, s. 1.)

§ 160A-58.22. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Agreement" means any written agreement authorized by this Part.

(2) "Annexation" means any extension of a city's corporate limits as authorized by this Article, the charter of the city, or any local act applicable to the city, as such statutory authority exists now or is hereafter amended.

(3) "Participating city" means any city which is a party to an agreement. (1989, c. 143, s. 1.)

§ 160A-58.23. Annexation agreements authorized.

Two or more cities may enter into agreements in order to designate one or more areas which are not subject to annexation by one or more of the participating cities. The agreements shall be of reasonable duration, not to exceed 20 years, and shall be approved by ordinance of the governing board and executed by the mayor of each city and spread upon its minutes. (1989, c. 143, s. 1.)

§ 160A-58.24. Contents of agreements; procedure.

(a) The agreement shall:

(1) State the duration of the agreement.

(2) Describe clearly the area or areas subject to the agreement. The boundaries of such area or areas may be established at such locations as the participating cities shall agree. Thereafter, any participating city may follow such boundaries in annexing any property, whether or not such boundaries follow roads or natural topographical features.

(3) Specify one or more participating cities which may not annex the area or areas described in the agreement.

(4) State the effective date of the agreement.

(5) Require each participating city which proposes any annexation to give written notice to the other participating city or cities of the annexation at least 60 days before the adoption of any annexation ordinance; provided, however, that the agreement may provide for a waiver of this time period by the notified city.

(6) Include any other necessary or proper matter.

(b) The written notice required by subdivision (a)(5) of this section shall describe the area to be annexed by a legible map, clearly and accurately showing the boundaries of the area to be annexed in relation to: the area or areas described pursuant to subdivision (a)(2) of this section, roads, streams and any other prominent geographical features. Such notice shall not be effective for more than 180 days.

(c) No agreement may be entered into under this Part unless each participating city has held a public hearing on the agreement prior to adopting the ordinance approving the agreement. The governing boards of the participating cities may hold a joint public hearing if desired. Notice of the public hearing or hearings shall be given as provided in G.S. 160A-31(c).

(d) Any agreement entered into under this Part may be modified or terminated by a subsequent agreement entered into by all the participating cities to that agreement. The subsequent agreement shall be approved by ordinance after a public hearing or hearings as provided in subsection (c).

(e) No agreement entered into under this Part shall be binding beyond three miles of the primary corporate limits of a participating city which is permitted to annex the area under the agreement, unless approved by the board of county commissioners with jurisdiction over the area. Provided however, that an area where the agreement is not binding because of failure of the board of county commissioners to approve it, shall become subject to the agreement if subsequent annexation brings it within three miles. The approval of a board of county commissioners shall be evidenced by a resolution adopted after a public hearing as provided in subsection (c).

(f) A participating city may terminate an annexation agreement unilaterally or withdraw itself from the agreement, by repealing the ordinance by which it approved the agreement and providing five years' written notice to the other participating cities. Upon the expiration of the

five-year period, an agreement originally involving only two cities shall terminate, and an agreement originally involving more than two cities shall terminate unless each of the other participating cities shall have adopted an ordinance reaffirming the agreement. (1989, c. 143, s. 1.)

§ 160A-58.25. Effect of agreement.

From and after the effective date of an agreement, no participating city may adopt an annexation ordinance as to all or any portion of an area in violation of the agreement. (1989, c. 143, s. 1.)

§ 160A-58.26. Part grants no annexation authority.

Nothing in this Part shall be construed to authorize the annexation of any area which is not otherwise subject to annexation under applicable law. (1989, c. 143, s. 1.)

§ 160A-58.27. Relief.

(a) Each provision of an agreement shall be binding upon the respective parties. Not later than 30 days following the passage of an annexation ordinance concerning territory subject to an agreement, a participating city which believes that another participating city has violated this Part or the agreement may file a petition in the superior court of the county where any of the territory proposed to be annexed is located, seeking review of the action of the city alleged to have violated this Part or the agreement.

(b) Within five days after the petition is filed with the court, the petitioning city shall serve copies of the petition by certified mail, return receipt requested, upon the respondent city.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent city shall transmit to the reviewing court:

(1) A transcript of the portions of the ordinance or minute book in which the procedure for annexation has been set forth;

(2) A copy of resolutions, ordinances, and any other document received or approved by the respondent city's governing board as part of the annexation proceeding.

(d) The court shall fix the date for review of the petition so that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

(1) That the provisions of this Part were not met; or

(2) That the provisions of the agreement were not met.

(e) At any time before or during the review proceeding, any petitioner may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) Upon a finding that the respondent city has not violated this Part or the agreement, the court may affirm the action of the respondent city without change. Upon a finding that the respondent city has violated this Part or the agreement, the court may:

(1) Remand to the respondent city's governing board any ordinance adopted pursuant to Parts 2 or 3 of this Article, as the same exists now or is hereafter amended, for amendment of the boundaries, or for such other

action as is necessary, to conform to the provisions of this Part and the agreement.

(2) Declare any annexation begun pursuant to any other applicable law to be void. If the respondent city shall fail to take action in accordance with the court's instructions upon remand under subdivision (d)(1) of this section within three months from receipt of such instructions, the annexation proceeding shall be void.

(g) Any participating city which is a party to the review proceedings may appeal from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the appellate division; provided, that the superior court may, with the agreement of the parties, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the respondent city without regard to any part of the area concerning which an appeal is being made.

(h) If part or all of the area annexed under the terms of a challenged annexation ordinance is the subject of an appeal to the superior court or appellate division on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the respondent city's governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(i) A participating city which is prohibited from annexing into an area under a binding agreement may file a petition in the superior court where any of the territory proposed to be annexed is located, or a response in a proceeding initiated by another participating city, seeking permission to annex territory in the area notwithstanding the agreement. If the territory qualifies for annexation by the city seeking to annex it, the court may enter an order allowing the annexation to proceed with respect to all or a portion of the territory upon a finding that there is an imminent threat to public health or safety that can be remedied only by the city seeking annexation. The procedural provisions of this section shall apply to proceedings under this subsection, so far as applicable. (1989, c. 143, s. 1.)

§ 160A-58.28. Effect on prior local acts.

This Part does not affect Chapter 953, Session Laws of 1983, Chapter 847, Session Laws of 1985 (1986 Regular Session), or Chapters 204, 233, or 1009, Session Laws of 1987, authorizing annexation agreements, but any city which is authorized to enter into agreements by one of those acts may enter into future agreements either under such act or this Part. (1989, c. 143, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 48.)

§ 160A-58.29: Reserved for future codification purposes.

§ 160A-58.30: Reserved for future codification purposes.

§ 160A-58.31: Reserved for future codification purposes.

§ 160A-58.32: Reserved for future codification purposes.

§ 160A-58.33: Reserved for future codification purposes.

§ 160A-58.34: Reserved for future codification purposes.

§ 160A-58.35: Reserved for future codification purposes.

§ 160A-58.36: Reserved for future codification purposes.

§ 160A-58.37: Reserved for future codification purposes.

§ 160A-58.38: Reserved for future codification purposes.

§ 160A-58.39: Reserved for future codification purposes.

§ 160A-58.40: Reserved for future codification purposes.

§ 160A-58.41: Reserved for future codification purposes.

§ 160A-58.42: Reserved for future codification purposes.

§ 160A-58.43: Reserved for future codification purposes.

§ 160A-58.44: Reserved for future codification purposes.

§ 160A-58.45: Reserved for future codification purposes.

§ 160A-58.46: Reserved for future codification purposes.

§ 160A-58.47: Reserved for future codification purposes.

§ 160A-58.48: Reserved for future codification purposes.

§ 160A-58.49: Reserved for future codification purposes.

Part 7. Annexations Initiated by Municipalities.

§ 160A-58.50. Declaration of policy.

It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina.

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development.

(3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State to include such areas and to provide the high quality of governmental services needed therein for the public health, safety, and welfare.
(4) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality.
(5) That the provision of services to protect the health, safety, and welfare is a public purpose.
(6) That it is essential for citizens to have an effective voice in annexations initiated by municipalities. (2011-396, s. 9.)

§ 160A-58.51. Definitions.

As used in this Part, the following definitions apply:

(1) Contiguous area. – Any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of the length of a street or street right-of-way may not be used to establish contiguity.
(2) Eligible property owner. – A property owner who is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner. A property owner is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner if that property owner held a freehold interest in the real property to be annexed as of the date of the combined notice of public informational meeting and public hearing.
(3) Necessary land connection. – An area that does not exceed twenty-five percent (25%) of the total area to be annexed.
(4) Property owner. – Any person having a freehold interest in real property.
(5) Used for residential purposes. – Any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. The term also includes any lot or tract that is used in common for social or recreational purposes by either owners of lots with habitable dwelling units or owners of lots intended for occupation by dwelling units and the lot owners have a real property interest in the commonly used property that attaches to or is appurtenant to the owners' lots. (2011-396, s. 9; 2012-11, s. 4.)

§ 160A-58.52. Authority to annex.

The governing board of any municipality may extend the corporate limits of such municipality under the procedure set forth in this Part. (2011-396, s. 9.)

§ 160A-58.53. Prerequisites to annexation.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-58.55, prepare a report setting forth such plans to provide services to the area proposed to be annexed. The report shall include the following:

(1) A map or maps of the municipality and adjacent territory to show the following information:

a. The present and proposed boundaries of the municipality.

b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains, outfalls, and lines as required in subdivision (3) of this section. The water and sewer map shall bear the seal of a registered professional engineer.

c. The general land use pattern in the area proposed to be annexed.

(2) A statement showing that the area proposed to be annexed meets the requirements of G.S. 160A-58.54.

(3) A statement setting forth the plans for extending to the area proposed to be annexed each major municipal service on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation and the method to finance the extension of major municipal services into the area proposed to be annexed as follows:

a. Provision of police protection, fire protection, solid waste collection, and street maintenance services on the effective date of annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Extension of water and sewer services to each lot or parcel, if an installation easement is provided by the affected property owner, with a proposed timetable for construction of such mains, outfalls, and lines within three and one-half years of the effective date of annexation, in accordance with G.S. 160A-58.56.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area proposed to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area proposed to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the municipality not later than 30 days following a written request from the

municipality all information in its possession or control, including operational, financial, and budgetary information, necessary for preparation of a statement of impact. The municipality shall, in a timely fashion, supply the rural fire department with information requested by the rural fire department to respond to the written request. The rural fire department forfeits its rights under G.S. 160A-58.57 if it fails to make a good faith response within 45 days following receipt of the written request for information from the municipality, provided that the municipality's written request so states by specific reference to this subdivision.

(5) A statement showing how the proposed annexation will affect the municipality's finances and services, including municipal revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part. (2011-396, s. 9.)

§ 160A-58.54. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area that meets all of the following criteria:

(1) It shall be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one-eighth of the aggregate external boundaries of the area shall coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) The total area to be annexed shall meet the requirements of any of the following:

a. Part or all of the area to be annexed must be developed for urban purposes at the time of approval of the report provided for in G.S. 160A-58.53. The area of streets and street rights-of-way shall not be used to determine total acreage under this subdivision. An area developed for urban purposes is defined as any area which meets any one of the following standards:

1. Has a total resident population equal to at least two and three-tenths persons for each acre of land included within its boundaries.

2. Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is

subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts three acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size.

3. Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional, or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts three acres or less in size.

4. Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), if all of the following apply:

   I. The municipality has provided in a contract with that district that the area is developed for urban purposes.

   II. The contract provides for the municipality to operate the sewer system of that county water and sewer district.

   III. The municipality is annexing in one ordinance the entire territory of the district not already within the corporate limits of a municipality.

5. Is so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

b. Part or all of the area to be annexed meets either of the following:

1. Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending major municipal services, including water or sewer lines, through such sparsely developed area.

2. Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in sub-subdivision a. of this subsection.

The purpose of paragraphs 1. and 2. of this sub-subdivision is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

c. The total area to be annexed is completely surrounded by the municipality's primary corporate limits.

(b) In fixing new municipal boundaries and determining whether an area is developed for urban purposes, a municipal governing board shall comply with all the following:

(1) Use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district is not already within the corporate limits of the municipality.

(2) Use whole parcels of property in that if any portion of that parcel is included, the entire parcel of real property as recorded in the deed transferring title shall be included.

(3) Not use a connecting corridor consisting solely of the length of a street or street right-of-way to establish contiguity.

(4) Not consider property in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract.

(5) Include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities when determining acreage in use for commercial, industrial, institutional, or governmental purposes.

(6) Consider the area of an abolished water and sewer district to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b).

(c) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property. (2011-396, s. 9; 2011-363, s. 3.1.)

§ 160A-58.55. Procedure for annexation.

(a) Resolution of Consideration. – Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution of consideration identifying the area under consideration for annexation by either a metes and bounds description or a map. The resolution of consideration shall remain effective for two years after adoption and be filed with the municipal clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution. Adoption of a resolution of consideration shall not confer prior jurisdiction over the area as to any other municipality.

(b) Notice of Resolution of Consideration. – A notice of the adoption of the resolution of consideration shall be published once a week for two successive weeks, with each publication being on the same day of the week, in a newspaper having general circulation in the municipality. The second publication shall be no more than 30 days following adoption of the resolution of consideration. The resolution of consideration shall contain a map or description of the area under consideration and a summary of the annexation process and time lines. A copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the property owners of real property located within the area under consideration for annexation as shown by the tax records of the county. If a proposed annexation extends across a county border into a county other that the county where the majority of the area of the existing municipality is located, a copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the clerk of the board of county commissioners of that county.

(c) Resolution of Intent. – At least one year after adoption of the resolution of consideration, the municipal governing body may adopt a resolution of intent of the municipality to proceed with the annexation of some or all of the area described in the resolution of consideration. The resolution of intent shall describe the boundaries of the area proposed for annexation, fix a date for a public informational meeting, fix a date for a public hearing on the question of annexation, and fix a date for the referendum on annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution of intent. The date for the public hearing shall be not less than 130 days and not more than 150 days following passage of the resolution of intent. The date of the referendum on annexation shall be set for the next municipal general election that is more than 45 days from the date of the resolution of intent.

(d) Notice of Public Informational Meeting, Public Hearing, and Opportunity for Water and Sewer. – A combined notice of public informational meeting and public hearing shall be issued as provided for in this subsection as follows:

(1) The notice shall be a combined notice that includes at least all of the following:

a. The date, hour, and place of the public informational meeting.

b. The date, hour, and place of the public hearing.

c. A clear description of the boundaries of the area under consideration, including a legible map of the area.

d. A statement that the report required by G.S. 160A-58.53 will be available at the office of the municipal clerk.

e. An explanation of a property owner's rights under this section.

f. A summary of the annexation process with time lines.

g. A summary of the opportunity to vote in the referendum and available statutory remedies appealing the annexation and the failure to provide services.

h. Information on how to request to become a customer of the water and sewer service, all forms to request that service, and the consequences of opting in or opting out, as provided in G.S. 160A-58.56.

i. A clear description of the distinction between the public informational meeting and the public hearing.

(2) The combined notice shall be given by publication of the information required by sub-subdivisions (1)a., b., and c. of this subsection and a statement regarding the availability of the information required by the remaining sub-subdivisions of subdivision (1) of this subsection in a newspaper having general circulation in the municipality once a week for at least two successive weeks prior to the date of the public informational meeting, with each publication being on the same day of the week. The date of the last publication shall be not more than 10 days preceding the date of the public informational meeting. In addition thereto, if the area proposed to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, the same publication shall be given in a newspaper having general circulation in the area of proposed annexation. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting.

(3) The combined notice, together with the information about requesting water and sewer service, shall be mailed within five business days of the passage of the resolution of intent by first class mail to the property owners of real property located within the area to be annexed as shown by the tax records of the county. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the public record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If a notice is returned to the municipality by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

(4) If the governing board by resolution finds that the tax records are not adequate to identify the property owners within the area to be annexed after exercising reasonable efforts to locate the property owners, it may, in lieu of the mail procedure required by subdivision (3) of this subsection, post the notice at least 30 days prior to the date of the public informational meeting on all buildings, on such parcels, and in at least five other places within the area to be annexed as to those parcels where the property owner could not be so identified. In any case where notices

are placed on property, the person placing the notice shall certify that fact to the governing board.

(e) Action Prior to Informational Meeting. – At least 30 days before the date of the public informational meeting, the municipal governing board shall do all of the following:

(1) Approve the report provided for in G.S. 160A-58.53.

(2) Prepare a summary of the approved report for public distribution.

(3) Post in the office of the clerk all of the following:

a. The approved report provided for in G.S. 160A-58.53.

b. The summary of the approved report.

c. A legible map of the area to be annexed.

d. The list of the property owners, and associated mailing addresses, in the area to be annexed that the municipality has identified and mailed notice.

e. Information for property owners on how to request to become a customer of the water service or sewer service and all forms to request that service.

(4) If the municipality has a Web site, post on that Web site all of the information under this section together with any forms to apply for water and sewer service.

(5) Prepare a summary of the opportunity to vote in the referendum and available statutory remedies for appealing the annexation for public distribution.

(f) Public Informational Meeting. – At the public informational meeting, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53 and an explanation of the provision of major municipal services. The explanation of the provision of services shall include how to request water service or sewer service to individual lots, the average cost of a residential connection to the water and sewer system, and the opportunity for installation of a residential connection under G.S. 160A-58.56. A summary of the annexation process with time lines, a summary of opportunity to vote in the referendum and available statutory remedies for appealing the annexation, an explanation of the provision of services, and information for requesting water service or sewer service to individual lots and any forms to so request shall also be distributed at the public informational meeting. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(g) Public Hearing. – At the public hearing, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(h) The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-58.53 to make changes in the plans for serving the area proposed to be annexed so

long as such changes meet the requirements of G.S. 160A-58.53. At any regular or special meeting held no sooner than the tenth day following the certification of the election held under G.S. 160A-58.64, the governing board shall have authority to adopt an ordinance, subject to subsection (i) of this section, extending the corporate limits of the municipality to include all, or part, of the area described in the notice of public hearing which the governing board has concluded should be annexed. The annexation ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-58.54.

(2) Describe the external boundaries of the area to be annexed by metes and bounds.

(3) Include a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-58.53 and a time line for the provision of those services.

(4) Contain a specific finding that on the effective date of annexation, the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines stated in the report required by G.S. 160A-58.53 to extend the water and sewer services into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds shall be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(5) Fix the effective date for annexation as June 30 next following the adoption of the ordinance or the second June 30 following adoption of the ordinance, but not before the completion of the water and sewer request appeal periods are complete.

(6) Together, with the list of the property owners of parcels within the area described in the annexation ordinance to which a notice was mailed under subsection (d) of this section, be delivered within five business days to the tax assessor and the board of elections of the county in which a majority of the municipality lies.

(7) Repealed by Session Laws 2012-11, s. 2, effective July 1, 2012.

(8) If a public body has a Web site, conspicuously post notice of the referendum until after the certification of the election.

(i) Referendum Vote on Annexation Ordinance. – The procedures in G.S. 160A-58.64 shall apply to any annexation under this Part. The municipality shall reimburse the board or boards of elections the costs of the referendum required under G.S. 160A-58.64.

(j) Effect of Annexation Ordinance. – From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(k) Reserved.

(l) Reserved.

(m) Simultaneous Annexation Proceedings. – If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(n) Remedies for Failure to Provide Services. – If, not earlier than 30 days after the effective date of annexation and not later than 15 months from the effective date of annexation, any property owner in the annexed territory shall believe that the municipality has not followed through providing services as set forth in the report adopted under G.S. 160A-58.53 and subsection (e) of this section, the property owner may apply for a writ of mandamus. Relief may be granted by the judge of superior court if the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-58.53(3)a. on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation and those services are still being provided on substantially the same basis and in the same manner within the original corporate limits of the municipality. If a writ is issued, costs in the action, including reasonable attorneys' fees for such aggrieved property owner, shall be charged to the municipality.

(o) Reports to the Local Government Commission. – The municipality shall report to the Local Government Commission as follows:

(1) As to whether police protection, fire protection, solid waste services, and street maintenance services were provided in accordance with G.S. 160A-58.53(3)a., within 30 days after the effective date of the annexation. Such report shall be filed no more than 30 days following the expiration of the 30-day period. If the Local Government Commission determines that the municipality failed to deliver police protection, fire protection, solid waste services, or street maintenance services as provided for in G.S. 160A-58.53(3)a. within 30 days after the effective date of the annexation, the Local Government Commission shall notify the municipality that the municipality may not count any of the residents as part of the population of the municipality for the purpose of receiving any State, federal, or county dollars distributed based on population until all of the services are provided.

(2) As to whether the extension of water and sewer lines was completed within the time period specified in G.S. 160A-58.53(3), within six months after the effective date of the annexation ordinance, and again within three and one-half years of the effective date of the annexation ordinance or upon the completion of the installation, whichever occurs first. If the municipality failed to deliver either water or sewer services, or both, as provided for in G.S. 160A-58.53(3)b. within three and one-half years after the effective date of the annexation, the municipality shall stop any other annexations in progress and may not begin any other annexation

until the water and sewer services are provided. The municipality shall adopt a resolution of consideration to begin again any annexation that is stopped due to this subdivision. (2011-396, s. 9; 2012-11, s. 2.)

§ 160A-58.56. Provision of water and sewer service.

(a) The municipality shall provide water and sewer service to the annexed area as required by plans for extension under G.S. 160A-58.53(3) within three and one-half years of the effective date of the annexation ordinance except as provided in subdivision (b)(4) of this section. If (i) the residents in the existing city boundaries are served by a public water or sewer system, or by a combination of a public water or sewer system and one or more nonprofit entities providing service by contract with the public system, (ii) the annexing municipality does not provide that service within the existing city boundaries, (iii) the area to be annexed is in an area served by the public water or sewer system, and (iv) the municipality has no responsibility through an agreement with the public water or sewer system to pay for the extension of lines to areas annexed to the city, the city shall have no financial responsibility for the extension of water and sewer lines under this section. For purposes of this provision, "public water or sewer system" means a water or sewer authority formed under Article 1 of Chapter 162A of the General Statutes; a metropolitan water or sewerage district formed under Article 4 or Article 5 of Chapter 162A of the General Statutes; a county water or sewer district formed under Article 6 of Chapter 162A of the General Statutes; a sanitary district formed under Article 2 of Chapter 130A of the General Statutes; a county-owned water or sewer system; a municipal-owned water or sewer system; a water or sewer utility created by an act of the General Assembly; or a joint agency providing a water or sewer system by interlocal agreement under Article 20 of Chapter 160A of the General Statutes.

(b) Prior to the adoption of the annexation ordinance, the municipality shall offer to each eligible property owner of real property located within the area proposed to be annexed an opportunity to obtain water or sewer service, or both, at no cost other than periodic user fees based upon usage as follows:

(1) After passage of the resolution of intent, the property owner of real property located within the area proposed to be annexed shall be notified in writing, as provided in G.S. 160A-58.55(d), within five business days of the passage of the resolution of intent, of the opportunity to have water and sewer lines and connections installed at no cost to the property owner. The notice shall state that a request for extending water and sewer lines does not waive the right to contest the annexation. The property owners of real property located within the area proposed to be annexed shall be allowed 65 days from the date of the passage of the resolution of intent to respond yes or no to the opportunity. Any property owner of a parcel that is an existing customer of the municipality's water or sewer, whether provided by the municipality or by a third party under contract with the municipality, shall be deemed to respond yes to the opportunity, whether or not the property owner returns the notification.

(2) At the close of the 65-day period, the municipality shall determine if the eligible property owners of a majority of the parcels to be annexed have responded favorably. A majority of the property owners of a single parcel of real property must respond favorably before the municipality may count that parcel of real property as responding favorably.

(3) If the property owners of a majority of the parcels located within the area proposed to be annexed respond favorably, the municipality shall do all of the following:

a. Provide water and sewer lines, service lines, and connections at no cost other than periodic user fees to all real property for which an owner responded favorably if the annexation ordinance is adopted. The right to receive water and sewer lines shall run with the land.

b. Notify, within five days of the close of the 65-day period under subdivision (2) of this subsection, those property owners of real property located within the area proposed to be annexed who failed to respond or responded negatively that the property owners of a majority of the parcels located within the area proposed to be annexed responded favorably and offer a second opportunity for that property owner to respond favorably within 30 days.

(4) If the property owners of a majority of the parcels located within the area proposed to be annexed fail to respond favorably to the offer to obtain water and sewer services made under this section, the municipality may nevertheless proceed with the annexation. If the municipality proceeds with the annexation when the property owners of a majority of the parcels located within the area proposed to be annexed fail to respond favorably to the offer to obtain water and sewer services, the municipality is not required to provide water and sewer services to any property owners in the area that is annexed. If the municipality does provide water and sewer services, and if a property owner requests those services, the municipality may charge the property owner for the connection to a residential lot as provided in subsection (d) of this section during the first five years following the effective date of the annexation. After five years, and only if connection is requested by a property owner in accordance with subsection (e) of this section, the municipality may charge for the connection according to the municipality's policy.

(c) The process required by subsection (b) of this section shall be completed by the municipality at least 30 days prior to the public hearing. The report required by G.S. 160A-58.53 shall include the results of the process required by subsection (b) of this section.

(d) Any property owner of the real property located within the area described in the annexation ordinance may apply to participate in the water and sewer system after the completion of the process required by subsection (b) of this section. For a property owner of real property located within the area described in the annexation ordinance applying within the first year, that property owner may be charged an amount not to exceed fifty

percent (50%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the second year, that property owner may be charged an amount not to exceed sixty percent (60%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the third year, that property owner may be charged an amount not to exceed seventy percent (70%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the fourth year, that property owner may be charged an amount not to exceed eighty percent (80%) of average cost of the installation of the water and sewer for a residential lot. For a property owner of real property located within the area described in the annexation ordinance applying within the fifth year, that property owner may be charged an amount not to exceed ninety percent (90%) of average cost of the installation of the water and sewer for a residential lot. Charges pursuant to this section shall be made when the water and sewer connection is operable.

(e) Notwithstanding Article 16 of this Chapter, the municipality may not charge, for any reason, any property owner within the area described in the annexation ordinance, for the installation or use of the water or sewer system unless that property owner is, or has requested to become, a customer of the water or sewer system.

(f) The initial installation of water or sewer connection lines to property shall be completed without charge to the property owner. Title to water or sewer connection lines shall vest in the property owner following completion of the initial installation. The property owner shall be responsible for maintenance and repair of water and sewer connection lines on the owner's property following the initial installation.

(g) If the municipality is unable to provide water or sewer service within three and one-half years, as required by this section, due to permitting delays that are caused through no fault of the municipality, the municipality may petition the Local Government Commission for a reasonable time extension.

(h) For purposes of this section, the following definitions apply:

(1) "At no cost other than periodic user fees." – The municipality may not charge the property owner who responded favorably under subdivision (b)(3) of this section for any costs associated with the installation of the water or sewer system. The municipality may not charge a property owner who applies to participate in the water and sewer system under subsection (d) of this section prior to the first periodic user fee charge, and on that bill the owner may be charged no more then as provided in subsection (d) of this section.

(2) "Average installation of a connection for a residential lot." – The average of the cost for residential installations from curb to residence, including connection and tap fees, in the area described in the annexation ordinance. (2011-396, s. 9.)

§ 160A-58.57. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-58.55(c) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars ($100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such amount annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-58.60 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes. (1983, c. 636, s. 21; 1987, c. 827, s. 1; 2011-396, ss. 2, 9.)

§ 160A-58.58. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. (1983, c. 636, s. 23; 1998-150, s. 16; 2011-396, s. 3.)

§ 160A-58.59. Contract with private solid waste collection firms.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-58.55(c) includes an area where a firm (i) meets the requirements of subsection (b) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (f) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months.

Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(b) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (d) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-58.55(d), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(c) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(d) At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (c) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (c) of this section.

(e) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards existing at the time of notice published pursuant to G.S. 160A-49(b) [160A-58.55(d)] with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(f) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(g) The firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of

intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. – A private solid waste collection firm. (1985, c. 610, s. 4; 1987, c. 827, s. 1; 1989, c. 598, s. 9; 1998-150, s. 17; 2006-193, s. 2; 2006-259, s. 53; 2011-396, ss. 4, 9.)

§ 160A-58.60. Appeal.

(a) Within 60 days following the adoption of the annexation ordinance, any property owner of real property located within the area described in the annexation ordinance who believes that property owner will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure or to meet the requirements set forth in this Part as they apply to the annexation may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the municipality shall transmit to the reviewing court both of the following:

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth.

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-58.53.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c) of this section.

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall be expeditious and without unnecessary delays. The review shall

be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show one or more of the following:

(1) That the statutory procedure was not followed.

(2) That the provisions of G.S. 160A-58.53 were not met.

(3) That the provisions of G.S. 160A-58.54 have not been met.

(4) That the provisions of G.S. 160A-58.50 have not been met.

(g) The court may affirm the action of the governing board without change, or it may order any of the following:

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-58.54 if it finds that the provisions of G.S. 160A-58.54 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-58.53 are satisfied or to correct errors in [the] municipal governing board's estimates that fall below the standards in G.S. 160A-58.63.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within 90 days following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the municipality without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals, or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the first June 30th at least six months following the date of the final judgment of the superior court or appellate division, or the first June 30th at least six months from the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes

of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgment.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-58.57(g) or G.S. 160A-58.59(g) and a stay is granted, then the time periods of three and one-half years or G.S. 160A-58.55(n) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-58.57(i) or G.S. 160A-58.57(g).

(l) In any proceeding related to an annexation ordinance appeal under this section, a municipality shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(m) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly.

(n) If a final court order is issued against the annexing municipality, costs in the action, including reasonable attorneys' fees for such aggrieved person having a freehold interest in the real property located within the area described in the annexation ordinance, may be charged to the municipality. (2011-396, s. 9 2012-11, s. 5; 2013-410, s. 15.)

§ 160A-58.61. Annexation recorded.

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census. (1959, c. 1009, s. 7; 1973, c. 426, s. 74; 1987, c. 715, s. 8; c. 879, s. 3; 1989, c. 440, s. 9; 1991, c. 586, s. 3; 2011-396, s. 5.)

§ 160A-58.62. Authorized expenditures.

Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose

calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1009, s. 8; 1973, c. 426, s. 74; 2011-396, s. 6.)

§ 160A-58.63. Population and land estimates.

In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-58.54, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-58.54 have been met on appeal to the superior court under G.S. 160A-58.60, the reviewing court shall accept the estimates of the municipality unless the actual population, total area, or degree of land subdivision falls below the standards in G.S. 160A-58.54:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.

(2) As to total area, if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more. (2011-396, s. 9.)

§ 160A-58.64. Referendum prior to involuntary annexation ordinance.

(a) After the adoption of the resolution of intent under this Part, the municipality shall place the question of annexation on the ballot. The municipal governing board shall notify the appropriate county board or boards of elections of the adoption of the resolution of intent and provide a legible map and clear written description of the proposed annexation area.

(b) In accordance with G.S. 160A-58.55, the municipal governing board shall adopt a resolution setting the date for the referendum and so notify the appropriate county board or boards of elections.

(c) The county board or boards of elections shall cause legal notice of the election to be published. That notice shall include the general statement of the referendum. The referendum shall be conducted, returned, and the results declared as in other municipal

elections in the municipality. Only registered voters of the proposed annexation area shall be allowed to vote on the referendum.

(d) The referendum of any number of proposed involuntary annexations may be submitted at the same election; but as to each proposed involuntary annexation, there shall be an entirely separate ballot question.

(e) The ballots used in a referendum shall submit the following proposition:

"[ ] FOR [ ] AGAINST

The annexation of (clear description of the proposed annexation area)."

(f) If less than a majority of the votes cast on the referendum are for annexation, the municipal governing body may not proceed with the adoption of the annexation ordinance or begin a separate involuntary annexation process with respect to that proposed annexation area for at least 36 months from the date of the referendum. If a majority of the votes cast on the referendum are for annexation, the municipal governing body may proceed with the adoption of the annexation ordinance under G.S. 160A-58.55. (2012-11, s. 1; 2014-115, s. 15.1.)

§ 160A-58.65: Reserved for future codification purposes.

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§ 160A-58.67: Reserved for future codification purposes.

§ 160A-58.68: Reserved for future codification purposes.

§ 160A-58.69: Reserved for future codification purposes.

§ 160A-58.70: Reserved for future codification purposes.

§ 160A-58.71: Reserved for future codification purposes.

§ 160A-58.72: Reserved for future codification purposes.

§ 160A-58.73: Reserved for future codification purposes.

§ 160A-58.74: Reserved for future codification purposes.

§ 160A-58.75: Reserved for future codification purposes.

§ 160A-58.76: Reserved for future codification purposes.

§ 160A-58.77: Reserved for future codification purposes.

§ 160A-58.78: Reserved for future codification purposes.

§ 160A-58.79: Reserved for future codification purposes.

§ 160A-58.80: Reserved for future codification purposes.

§ 160A-58.81: Reserved for future codification purposes.

§ 160A-58.82: Reserved for future codification purposes.

§ 160A-58.83: Reserved for future codification purposes.

§ 160A-58.84: Reserved for future codification purposes.

§ 160A-58.85: Reserved for future codification purposes.

§ 160A-58.86: Reserved for future codification purposes.

§ 160A-58.87: Reserved for future codification purposes.

§ 160A-58.88: Reserved for future codification purposes.

§ 160A-58.89: Reserved for future codification purposes.

Part 8. Recording and Reporting.

§ 160A-58.90. Recording and Reporting.

(a) Annexations made under this Article shall be recorded and reported in the same manner as under G.S. 160A-29.

(b) To be enforceable, any written agreement with a person having a freehold interest in real property regarding annexation shall be recorded in the county register of deeds office in which the real property lies. (2011-396, s. 11.)

Article 5.

Form of Government.

Part 1. General Provisions.

§ 160A-59. Qualifications for elective office.

All city officers elected by the people shall possess the qualifications set out in Article VI of the Constitution. In addition, when the city is divided into electoral districts for the purpose of electing members of the council, council members shall reside in the district they represent. When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant. (1973, c. 609.)

§ 160A-60. Qualifications for appointive office.

Residence within a city shall not be a qualification for or prerequisite to appointment to any city office not filled by election of the people, unless the charter or an ordinance provides otherwise. City councils shall have authority to fix qualifications for appointive offices, but shall have no authority to waive qualifications for appointive offices fixed by charters or general laws. (1870-1, c. 24, s. 3; Code, s. 3796; Rev., s. 2941; C.S., s. 2646; 1951, c. 24; 1969, c. 134, s. 1; 1971, c. 698, s. 1.)

§ 160A-61. Oath of office.

Every person elected by the people or appointed to any city office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk. (R.C., c. 111, s. 12; Code, s. 3799; Rev., s. 2920; C.S., s. 2628; 1971, c. 698, s. 1.)

§ 160A-62. Officers to hold over until successors qualified.

All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office. (R.C., c. 111, s. 8; Code, s. 3792; Rev., s. 2943; C.S., s. 2648; 1971, c. 698, s. 1.)

§ 160A-63. Vacancies.

A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party. (R.C., c. 111, ss. 9, 10; Code, ss. 3793, 3794; Rev., ss. 2921, 2931; C.S., ss. 2629, 2631; 1971, c. 698, s. 1; 1973, c. 426, s. 11; c. 827, s. 1; 1983, c. 827, s. 1.)

§ 160A-64. Compensation of mayor and council.

(a) The council may fix its own compensation and the compensation of the mayor and any other elected officers of the city by adoption of the annual budget ordinance, but the salary of an elected officer other than a member of the council may not be reduced during the then-current term of office unless he agrees thereto. The mayor, councilmen, and other elected officers are entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other city officers and employees, or to a fixed allowance, the amount of which shall be established by the council, for travel and other personal expenses of office; provided, any fixed allowance so established during a term of office shall not be increased during such term of office.

(b) All charter provisions in effect as of January 1, 1972, fixing the compensation or allowances of any city officer or employee are repealed, but persons holding office or employment on January 1, 1972, shall continue to receive the compensation and allowances then prescribed by law until the council provides otherwise in accordance with this section or G.S. 160A-162. (1969, c. 181, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 12; c. 1145; 1979, 2nd Sess., c. 1247, s. 1.)

§ 160A-64.1. Withholding compensation; money judgment against council member.

In addition to any other enforcement available, the finance officer of a city that obtains a final judgment awarding monetary damages against an elected or appointed member of the city council, either individually or jointly, may enforce that final judgment using any of the remedies set forth in G.S. 105-366(b) or the procedure for attachment and garnishment set forth in G.S. 105-368 as if final judgment awarding monetary damages were delinquent taxes and that finance officer were the tax collector. The provision of G.S. 105-368(a) that limits the amount of compensation that may be garnished to not more than ten percent (10%) for any one pay period shall not apply to this section. (2014-40, s. 1.)

§ 160A-65. Repealed by Session Laws 1975, c. 514, s. 17.)

Part 2. Mayor and Council.

§ 160A-66. Composition of council.

Unless otherwise provided by its charter, each city shall be governed by a mayor and a council of three members, who shall be elected from the city at large for terms of two years. (1971, c. 698, s. 1.)

§ 160A-67. General powers of mayor and council.

Except as otherwise provided by law, the government and general management of the city shall be vested in the council. The powers and duties of the mayor shall be such as are conferred upon him by law, together with such other powers and duties as may be conferred upon him by the council pursuant to law. The mayor shall be recognized as the official head of the city for the purpose of service of civil process, and for all ceremonial purposes. (1971, c. 698, s. 1.)

Part 3. Organization and Procedures of the Council.

§ 160A-68. Organizational meeting of council.

(a) The council may fix the date and time of its organizational meeting. The organizational meeting may be held at any time after the results of the municipal election

have been officially determined and published pursuant to Subchapter IX of Chapter 163 of the General Statutes but not later than the date and time of the first regular meeting of the council in December after the results of the municipal election have been certified pursuant to that Subchapter. If the council fails to fix the date and time of its organizational meeting, then the meeting shall be held on the date and at the time of the first regular meeting in December after the results of the municipal election have been certified pursuant to Subchapter IX of Chapter 163 of the General Statutes.

(b) At the organizational meeting, the newly elected mayor and councilmen shall qualify by taking the oath of office prescribed in Article VI, Section 7 of the Constitution. The organization of the council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present.

(c) All local acts or provisions of city charters which prescribe a particular meeting day or date for the organizational meeting of a council are hereby repealed. (1971, c. 698, s. 1; 1973, c. 426, s. 13; c. 607; 1979, c. 168; 1979, 2nd Sess., c. 1247, s. 2; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-69. Mayor to preside over council.

The mayor shall preside at all council meetings, but shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative. In a city where the mayor is elected by the council from among its membership, and the city charter makes no provision as to the right of the mayor to vote, he shall have the right to vote as a council member on all matters before the council, but shall have no right to break a tie vote in which he participated. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 3.)

§ 160A-70. Mayor pro tempore; disability of mayor.

At the organizational meeting, the council shall elect from among its members a mayor pro tempore to serve at the pleasure of the council. A councilman serving as mayor pro tempore shall be entitled to vote on all matters and shall be considered a councilman for all purposes, including the determination of whether a quorum is present. During the absence of the mayor, the council may confer upon the mayor pro tempore any of the powers and duties of the mayor. If the mayor should become physically or mentally incapable of performing the duties of his office, the council may by unanimous vote declare that he is incapacitated and confer any of his powers and duties on the mayor pro tempore. Upon the mayor's declaration that he is no longer incapacitated, and with the concurrence of a majority of the council, the mayor shall resume the exercise of his powers and duties. In the event both the mayor and the mayor pro tempore are absent from a meeting, the council may elect from its members a temporary chairman to preside in such absence. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 4.)

§ 160A-71. Regular and special meetings; recessed and adjourned meetings; procedure.

(a) The council shall fix the time and place for its regular meetings. If no action has been taken fixing the time and place for regular meetings, a regular meeting shall be held at least once a month at 10:00 A.M. on the first Monday of the month.

(b) (1) The mayor, the mayor pro tempore, or any two members of the council may at any time call a special council meeting by signing a written notice stating the

time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each councilman or left at his usual dwelling place at least six hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or have signed a written waiver of notice. In addition to the procedures set out in this subsection or any city charter, a person or persons calling a special meeting of a city council shall comply with the notice requirements of Article 33C of General Statutes Chapter 143.

(2) Special meetings may be held at any time when the mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice.

(3) During any regular meeting, or any duly called special meeting, the council may call or schedule a special meeting, provided that the motion or resolution calling or scheduling any such special meeting shall specify the time, place and purpose or purposes of such meeting and shall be adopted during an open session.

(b1) Any regular or duly called special meeting may be recessed to reconvene at a time and place certain, or may be adjourned to reconvene at a time and place certain, by the council.

(c) The council may adopt its own rules of procedure, not inconsistent with the city charter, general law, or generally accepted principles of parliamentary procedure. (1917, c. 136, subch. 13, s. 1; C.S., s. 2822; 1971, c. 698, s. 1; 1973, c. 426, s. 14; 1977, 2nd Sess., c. 1191, s. 7; 1979, 2nd Sess., c. 1247, s. 5; 1989, c. 770, s. 37.)

§ 160A-72. Minutes to be kept; ayes and noes.

Full and accurate minutes of the council proceedings shall be kept, and shall be open to the inspection of the public. The results of each vote shall be recorded in the minutes, and upon the request of any member of the council, the ayes and noes upon any question shall be taken. (1917, c. 136, subch. 13, s. 1; C.S., s. 2822; 1971, c. 698, s. 1; 1973, c. 426, s. 15.)

§ 160A-73. Repealed by Session Laws 1971, c. 896, s. 16.

§ 160A-74. Quorum.

A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. (1917, c. 136, subch. 13, s. 1; C.S., s. 2821; 1971, c. 698, s. 1; 1975, c. 664, s. 5; 1979, 2nd Sess., c. 1247, s. 6.)

§ 160A-75. (Effective until January 1, 2021) Voting.

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e)(2). In all other cases except votes taken under G.S. 160D-601, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of

members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2821; 1971, c. 698, s. 1; 1973, c. 426, s. 16; 1979, 2nd Sess., c. 1247, s. 7; 1983, c. 696; 2001-409, s. 9; 2005-426, s. 5.1(a); 2013-126, s. 11; 2015-160, s. 5.)

§ 160A-75. (Effective January 1, 2021) Voting.

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234 or G.S. 160D-109. In all other cases except votes taken under G.S. 160D-601, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance, except an ordinance on which a public hearing must be held pursuant to G.S. 160D-601 before the ordinance may be adopted, may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2821; 1971, c. 698, s. 1; 1973, c. 426, s. 16; 1979, 2nd Sess., c. 1247, s. 7; 1983, c. 696; 2001-409, s. 9; 2005-426, s. 5.1(a); 2013-126, s. 11; 2015-160, s. 5; 2019-111, s. 2.5(n).)

§ 160A-76. Franchises; technical ordinances.

(a) No ordinance making a grant, renewal, extension, or amendment of any franchise shall be finally adopted until it has been passed at two regular meetings of the council, and no such grant, renewal, extension, or amendment shall be made otherwise than by ordinance.

(b) Any published technical code or any standards or regulations promulgated by any public agency may be adopted in an ordinance by reference subject to G.S. 143-138(e). A technical code or set of standards or regulations adopted by reference in a city ordinance shall have the force of law within the city. Official copies of all technical codes, standards, and regulations adopted by reference shall be maintained for public inspection in the office of the city clerk. (1917, c. 136, subch. 13; C.S., s. 2823; 1963, c. 790; 1971, c. 698, s. 1; 1973, c. 426, s. 17.)

§ 160A-77. Code of ordinances.

(a) Not later than July 1, 1974, each city having a population of 5,000 or more shall adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued annually at least, unless no additions to or modifications of the code have been adopted by the council during the year. The code may consist of two separate parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, the installation of cooling and heating equipment, the use of public utilities, buildings, or facilities operated by the city, the zoning ordinance, the subdivision control ordinance, the privilege license tax ordinance, and other similar technical ordinances designated as such by the council. The council may omit from the code designated classes of ordinances of limited interest or transitory nature, but the code should clearly describe the classes of ordinances omitted therefrom.

(b) The council may provide that one or more of the following classes of ordinances shall be codified by appropriate entries upon official map books to be retained permanently in the office of the city clerk or some other city office generally accessible to the public:

(1) Establishing or amending the boundaries of zoning districts;
(2) Designating the location of traffic control devices;
(3) Designating areas or zones where regulations are applied to parking, loading, bus stops, or taxicab stands;
(4) Establishing speed limits;
(4a) Restricting or regulating traffic at certain times on certain streets, or to certain types, weights or sizes of vehicles;
(5) Designating the location of through streets, stop intersections, yield-right-of-way intersections, waiting lanes, one-way streets, or truck traffic routes; and
(6) Establishing regulations upon vehicle turns at designated locations.

(b1) The council may provide that the classes of ordinances described in paragraphs (2) through (6) of subsection (b) above, and ordinances establishing rates for utility or other public enterprise services, or ordinances establishing fees of any nature, shall be codified by entry upon official lists or schedules of the regulations established by such ordinances, or schedules of such rates or fees, to be maintained in the office of the city clerk.

(c) It is the intent of this section to make uniform the law concerning the adoption of city codes. To this end, all charter provisions in conflict with this section in effect as of January 1,

1972, are expressly repealed, except to the extent that the charter makes adoption of a code mandatory, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 8, 9.)

§ 160A-78. Ordinance book.

Effective January 1, 1972, each city shall file a true copy of each ordinance adopted on or after January 1, 1972, in an ordinance book separate and apart from the council's minute book. The ordinance book shall be appropriately indexed and maintained for public inspection in the office of the city clerk. Effective July 1, 1973, true copies of all ordinances that were adopted before January 1, 1972, and are still in effect shall be filed and indexed in the ordinance book. If the city has adopted and issued a code of ordinances in compliance with G.S. 160A-77, its ordinances shall be filed and indexed in the ordinance book until they are codified. (1971, c. 698, s. 1.)

§ 160A-79. Pleading and proving city ordinances.

(a) In all civil and criminal cases a city ordinance that has been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by both section number and caption. In all civil and criminal cases a city ordinance that has not been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by its caption. In both instances, it is not necessary to plead or allege the substance or effect of the ordinance unless the ordinance has no caption and has not been codified.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

(1) A city code adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council.

(2) Copies of any part of an official map book maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(3) A copy of an ordinance as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).

(4) Copies of any official lists or schedules maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which has been duly pleaded or admitted in evidence in accordance with this section, shall be upon the party asserting such modification or repeal. It shall be presumed that any portion of a city code that is admitted in evidence in accordance with this section has been codified in compliance with G.S. 160A-77, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(d) From and after the respective effective dates of G.S. 160A-77 and 160A-78, no city ordinance shall be enforced or admitted into evidence in any court unless it has been codified or filed and indexed in accordance with G.S. 160A-77 or 160A-78. It shall be presumed that an

ordinance which has been properly pleaded and proved in accordance with this section has been codified or filed and indexed in accordance with G.S. 160A-77 or 160A-78, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(e) It is the intent of this section to make uniform the law concerning the pleading and proving of city ordinances. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference. (1917, c. 136, subch. 13, s. 14; C.S., s. 2825; 1959, c. 631; 1971, c. 698, s. 1; 1973, c. 426, s. 18; 1979, 2nd Sess., c. 1247, s. 10.)

§ 160A-80. Power of investigation; subpoena power.

(a) The council shall have power to investigate the affairs of the city, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence.

(b) If a person fails or refuses to obey a subpoena issued pursuant to this section, the council may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the council pursuant to a subpoena issued in exercise of the power conferred by this section may be used against him on the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. If any person, while under oath at an investigation by the council, willfully swears falsely, he is guilty of a Class 1 misdemeanor.

(c) Repealed by Session Laws 1991, c. 512, s. 1. (1971, c. 698, s. 1; 1991, c. 512, s. 1; 1993, c. 539, s. 1083; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 160A-81. Conduct of public hearings.

Public hearings may be held at any place within the city or within the county in which the city is located. The council may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The council may continue any public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the council is not then present, the hearing shall be continued until the next regular council meeting without further advertisement. (1971, c. 698, s. 1.)

§ 160A-81.1. Public comment period during regular meetings.

The council shall provide at least one period for public comment per month at a regular meeting of the council. The council may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and

decorum in the conduct of the hearing. The council is not required to provide a public comment period under this section if no regular meeting is held during the month. (2005-170, s. 3.)

§ 160A-82. Applicability of Part.

Nothing in this Part, except G.S. 160A-77, 160A-78 and 160A-79, shall be construed to repeal any portion of any city charter inconsistent with anything contained herein. (1971, c. 698, s. 1.)

§ 160A-83. Reserved for future codification purposes.

§ 160A-84. Reserved for future codification purposes.

§ 160A-85. Reserved for future codification purposes.

Part 3A. Ethics Codes and Education Programs.

§ 160A-86. Local governing boards' code of ethics.

(a) Governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall adopt a resolution or policy containing a code of ethics to guide actions by the governing board members in the performance of the member's official duties as a member of that governing board.

(b) The resolution or policy required by subsection (a) of this section shall address at least all of the following:

(1) The need to obey all applicable laws regarding official actions taken as a board member.

(2) The need to uphold the integrity and independence of the board member's office.

(3) The need to avoid impropriety in the exercise of the board member's official duties.

(4) The need to faithfully perform the duties of the office.

(5) The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records. (2009-403, s. 1.)

§ 160A-87. Ethics education program required.

(a) All members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office and again within 12 months after each subsequent election or appointment to the office.

(b) The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.

(c) The ethics education may be provided by the North Carolina League of Municipalities, North Carolina Association of County Commissioners, North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the governing board.

(d) The clerk to the governing board shall maintain a record verifying receipt of the ethics education by each member of the governing board. (2009-403, s. 1.)

§ 160A-88. Reserved for future codification purposes.

§ 160A-89. Reserved for future codification purposes.

§ 160A-90. Reserved for future codification purposes.

§ 160A-91. Reserved for future codification purposes.

§ 160A-92. Reserved for future codification purposes.

§ 160A-93. Reserved for future codification purposes.

§ 160A-94. Reserved for future codification purposes.

§ 160A-95. Reserved for future codification purposes.

§ 160A-96. Reserved for future codification purposes.

§ 160A-97. Reserved for future codification purposes.

§ 160A-98. Reserved for future codification purposes.

§ 160A-99. Reserved for future codification purposes.

§ 160A-100. Reserved for future codification purposes.

Part 4. Modification of Form of Government

§ 160A-101. Optional forms.

Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

(1) Name of the corporation:

The name of the corporation may be changed to any name not deceptively similar to that of another city in this State.

(2) Style of the corporation:

The city may be styled a city, town, or village.

(3) Style of the governing board:

The governing board may be styled the board of commissioners, the board of aldermen, or the council.

(4) Terms of office of members of the council:

Members of the council shall serve terms of office of either two or four years. All of the terms need not be of the same length, and all of the terms need not expire in the same year.

(5) Number of members of the council:

The council shall consist of any number of members not less than three nor more than 12.

(6) Mode of election of the council:

a. All candidates shall be nominated and elected by all the qualified voters of the city.

b. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.

c. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into "ward seats" and "at-large seats," one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the "ward seats"; candidates for the "at-large seats" shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for "at-large" seats shall be nominated and elected by all the qualified voters of the city.

e. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; in a nonpartisan primary, the qualified voters of each district shall nominate two candidates who reside in the district, and the qualified voters of the entire city shall nominate two candidates for each seat apportioned to the city at large, if any; and all candidates shall be elected by all the qualified voters of the city.

If either of options b, c, d or e is adopted, the council shall divide the city into the requisite number of single-member electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of single-member electoral districts to be laid out, but the

drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

(7) Elections:

a. Partisan. – Municipal primaries and elections shall be conducted on a partisan basis as provided in G.S. 163-291.

b. Nonpartisan Plurality. – Municipal elections shall be conducted as provided in G.S. 163-292

c. Nonpartisan Election and Runoff Election. – Municipal elections and runoff elections shall be conducted as provided in G.S. 163-293.

d. Nonpartisan Primary and Election. – Municipal primaries and elections shall be conducted as provided in G.S. 163-294.

(8) Selection of mayor:

a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.

b. The mayor shall be selected by the council from among its membership to serve at its pleasure.

Under option a, the mayor may be given the right to vote on all matters before the council, or he may be limited to voting only to break a tie. Under option b, the mayor has the right to vote on all matters before the council. In both cases the mayor has no right to break a tie vote in which he participated.

(9) Form of government:

a. The city shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of this Chapter.

b. The city shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of this Chapter and any charter provisions not in conflict therewith. (1969, c. 629, s. 2; 1971, c. 698, s. 1; c. 1076, s. 1; 1973, c. 426, s. 19; c. 1001, ss. 1, 2; 1975, c. 19, s. 64; c. 664, s. 6; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-102. Amendment by ordinance.

By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from

the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be the next date permitted under G.S. 163-287(a) that is more than 70 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election in accordance with G.S. 163-287, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-104 and the date of any election called pursuant to such petition. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 20; 1979, 2nd Sess., c. 1247, s. 11; 2014-111, s. 18; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-103. Referendum on charter amendments by ordinance.

An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures and residence addresses of a number of qualified voters of the city equal to at least 10 percent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed on a date permitted by G.S. 163-287. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the notice of adoption of the ordinance. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 13, 15; 2013-381, s. 10.27; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-104. Initiative petitions for charter amendments.

The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting

the charter amendments proposed therein, and shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be fixed on a date permitted by G.S. 163-287. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceeding under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 21; 1979, 2nd Sess., c. 1247, ss. 12, 14; 2013-381, s. 10.28; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-105. Submission of propositions to voters; form of ballot.

A proposition to approve an ordinance or petition shall be printed on the ballot in substantially the following form:

"Shall the ordinance (describe the effect of the ordinance) be approved?

( ) YES

( ) NO"

The ballot shall be separate from all other ballots used at the election.

If a majority of the votes cast on a proposition shall be in the affirmative, the plan contained therein shall be put into effect as provided in this Article. If a majority of the votes cast shall be against the proposition, the ordinance or petition proposing the amendments shall be void and of no effect. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-106. Amendment of charter provisions dependent on form of government.

The authority conferred by this Article to amend charter provisions within the options set out in G.S. 160A-101 also includes authority to amend other charter provisions dependent on the form of city government to conform them to the form of government amendments. By way of illustration and not limitation, if a charter providing for a five-member council is amended to increase the size of the council to seven members, a charter provision defining a quorum of the council as three members shall be amended to define a quorum as four members. (1971, c. 698, s. 1.)

§ 160A-107. Plan to continue for two years.

Charter amendments adopted as provided in this Article shall continue in force for at least two years after the beginning of the term of office of the officers elected thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-108. Municipal officers to carry out plan.

It shall be the duty of the mayor, the council, the city clerk, and other city officials in office, and all boards of election and election officials, when any plan of government is adopted as provided by this Article or is proposed for adoption, to comply with all requirements of this Article, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the new plan so adopted. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-109. Effective date.

The council may submit new charter amendments proposed under this Article at any regular or special municipal election, or at a special election called for that sole purpose. Any amendment affecting the election of city officers shall be finally adopted and approved at least 90 days before the first election for mayor or council members held thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-110. Charters to remain in force.

The charter of any city that adopts a new form of government as provided in this Article shall continue in full force and effect notwithstanding adoption of a new form of government, except to the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this Article. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-111. Filing certified true copies of charter amendments.

The city clerk shall file a certified true copy of any charter amendment adopted under this Part with the Secretary of State and the Legislative Library. (1985 (Reg. Sess., 1986), c. 935, s. 2; 1989, c. 191, s. 2.)

§§ 160A-112 through 160A-115. Reserved for future codification purposes.

Article 6.

Elections.

§§ 160A-116 through 160A-127. Repealed by Session Laws 1971, c. 1076, s. 2.

§§ 160A-128 through 160A-145. Reserved for future codification purposes.

Article 7.

Administrative Offices.

Part 1. Organization and Reorganization of City Government.

§ 160A-146. Council to organize city government.

The council may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the city government and generally organize and reorganize the city government in order to promote orderly and efficient administration of city affairs, subject to the following limitations:

(1) The council may not abolish any office, position, department, board, commission, or agency established and required by law;

(2) The council may not combine offices or confer certain duties on the same officer when such action is specifically forbidden by law;

(3) The council may not discontinue or assign elsewhere any functions or duties assigned by law to a particular office, position, department, or agency. (1971, c. 698, s. 1.)

Part 2. Administration of Council-Manager Cities.

§ 160A-147. Appointment of city manager; dual office holding.

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of the manager's executive and administrative qualifications. The manager need not be a resident of the city or State at the time of appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education that is elected on a non-partisan basis if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 10,000;

(2) The city is located in two counties; and

(3) The population of the county in which the city manager resides does not exceed 40,000.

(b1) Notwithstanding the provisions of subsection (a) of this section, a city manager may serve on a county board of education that is elected on a nonpartisan basis if the population of the city by which the city manager is employed does not exceed 3,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 3,000.

(2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this section, the city manager may complete the term of elected office that the city manager is then serving. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1989, c. 49; 1997-25, s. 1; 2009-321, s. 1.)

§ 160A-148. Powers and duties of manager.

The manager shall be the chief administrator of the city. He shall be responsible to the council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

(1) He shall appoint and suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.
(2) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council, except as otherwise provided by law.
(3) He shall attend all meetings of the council and recommend any measures that he deems expedient.
(4) He shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the city.
(5) He shall prepare and submit the annual budget and capital program to the council.
(6) He shall annually submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.
(7) He shall make any other reports that the council may require concerning the operations of city departments, offices, and agencies subject to his direction and control.
(8) He shall perform any other duties that may be required or authorized by the council. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 22.)

§ 160A-149. Acting city manager.

By letter filed with the city clerk, the manager may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of manager during his temporary absence or disability. During this absence or disability, the council may revoke that designation at any time and appoint another to serve until the manager returns or his disability ceases. (1971, c. 698, s. 1.)

§ 160A-150. Interim city manager.

When the position of city manager is vacant, the council shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled. (1971, c. 698, s. 1.)

§ 160A-151. Mayor and councilmen ineligible to serve or act as manager.

Neither the mayor nor any member of the council shall be eligible for appointment as manager or acting or interim manager. (1971, c. 698, s. 1.)

§ 160A-152. Applicability of Part.

This Part shall apply only to those cities having the council-manager form of government. If the powers and duties of a city manager set out in any city charter shall differ materially from those set out in G.S. 160A-148, the council may by ordinance confer or impose on the manager any of the powers or duties set out in G.S. 160A-148 but not contained in the charter. (1971, c. 698, s. 1.)

§§ 160A-153 through 160A-154. Reserved for future codification purposes.

Part 3. Administration of Mayor-Council Cities.

§ 160A-155. Council to provide for administration in mayor-council cities.

The council shall appoint, suspend, and remove the heads of all city departments, and all other city employees; provided, the council may delegate to any administrative official or department head the power to appoint, suspend, and remove city employees assigned to his department. The head of each department shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council concerning his department are faithfully executed within the city. Otherwise, the administration of the city shall be performed as provided by law or direction of the council. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 16.)

§ 160A-156. Acting department heads.

By letter filed with the city clerk, the head of any department may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of head of that department during his temporary absence or disability. During his absence or disability, the council may revoke that designation at any time and appoint another officer to serve until the department head returns or his disability ceases. (1971, c. 698, s. 1.)

§ 160A-157. Interim department heads.

When the position of head of any department is vacant, the council may designate a qualified person to exercise the powers and perform the duties of head of the department until the vacancy is filled. (1971, c. 698, s. 1.)

§ 160A-158. Mayor and councilmen ineligible to serve or act as heads of departments.

Neither the mayor nor any member of the council shall be eligible for appointment as head of any city department or as acting or interim head of a department; provided, that in cities having a population of less than 5,000 according to the most recent official federal census, the mayor and any member of the council shall be eligible for appointment by the council as department head or other employee, and may receive reasonable compensation for such employment, notwithstanding any other provision of law. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 17.)

§ 160A-159. Applicability of Part.

This Part shall apply only to those cities having the mayor-council form of government. (1971, c. 698, s. 1.)

§§ 160A-160 through 160A-161. Reserved for future codification purposes.

Part 4. Personnel.

§ 160A-162. Compensation.

(a) The council shall fix or approve the schedule of pay, expense allowances, and other compensation of all city employees, and may adopt position classification plans; any compensation or pay plan may include provisions for payments to employees on account of sickness or disability. In cities with the council-manager form of government, the manager shall be responsible for preparing position classification and pay plans for submission to the council and, after any such plans have been adopted by the council, shall

administer them. In cities with the mayor-council form of government, the council shall appoint a personnel officer (or confer the duties of personnel officer on some city administrative officer); the personnel officer shall then be responsible for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the council.

(b) The council may purchase life, health, and any other forms of insurance for the benefit of all or any class of city employees and their dependents, and may provide other fringe benefits for city employees. In providing health insurance to city employees, the council shall not provide abortion coverage greater than that provided by the State Health Plan for Teachers and State Employees under Article 3B of Chapter 135 of the General Statutes. (1923, c. 20; 1949, c. 103; 1969, c. 845; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 18, 19; 2013-366, s. 2(c).)

§ 160A-163. Retirement benefits.

(a) The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

(b) The council may create and administer a special fund for the relief of members of the police and fire departments who have been retired for age, or for disability or injury incurred in the line of duty, but any such funds established on or after January 1, 1972, shall be subject to the provisions of subsection (c) of this section. The council may receive donations and devises in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid.

(c) No city shall make payments into any retirement system or plan established or authorized by local act of the General Assembly unless the plan is certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section.

(d) A qualified actuary means an individual certified as qualified by the Commissioner of Insurance, or any member of the American Academy of Actuaries.

(e) A city which is providing health insurance under G.S. 160A-162(b) may provide health insurance for all or any class of former employees of the city who are receiving benefits under subsection (a) of this section or who are 65 years of age or older. Such health insurance may be paid entirely by the city, partly by the city and former employee, or entirely by the former employee, at the option of the city.

(f) The council may provide a deferred compensation plan. Where the council provides a deferred compensation plan, the investment of funds for the plan shall be exempt from the provisions of G.S 159-30 and G.S. 159-31. Cities may invest deferred compensation plan funds in life insurance, fixed or variable annuities and retirement

income contracts, regulated investment trusts, or other forms of investments approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(g) Should the council provide for a retirement plan, a plan which supplements a State-administered plan, or a special fund, any benefits payable from such plan or fund on account of the disability of city employees may be restricted with regard to the amount which may be earned by the disabled former employee in any other employment, but only to the extent that the earnings of disability beneficiaries in the Local Governmental Employees' Retirement System are restricted in accordance with G.S. 128-27(e)(1). (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1; 1981, c. 347, s. 2; 1991, c. 277, s. 2; 1995, c. 259, s. 3; 2011-284, s. 111.)

§ 160A-164. Personnel rules.

The council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and honest career employees. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1; 1979, c. 714, s. 2.)

§ 160A-164.1. Smallpox vaccination policy (see editor's note on condition precedent).

All municipalities that employ firefighters, police officers, paramedics, or other first responders shall, not later than 90 days after this section becomes law, enact a policy regarding sick leave and salary continuation for those employees for absence from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)). (2003-169, s. 5.)

§ 160A-164.2. Criminal history record check of employees permitted.

The council may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Public Safety in accordance with G.S. 143B-945. The city may consider the results of these criminal history record checks in its hiring decisions. (2003-214, s. 5; 2014-100, s. 17.1(nnn).)

§ 160A-165. Personnel board.

The council may establish a personnel board with authority to administer tests designed to determine the merit and fitness of candidates for appointment or promotion, to conduct hearings upon the appeal of employees who have been suspended, demoted, or discharged, and hear employee grievances. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1.)

§ 160A-166. Participation in Social Security Act.

The council may take any action necessary to allow city employees to participate fully in benefits provided by the federal Social Security Act. (1949, c. 103; 1969, c. 845; 1971, c. 698, s. 1.)

§ 160A-167. Defense of employees and officers; payment of judgments.

(a) Upon request made by or in behalf of any member or former member of the governing body of any authority, or any city, county, or authority employee or officer, or former employee or officer, any soil and water conservation supervisor or any local soil and water conservation employee, whether the employee is a district or county employee, or any member of a volunteer fire department or rescue squad which receives public funds, any city, authority, county, soil and water conservation district, or county alcoholic beverage control board may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city, authority, county or county alcoholic beverage control board. The defense may be provided by the city, authority, county or county alcoholic beverage control board by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any city, authority, county or county alcoholic beverage control board to provide for the defense of any action or proceeding of any nature.

(b) Any city council or board of county commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its members or former members of the governing body of any authority, or any city, county, or authority employees or officers, or former employees or officers, or any soil and water conservation supervisor or any local soil and water conservation employee, whether the employee is a district or county employee, when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as a member or former member of the governing body of any authority, or any city, county, district, or authority employee or officer of the city, authority, district, or county; provided, however, that nothing in this section shall authorize any city, authority, district, or county to appropriate funds for the purpose of paying any claim made or civil judgment entered against any of its members or former members of the governing body of any authority, or any city, county, district, or authority employees or officers or former employees or officers if the city council or board of county commissioners finds that such members or former members of the governing body of any authority, or any city, county, or authority employee or officer acted or failed to act because of actual fraud, corruption or actual malice on his part. Any city, authority, or county may purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any city, authority, or county to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of any such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability for payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) shall not authorize any city, authority, or county to pay all or part of a claim made or civil judgment entered unless (1) notice of the claim or litigation is given to the city council, authority governing board, or board of county commissioners as the case may be prior to the time that the claim is settled or civil judgment is entered, and (2) the city council, authority governing board, or board of county commissioners as the case may be shall have adopted, and made available for public inspection, uniform standards under which claims made or civil judgments entered against members or former members of the governing body of any authority, or any city, county, or authority employees or officers, or former employees or officers, shall be paid.

(d) For the purposes of this section, "authority" means an authority organized under Article 1 of Chapter 162A of the General Statutes, the North Carolina Water and Sewer Authorities Act. "District" means a soil and water conservation district organized under Chapter 139 of the General Statutes. (1967, c. 1093; 1971, c. 698, s. 1; 1973, c. 426, s. 23; c. 1450; 1977, c. 307, s. 2; c. 834, s. 1; 1983, c. 525, ss. 1-4; 2001-300, s. 2.)

§ 160A-168. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the city with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the city.

(b) The following information with respect to each city employee is a matter of public record:

(1) Name.
(2) Age.
(3) Date of original employment or appointment to the service.
(4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession.
(5) Current position.
(6) Title.
(7) Current salary.
(8) Date and amount of each increase or decrease in salary with that municipality.
(9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that municipality.
(10) Date and general description of the reasons for each promotion with that municipality.

(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the municipality. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the municipality setting forth the specific acts or omissions that are the basis of the dismissal.

(12) The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to

prospective employers, educational institutions, or other persons specified in the release.

(7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.

(c3) Repealed by Session Laws 2016-108, s. 2(h), effective July 22, 2016.

(c4) Even if considered part of an employee's personnel file, the following information regarding any sworn law enforcement officer shall not be disclosed to an employee or any other person, unless disclosed in accordance with G.S. 132-1.4, or in accordance with G.S. 132-1.10, or for the personal safety of that sworn law enforcement officer or any other person residing in the same residence:

(1) Information that might identify the residence of a sworn law enforcement officer.

(2) Emergency contact information.

(3) Any identifying information as defined in G.S. 14-113.20.

(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 2; 1981, c. 926, ss. 1-4; 1993, c. 539, ss. 1084, 1085; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 7; 2008-194, s. 11(e); 2010-169, s. 18(f); 2015-225, s. 2; 2016-108, s. 2(h).)

§ 160A-169. City employee political activity.

(a) Purpose. The purpose of this section is to ensure that city employees are not subjected to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every city employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

(1) "City employee" or ""employee" means any person employed by a city or any department or program thereof that is supported, in whole or in part, by city funds;

(2) "On duty" means that time period when an employee is engaged in the duties of his or her employment; and

(3) "Workplace" means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or

(2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use city funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) To the extent that this section conflicts with the provisions of any local act, city charter, local ordinance, resolution, or policy, this section prevails to the extent of the conflict. (1991, c. 619, s. 2; 1993, c. 298, s. 2.)

§ 160A-169.1. Municipality verification of employee work authorization.

(a) Municipalities Must Use E-Verify. – Each municipality shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.

(b) E-Verify Defined. – As used in this section, the term "E-Verify" means the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

(c) Nondiscrimination. – This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin. (2011-263, s. 5.)

§ 160A-170. Reserved for future codification purposes.

Part 5. City Clerk.

§ 160A-171. City clerk; duties.

There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records, and shall perform any other duties that may be required by law or the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2826; 1941, c. 103; 1949, c. 14; 1971, c. 698, s. 1.)

§ 160A-172. Deputy clerk.

The council may provide for a deputy city clerk who shall have full authority to exercise and perform any of the powers and duties of the city clerk that may be specified by the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2826; 1941, c. 103; 1949, c. 14; 1971, c. 698, s. 1.)

Part 6. City Attorney.

§ 160A-173. City attorney; appointment and duties.

The council shall appoint a city attorney to serve at its pleasure and to be its legal adviser. (1971, c. 698, s. 1.)

Article 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition. (1971, c. 698, s. 1.)

§ 160A-175. Enforcement of ordinances.

(a) A city shall have power to impose fines and penalties for violation of its ordinances, and may secure injunctions and abatement orders to further insure compliance with its ordinances as provided by this section.

(b) Unless the Council shall otherwise provide, violation of a city ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(c1) An ordinance may provide for the recovery of a civil penalty by the city for violation of the fire prevention code of the State Building Code as authorized under G.S. 143-139.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the city may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) Subject to the express terms of the ordinance, a city ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(g) A city ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

(h) Notwithstanding any authority under this Article or any local act of the General Assembly, no ordinance regulating trees may be enforced on land owned or operated by a public airport authority. (1971, c. 698, s. 1; 1985, c. 764, s. 35; 1993, c. 329, s. 4; 2013-331, s. 2.)

§ 160A-176. Ordinances effective on city property outside limits.

Any city ordinance may be made effective on and to property and rights-of-way belonging to the city and located outside the corporate limits. (1917, c. 136, subch. 5, s. 2; C.S., s. 2790; 1971, c. 698, s. 1; 1973, c. 426, s. 24.)

§ 160A-176.1. Ordinances effective in Atlantic Ocean.

(a) A city may adopt ordinances to regulate and control swimming, surfing and littering in the Atlantic Ocean adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming and surfing or to make these activities unlawful.

(b) This section shall apply only to cities in the counties of Brunswick, Carteret, Currituck, Dare, Hyde, New Hanover, Onslow, and Pender. (1973, c. 539, ss. 1, 2.)

§ 160A-176.2. Ordinances effective in Atlantic Ocean.

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Calabash, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, Oak Island, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, and Wrightsville Beach, and the City of Southport only. (1991, c. 494, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 801; 1993, c. 67, s. 5; c. 125, s. 2; 1993 (Reg. Sess., 1994), c. 625, s. 1; 1997-48, s. 1; 2002-141, s. 1; 2004-203, s. 55.)

§ 160A-177. Enumeration not exclusive.

The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, and conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174. (1971, c. 698, s. 1.)

§ 160A-178. Regulation of solicitation campaigns, flea markets and itinerant merchants.

A city may by ordinance regulate, restrict or prohibit the solicitation of contributions from the public for any charitable or eleemosynary purpose, and also the business activities of itinerant merchants, salesmen, promoters, drummers, peddlers, flea market operators and flea market vendors or hawkers. These ordinances may include, but shall not be limited to, requirements that an application be made and a permit issued, that an investigation be made, that activities be reasonably limited as to time and place, that proper credentials and proof of financial stability be submitted, that not more than a stated percentage of contributions to solicitation campaigns be retained for administrative expenses, and that an adequate bond be posted to protect the public from fraud. (1963, c. 789; 1971, c. 698, s. 1; 1987, c. 708, s. 8.)

§ 160A-179. Regulation of begging.

A city may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person. (1971, c. 698, s. 1.)

§ 160A-180. Regulation of aircraft overflights.

A city may by ordinance regulate the operation of aircraft over the city. (1971, c. 698, s. 1.)

§ 160A-181. Regulation of places of amusement.

A city may by ordinance regulate places of amusement and entertainment, and may regulate, restrict or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment shall include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments, but any regulations thereof shall be consistent with any permits or licenses issued by the North Carolina

Alcoholic Beverage Control Commission. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1; 1981, c. 412, ss. 4, 5.)

§ 160A-181.1. (Repealed effective January 1, 2021) Regulation of sexually oriented businesses.

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are 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 city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

(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; and

(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, cities and counties 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) Cities and counties 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 businesses" means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their 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. (1998-46, s. 1; 2019-111, s. 2.6(c).)

§ 160A-182. Abuse of animals.

A city may by ordinance define and prohibit the abuse of animals. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1.)

§ 160A-183. Regulation of explosive, corrosive, inflammable, or radioactive substances.

A city may by ordinance restrict, regulate or prohibit the sale, possession, storage, use, or conveyance of any explosive, corrosive, inflammable, or radioactive substances, or any weapons or instrumentalities of mass death and destruction within the city. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1.)

§ 160A-184. Noise regulation.

A city may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens. (1971, c. 698, s. 1; 1973, c. 426, s. 25.)

§ 160A-185. Emission of pollutants or contaminants.

A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. A city may by ordinance regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by city employees specially appointed as environmental enforcement officers. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1949, c. 594, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 26; 2001-512, s. 6.)

§ 160A-186. Regulation of domestic animals.

A city may by ordinance regulate, restrict, or prohibit the keeping, running, or going at large of any domestic animals, including dogs and cats. The ordinance may provide that animals allowed to run at large in violation of the ordinance may be seized and sold or destroyed after reasonable efforts to notify their owner. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1.)

§ 160A-187. Possession or harboring of dangerous animals.

A city may by ordinance regulate, restrict, or prohibit the possession or harboring within the city of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1971, c. 698, s. 1; 1977, c. 407, s. 2.)

§ 160A-188. Bird sanctuaries.

A city may by ordinance create and establish a bird sanctuary within the city limits. The ordinance may not protect any birds classed as a pest under Article 22A of Chapter 113 of the General Statutes and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. When a bird sanctuary has been established, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected birds within the city limits except pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. 113-274(c) (1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within city limits. (1951, c. 411, ss. 1, 2; 1971, c. 698, s. 1; 1979, c. 830, s. 3.)

§ 160A-189. Firearms.

A city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 1A of Chapter 166A of the General Statutes. (1971, c. 698, s. 1; 2012-12, s. 2(zz).)

§ 160A-190. Pellet guns.

A city may by ordinance regulate, restrict, or prohibit the sale, possession or use within the city of pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force. (1971, c. 698, s. 1.)

§ 160A-191. Limitations on enactment of Sunday-closing ordinances.

No ordinance regulating or prohibiting business activity on Sundays shall be enacted unless the council shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once each week for four successive weeks before the date of the hearing. The notice shall fix the date, hour and place of the public hearing, and shall contain a statement of the council's intent to consider a Sunday-closing ordinance, the purpose for such an ordinance, and one or more reasons for its enactment. No ordinance shall be held invalid for failure to observe the procedural requirements for enactment imposed by this section unless the issue is joined in an appropriate proceeding initiated within 90 days after the date of final enactment. This section shall not apply to ordinances enacted pursuant to G.S. 18B-1004(d). (1967, c. 1156, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 27; 1983, c. 768, s. 22.)

§ 160A-192: Repealed by Session Laws 1991, c. 698, s. 1.

§ 160A-193. Abatement of public health nuisances.

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

(b) The expense of the action is also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another.

(c) The authority granted by this section does not authorize the application of a city ordinance banning or otherwise limiting outdoor burning to persons living within one mile of the city, unless the city provides those persons with either (i) trash and yard waste collection services or (ii) access to solid waste dropoff sites on the same basis as city residents. (1917, c. 136, subch. 7, s. 4; C.S., s. 2800; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 20; 2001-448, s. 1; 2002-116, s. 3; 2014-120, s. 24(h).)

§ 160A-193.1. Stream-clearing programs.

(a) A city shall have the authority to remove natural and man-made obstructions in stream channels and in the floodway of streams that may impede the passage of water during rain events.

(b) The actions of a city to clear obstructions from a stream shall not create or increase the responsibility of the city for the clearing or maintenance of the stream, or for flooding of the stream. In addition, actions by a city to clear obstructions from a stream shall not create in the city any ownership in the stream, obligation to control the stream, or affect any otherwise existing private property right, responsibility, or entitlement regarding the stream. These provisions shall not relieve a city for negligence that might be found under otherwise applicable law.

(c) Nothing in this section shall be construed to affect otherwise existing rights of the State to control or regulate streams or activities within streams. In implementing a stream-clearing program, the city shall comply with all requirements in State or federal statutes and rules. (2005-441, s. 2.)

§ 160A-194. Regulating and licensing businesses, trades, etc.

(a) A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor.

(b) Nothing in this section shall authorize a city to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State.

(c) Nothing in this section shall authorize a city to regulate and license a TNC service regulated under Article 10A of Chapter 20 of the General Statutes. (1971, c. 698, s. 1; 2013-413, s. 12.1(a); 2014-3, s. 12.3(c); 2014-115, s. 17; 2015-237, s. 5.)

§ 160A-195: Repealed by Session Laws 1998-128, s. 11.

§ 160A-196. Sewage tie-ons.

Cities that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean and Roanoke, Albemarle, Currituck, or Pamlico Sound may by ordinance regulate the tie-ons to sewage systems within their corporate limits. (1985, c. 525, s. 1; 1987, c. 303.)

§ 160A-197: Repealed by Session Laws 1995, c. 501, s. 4.

§ 160A-198. Curfews.

A city may by an appropriate ordinance impose a curfew on persons of any age less than 18. (1997-189, s. 1.)

§ 160A-199. (Repealed effective January 1, 2021) Regulation of 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 city 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 the jurisdiction of the city in accordance with the applicable provisions of this Chapter.

(c) A city 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 city 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 city and the owner of the nonconforming off-premises outdoor advertising enter into a relocation agreement pursuant to subsection (g) of this section.

(2) The city 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 city 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.

(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:

(1) The factors listed in G.S. 105-317.1(a); and

(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 city to the owner of the nonconforming off-premises outdoor advertising sign for its removal, and the city elects to proceed with the removal of the sign, the city 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 city shall own the sign.

(g) In lieu of paying monetary compensation, a city 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 city of the reasonable costs of relocating and reconstructing the sign including:

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 city, 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 city 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 city the parties have not been able to agree that the site or sites offered by the city 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 city for relocation of the nonconforming sign are not comparable to or better than the existing site, and the city 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 the parties are unable to reach an agreement regarding monetary compensation within 30 days of the receipt of the arbitrators' determination, and the city elects to proceed with the removal of the sign, then the city may bring an action in superior court for a determination of the monetary compensation to be paid by the city 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 city shall own the sign.

(k) Notwithstanding the provisions of this section, a city 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 city may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(*l*) A city 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 the effective date of this section. A city may amend an ordinance in effect on the effective date of this section 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 city may repeal or amend an ordinance in effect on the effective date of this section so long

as the amendment to the existing ordinance does not reduce the period of amortization in effect on the effective date of this section.

(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 city's authority to use amortization as a means of phasing out nonconforming uses other than off-premises outdoor advertising. (2004-152, s. 2; 2019-111, s. 2.6(e).)

§ 160A-200: Repealed by Session Laws 2015-246, s. 1(a), effective September 23, 2015.

§ 160A-200.1. Annual notice to chronic violators of public nuisance or overgrown vegetation ordinance.

(a) A city may notify a chronic violator of the city's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the city shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes.

(b) The notice shall be sent by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

(c) A city may also give notice to a chronic violator of the city's overgrown vegetation ordinance in accordance with this section.

(d) For purposes of this section, a chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance. (2009-287, s. 1; 2013-151, s. 1; 2015-246, s. 1(b).)

§ 160A-201. (Repealed effective January 1, 2021) Limitations on regulating solar collectors.

(a) Except as provided in subsection (c) of this section, no city ordinance 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 city 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 an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a residential property.

(c) This section does not prohibit an ordinance 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:

(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; or

(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. (2007-279, s. 1; 2009-553, s. 1; 2019-111, s. 2.6(g).)

§ 160A-202. Limitations on regulating cisterns and rain barrels.

No city ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance. (2011-394, s. 12(e).)

§ 160A-203. Limitations on regulating soft drink sizes.

No city ordinance may prohibit the sale of soft drinks above a particular size. This section does not prohibit any ordinance regulating the sanitation or other operational aspect of a device for the dispensing of soft drinks. For purposes of this section, "soft drink" shall have the meaning set forth in G.S. 105-164.3. (2013-309, s. 2.)

§ 160A-203.1. Limitations on standards of care for farm animals.

Notwithstanding any other provision of law, no city ordinance may regulate standards of care for farm animals. For purposes of this section, "standards of care for farm animals" includes the following: the construction, repair, or improvement of farm animal shelter or housing; restrictions on the types of feed or medicines that may be administered to farm animals; and exercise and social interaction requirements. For purposes of this section, the term "farm animals" includes the following domesticated animals: cattle, oxen, bison, sheep, swine, goats, horses, ponies, mules, donkeys, hinnies, llamas, alpacas, lagomorphs, ratites, and poultry flocks of greater than 20 birds. (2015-192, s. 2.)

§ 160A-204. Transportation impact mitigation ordinances prohibited.

No city may enact or enforce an ordinance, rule, or regulation that requires an employer to assume financial, legal, or other responsibility for the mitigation of the impact of his or her employees' commute or transportation to or from the employer's workplace, which may result in the employer being subject to a fine, fee, or other monetary, legal, or negative consequences. (2013-413, s. 10.1(a).)

§ 160A-205. Cities enforce ordinances within public trust areas.

(a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a city may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to use the State's ocean beaches. In addition, a city may, in the interest of promoting the health, safety, and welfare of the public, regulate, restrict, or prohibit the placement, maintenance, location, or use of structures that are uninhabitable and without water and sewer services for more than 120 days, as determined by the city with notice provided to the owner of record of the determination by certified mail at the time of the determination, equipment, personal property, or debris upon the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this section or any other provision of law upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances within the city's jurisdictional boundaries. A city may enforce an ordinance adopted pursuant to this section by any remedy provided for in G.S. 160A-175. For purposes of this section, the term "ocean beaches" has the same meaning as in G.S. 77-20(e).

(b) Nothing in this section shall be construed to (i) limit the authority of the State or any State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common law as interpreted and applied by the courts of this State; (ii) limit any other authority granted to cities by the State to regulate the State's ocean beaches; (iii) deny the existence of the authority recognized in this section prior to the date this section becomes effective; (iv) impair the right of the people of this State to the customary free use and enjoyment of the State's ocean beaches, which rights remain reserved to the people of this State as provided in G.S. 77-20(d); (v) change or modify the riparian, littoral, or other ownership rights of owners of property bounded by the Atlantic Ocean; or (vi) apply to the removal of permanent residential or commercial structures and appurtenances thereto from the State's ocean beaches, except as provided in subsection (a) of this section. (2013-384, s. 4(a); 2015-246, s. 1.5.)

§ 160A-205.1. Requiring compliance with voluntary State regulations and rules prohibited.

(a) If a State department or agency declares a regulation or rule to be voluntary or the General Assembly delays the effective date of a regulation or rule proposed or adopted by the Environmental Management Commission, or any other board or commission, a city shall not require or enforce compliance with the applicable regulation or rule, including any regulation or rule previously or hereafter incorporated as a condition or contractual obligation imposed by, agreed upon, or accepted by the city in any zoning, land use,

subdivision, or other developmental approval, including, without limitation, a development permit issuance, development agreement, site-specific development plan, or phased development plan.

(b) This section shall apply to the following regulations and rules:

(1) Those currently in effect.

(2) Those repealed or otherwise expired.

(3) Those temporarily or permanently held in abeyance.

(4) Those adopted but not yet effective.

(c) This section shall not apply to any water usage restrictions during either extreme or exceptional drought conditions as determined by the Drought Management Advisory Council pursuant to G.S. 143-355.1. (2015-246, s. 2(b).)

§ 160A-205.2. Adoption of sanctuary ordinances prohibited.

(a) No city may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

(b) No city shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

(1) Prohibit law enforcement officials or agencies from gathering such information.

(2) Direct law enforcement officials or agencies not to gather such information.

(3) Prohibit the communication of such information to federal law enforcement agencies. (2015-294, s. 15(b).)

§ 160A-205.3. Hours of certain alcohol sales.

In accordance with G.S. 18B-1004(c), a city may adopt an ordinance allowing for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 A.M. on Sunday pursuant to the licensed premises' permit issued under G.S. 18B-1001. (2017-87, s. 4(c).)

Article 9.

Taxation.

§ 160A-206. General power to impose taxes.

(a) Authority. – A city shall have power to impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. In determining the liability of any taxpayer for a tax, a city may not employ an agent who is compensated in whole or in part by the city for services rendered on a

contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the taxpayer. The power to impose a tax shall also include the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax.

(b) Prohibition. – A city may not impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to sales tax at the combined general rate for which the city receives a share of the tax revenue or they are subject to the local sales tax:

(1) Supplying piped natural gas.
(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).
(3) Providing video programming taxed under G.S. 105-164.4(a)(6).
(4) Providing electricity. (1971, c. 698, s. 1; 2012-152, s. 5; 2012-194, s. 61.5(b); 2015-6, s. 2.18(a); 2015-109, s. 1.)

§ 160A-207. Remedies for collecting taxes.

In addition to any other remedies provided by law, the remedies of levy, garnishment, and attachment shall be available for collecting any city tax under the rules and procedures prescribed by the Machinery Act for the enforcement of tax liability against personal property, except that:

(1) The remedies shall become available on the due date of the tax and not before that time;
(2) Rules dependent on the existence of a lien against real property for the same tax shall not apply; and
(3) The lien acquired by levy, garnishment, or attachment shall be inferior to any prior or simultaneous lien for property taxes acquired under the Machinery Act. (1971, c. 698, s. 1; 1973, c. 426, s. 29.)

§ 160A-208. Continuing taxes.

Except for taxes levied on property under the Machinery Act, a city may impose an authorized tax by a permanent ordinance that shall stand from year to year until amended or repealed, and it shall not be necessary to reimpose the tax in each annual budget ordinance. (1971, c. 698, s. 1; 1973, c. 426, s. 30.)

§ 160A-208.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) To sort, process, or deliver tax information on behalf of the city, as necessary to administer a tax.

(4) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(5) To disclose to the authorized finance officer of the county in which the municipality is located tax information in the possession of the municipality, as necessary to administer a tax.

(b) Punishment. – A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 34; 1994, Ex. Sess., c. 14, s. 67; 2008-35, s. 1.5; 2016-92, s. 3.1(b).)

§ 160A-209. Property taxes.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each city in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the city under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each city may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Debt Service. – To pay the principal of and interest on all general obligation bonds and notes of the city.

(2) Deficits. – To supply an unforeseen deficiency in the revenue (other than revenues of any of the enterprises listed in G.S. 160A-311), when revenues actually collected or received fall below revenue estimates made in good faith in accordance with the Local Government Budget and Fiscal Control Act.

(3) Civil Disorders. – To meet the cost of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city.

(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

(1) Administration. – To provide for the general administration of the city through the city council, the office of the city manager, the office of the city budget officer, the office of the city finance officer, the office of the city tax collector, the city purchasing agent, the city attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity.

(2) Air Pollution. – To maintain and administer air pollution control programs.
(3) Airports. – To establish and maintain airports and related aeronautical facilities.
(4) Ambulance Service. – To provide ambulance services, rescue squads, and other emergency medical services.
(5) Animal Protection and Control. – To provide animal protection and control programs.
(5a) Arts Programs and Museums. – To provide for arts programs and museums as authorized in G.S. 160A-488.
(6) Auditoriums, Coliseums, and Convention Centers. – To provide public auditoriums, coliseums, and convention centers.
(7) Beach Erosion and Natural Disasters. – To provide for shoreline protection, beach erosion control and flood and hurricane protection.
(8) Cemeteries. – To provide for cemeteries.
(9) Civil Defense. – To provide for civil defense programs.
(9a) Community Development. – To provide for community development as authorized by G.S. 160A-456 and 160A-457.
(10) Debts and Judgments. – To pay and discharge any valid debt of the city or any judgment lodged against it, other than debts or judgments evidenced by or based on bonds or notes.
(10a) Defense of Employees and Officers. – To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
(10b) Economic Development. – To provide for economic development as authorized by G.S. 158-7.1.
(10c) Drainage. – To provide for drainage projects or programs in accordance with Chapter 156 of the General Statutes or in accordance with this Chapter.
(11) Elections. – To provide for all city elections and referendums.
(12) Electric Power. – To provide electric power generation, transmission, and distribution services.
(12a) Energy Financing. – To provide financing for renewable energy and energy efficiency in accordance with a program established under G.S. 160A-459.1.
(13) Fire Protection. – To provide fire protection services and fire prevention programs.
(14) Gas. – To provide natural gas transmission and distribution services.
(15) Historic Preservation. – To undertake historic preservation programs and projects.
(15a) Housing. – To undertake housing projects as defined in G.S. 157-3, and urban homesteading programs under G.S. 160A-457.2.
(16) Human Relations. – To undertake human relations programs.

(17) Hospitals. – To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, and to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.

(17a) Industrial Development. – To provide for industrial development as authorized by G.S. 158-7.1.

(18) Jails. – To provide for the operation of a jail and other local confinement facilities.

(19) Joint Undertakings. – To cooperate with any other county, city, or political subdivision of the State in providing any of the functions, services, or activities listed in this subsection.

(20) Libraries. – To establish and maintain public libraries.

(21) Mosquito Control.

(22) Off-Street Parking. – To provide off-street lots and garages for the parking and storage of motor vehicles.

(23) Open Space. – To acquire open space land and easements in accordance with Article 19, Part 4, of this Chapter.

(24) Parks and Recreation. – To establish, support and maintain public parks and programs of supervised recreation.

(25) Planning. – To provide for a program of planning and regulation of development in accordance with Article 19 of this Chapter.

(26) Police. – To provide for law enforcement.

(26a) Ports and Harbors. – To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.

(26b) Public Education. – To supplement funding for elementary and secondary public education.

(27) Public Transportation. – To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation.

(27a) Railroad Corridor Preservation. – To acquire property for railroad corridor preservation.

(27b) Senior Citizens Programs. – To undertake programs for the assistance and care of its senior citizens.

(28) Sewage. – To provide sewage collection and treatment services as defined in G.S. 160A-311(3).

(29) Solid Waste. – To provide solid waste collection and disposal services, and to acquire and operate landfills.

(30) Streets. – To provide for the public streets, sidewalks, and bridges of the city.

(31) Traffic Control and On-Street Parking. – To provide for the regulation of vehicular and pedestrian traffic within the city, and for the parking of motor vehicles on the public streets.

(31a) Urban Redevelopment. – To provide for urban redevelopment.

(32) Water. – To provide water supply and distribution services.

(33) Water Resources. – To participate in federal water resources development projects.

(34) Watershed Improvement. – To undertake watershed improvement projects.

(d) Property taxes may be levied for one or more of the purposes listed in subsection (c) up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars' ($100.00) appraised value of property subject to taxation.

(e) With an approving vote of the people, any city may levy property taxes for any purpose for which the city is authorized by its charter or general law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (d).

The city council may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other city referendum or city election, but may not be otherwise held (i) on the day of any federal, State, district, or county election already validly called or scheduled by law at the time the tax referendum is called, or (ii) within the period of time beginning 30 days before and ending 10 days after the day of any other city referendum or city election already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the same board of elections that conducts regular city elections. A notice of referendum shall be published in accordance with G.S. 163-297. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall the City/Town of _____ be authorized to levy annually a property tax at a rate not in excess of ____ cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of _____?

(2) Shall the City/Town of _____ be authorized to levy annually a property tax at a rate not in excess of that which will produce $ _____ for the purpose of _____?

(3) Shall the City/Town of _____ be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of _____?

If a majority of those participating in the referendum approve the proposition, the city council may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the city council. The council shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the council.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Cities in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitations set out in subsection (d) at any appropriate level and are not subject to the former voted rate limitation.

(f) With an approving vote of the people, any city may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other city referendum or election, but may not be otherwise held (i) on the day of any federal, State, district, or county election, or (ii) within the period of time beginning 30 days before and ending 30 days after the day of any other city referendum or city election. The election shall be conducted by the same board of elections that conducts regular city elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to the City/Town of _____ be increased from _____ on the one hundred dollars ($100.00) value of property subject to taxation to ____ on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the city.

(g) With respect to any of the categories listed in subsections (b) and (c) of this section, the city may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(h) This section does not authorize any city to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 37; 1919, c. 178, s. 3(37); C.S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3; 1971, c. 698, s. 1; 1973, c. 426, s. 31; c. 803, s. 2; 1975, c. 664, s. 7; 1977, c. 187, s. 2; c. 834, s. 2; 1979, c. 619, s. 5; 1979, 2nd Sess., c. 1247, s. 21; 1981, c. 66, s. 1; 1983, c. 511, ss. 3, 4; c. 828; 1985, c. 665, ss. 4, 7; 1987, c. 464, s. 6; 1989, c. 600, s. 8; 1989 (Reg. Sess., 1990), c. 1005, ss. 6, 7; 1991 (Reg. Sess., 1992), c. 896, s. 2; 2002-159, s. 50(b); 2002-172, s. 2.4(b); 2003-416, s. 2; 2010-167, s. 4(d); 2017-6, s. 3; 2018-5, s. 38.8(a); 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-210. Repealed by Session Laws 1979, 2nd Session, c. 1247, s. 22.

§ 160A-211. (Repealed effective for taxable years beginning on or after July 1, 2015) Privilege license taxes.

(a) **(See Editor's note)** Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises physically located within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36 Amusements – Manufacturing, selling, leasing, or distributing moving picture films.

G.S. 105-36.1 Amusements – Outdoor theatres.

G.S. 105-37 Amusements – Moving pictures – Admission.

G.S. 105-37.1 Amusements – Live entertainment and ticket resales.

G.S. 105-42 Private detectives and investigators.

G.S. 105-45 Collecting agencies.

G.S. 105-46 Undertakers and retail dealers in coffins.

G.S. 105-50 Pawnbrokers.

G.S. 105-51.1 Alarm systems.

G.S. 105-53 Peddlers, itinerant merchants, and specialty market operators.

G.S. 105-54 Contractors and construction companies.

G.S. 105-55 Installing elevators and automatic sprinkler systems.

G.S. 105-61 Hotels, motels, tourist courts and tourist homes.

G.S. 105-62 Restaurants.

G.S. 105-65 Music machines.

G.S. 105-65.1 Merchandising dispensers and weighing machines.

G.S. 105-66.1 Electronic video games.

G.S. 105-74 Pressing clubs, dry cleaning plants, and hat blockers.

G.S. 105-77 Tobacco warehouses.

G.S. 105-80 Firearms dealers and dealers in other weapons.

105-85 Laundries.

105-86 Outdoor advertising.

105-89 Automobiles, wholesale supply dealers, and service stations.

105-89.1 Motorcycle dealers.

105-90 Emigrant and employment agents.

105-91 Plumbers, heating contractors, and electricians.

105-97 Manufacturers of ice cream.

105-98 Branch or chain stores.

105-99 Wholesale distributors of motor fuels.

105-102.1 Certain cooperative associations.

105-102.5 General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each

barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) Prohibition. – A city may not impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to sales tax at the combined general rate for which the city receives a share of the tax revenue or they are subject to the local sales tax:

(1) Supplying piped natural gas.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

(4) Providing electricity. A city may continue to impose and collect the license, franchise, or privilege taxes on an electric power company that it imposed and collected on or before January 1, 1947, but it may not impose or collect any greater franchise, privilege, or license taxes, in the aggregate, on an electric power company that was imposed and collected on or before January 1, 1947.

(d) Repealed by Session Laws 2006-151, s. 12, effective January 1, 2007. (R.C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C.S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 23; 1998-22, s. 12; 2001-430, s. 17; 2006-151, s. 12; 2013-316, s. 4.4(a); 2013-414, ss. 58(b), (d); 2014-3, ss. 12.1(a), 12.2(a).)

§ 160A-211.1. Repealed by Session Laws 2014-3, s. 12.3(b), effective July 1, 2015.

§ 160A-212. Animal taxes.

A city shall have power to levy an annual license tax on the privilege of keeping any domestic animal, including dogs and cats, within the city. This section shall not limit the city's authority to enact ordinances under G.S. 160A-186. (R.C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C.S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1.)

§ 160A-213. Motor vehicle taxes.

(a) A city may impose an annual license tax on motor vehicles as permitted by G.S. 20-97.

(b) By ordinance a city may provide that the annual license tax imposed under subsection (a) above may be waived for individuals serving as firemen or as members of emergency medical teams. A city may also provide such individuals with tags or decals with distinctive coloring, or other means, to identify the individual as a fireman or a member of an emergency medical team. (1971, c. 698, s. 1; 1979, c. 442.)

§ 160A-214: Repealed by Session Laws 2006-151, s. 13, effective January 1, 2007.

§ 160A-214.1. Uniform penalties for local meals taxes.

(a) Penalties. – Notwithstanding any other provision of law, the civil and criminal penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes

apply to local meals taxes. The governing board of a taxing city has the same authority to waive the penalties for a meals tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(b) Scope. – This section applies to every city authorized by the General Assembly to levy a meals tax.

(c) Definitions. – The following definitions apply in this section:

(1) City. – A municipality.

(2) Meals tax. – A tax on prepared food and drink. (2001-264, s. 2.)

§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – A retailer who is required to remit to the Department of Revenue the State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room occupancy tax to the taxing city on and after the effective date of the levy of the room occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax. A rental agent or a facilitator, as defined in G.S. 105-164.4F, has the same responsibility and liability under the room occupancy tax as the rental agent or facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business and calculate tax on the allocated price of the taxable accommodation.

A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a retailer are held in trust for and on account of the taxing city.

The taxing city shall design and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the retailer for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 20th day of the month following the month in which the tax

accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. – The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) Applicability. – Subsection (c) of this section applies to all cities that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of a local act, subsection (c) supersedes that provision. The remainder of this section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lake Santeetlah, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Salisbury, Sanford, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Bermuda Run, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cooleemee, Cramerton, Dallas, Dobson, Elkin, Fontana Dam, Franklin, Grover, Hillsborough, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mocksville, Mooresville, Murfreesboro, North Topsail Beach, Pembroke, Pilot Mountain, Ranlo, Robbinsville, Selma, Smithfield, St. Pauls, Swansboro, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, Yanceyville, to the municipalities in Avery and Brunswick Counties, and to Saluda District D. (1997-361, s. 4; 1997-364, s. 5; 1997-410, s. 3; 1997-447, s. 2; 1998-112, s. 4; 1999-258, s. 3; 1999-302, s. 2; 2000-103, s. 9; 2001-11, s. 2; 2001-365, s. 3; 2001-434, s. 9; 2001-439, s. 18.1; 2002-94, s. 4; 2002-95, s. 3; 2002-138, s. 2; 2002-139, s. 2; 2002-159, s. 62; 2003-281, s. 14; 2004-105, s. 3; 2004-170, ss. 36(b), 42(b); 2004-199, s. 60(b); 2005-16, s. 3; 2005-46, s. 2.3; 2005-49, s. 3; 2005-220, s. 5; 2005-233, s. 6.2; 2005-435, s. 45; 2006-118, s. 4; 2006-120, ss. 8.2, 10.2; 2006-148, s. 3; 2006-162, s. 20(b); 2006-164, s. 3; 2006-167, s. 3; 2006-264, ss. 19, 81(a); 2007-224, s. 6; 2007-317, s. 3; 2007-340, s. 10; 2007-484, s. 43; 2007-527, s. 42; 2008-64,

s. 2; 2008-134, s. 12(c); 2009-169, s. 8; 2009-291, s. 2; 2009-428, s. 4; 2009-429, s. 8; 2010-31, s. 31.6(e), (f); 2010-78, s. 11; 2010-123, s. 10.2; 2011-69, s. 2; 2011-170, s. 6; 2012-107, s. 2; 2013-351, s. 1.3; 2015-102, s. 2; 2017-202, s. 9.1(a); 2018-5, s. 38.10(f).)

§ 160A-215.1. Gross receipts tax on short-term leases or rentals.

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(42), a city may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals.

(b) If a city enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that the percentage amount enacted by the city of the total lease or rental price, excluding highway use tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the city.

(c) The collection and use of taxes under this section are not subject to highway use tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the city and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the city but otherwise administered in the same manner as the tax levied under G.S. 105-164.4(a)(2).

(e) The following definitions apply in this section:

(1) Short-term lease or rental. – Defined in G.S. 105-187.1.

(2) Vehicle. – Any of the following:

a. A motor vehicle of the passenger type, including a passenger van, minivan, or sport utility vehicle.

b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight rating of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to posses a commercial drivers license.

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(f) The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of Chapter 105 of the General Statutes apply to a tax levied under this section. The governing body of the city may exercise any power the Secretary of Revenue may exercise in collecting local sales and use taxes. (2000-2, s. 3; 2000-140, s. 75(c); 2001-414, s. 51; 2014-3, s. 12.3(d).)

§ 160A-215.2. Heavy equipment gross receipts tax in lieu of property tax.

(a) Definitions. – The following definitions apply in this section:

(1) Heavy equipment. – Defined in G.S. 153A-156.1.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) Tax Authorized. – A city may, by ordinance, impose a tax at the rate of eight tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a city under this section if the place of business from which the heavy equipment is delivered is located in the city.

(c) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the city. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. – The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the ordinance imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ordinance is adopted.

(f) Repeal. – A city may, by ordinance, repeal a tax imposed under this section. The repeal is effective on the date set in the ordinance. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ordinance is adopted. (2008-144, s. 3; 2009-445, s. 27(a).)

Article 10.

Special Assessments.

§ 160A-216. Authority to make special assessments.

Any city is authorized to make special assessments against benefited property within its corporate limits for:

(1) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets;

(2) Constructing, reconstructing, paving, widening, and otherwise building or improving sidewalks in any public street;

(3) Constructing, reconstructing, extending, and otherwise building or improving water systems;

(4) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(5) Constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems. (1971, c. 698, s. 1; 1975, c. 664, s. 8; 1979, c. 619, s. 12.)

§ 160A-217. Petition for street or sidewalk improvements.

(a) A city shall have no power to levy special assessments for street or sidewalk improvements unless it receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. Unless the petition specifies another percentage, not more than fifty percent (50%) of the cost of the improvement may be assessed (not including the cost of improvements made at street intersections).

(b) Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment in the manner provided in G.S. 160A-221. Property owned by railroad companies shall be included in determining frontage and the number of owners to the extent that the property is subject to assessment under G.S. 160A-222. Property owned by railroad companies that is not subject to assessment shall not be included in determining frontage and the number of owners. If it is necessary to exclude property owned by the United States, the State of North Carolina, or a railroad company in order to obtain a valid petition under subsection (a), not more than fifty percent (50%) of the cost (not including the cost of improvement at street intersections) may be assessed unless all of the owners subject to assessment agree to a higher percentage.

(c) No right of action or defense asserting the invalidity of street or sidewalk assessments on grounds that the city did not comply with this section in securing a valid petition shall be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (1915, c. 56, ss. 4, 5; C.S., ss. 2706, 2707; 1955, c. 675; 1963, c. 1000, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 33.)

§ 160A-218. Basis for making assessments.

Assessments may be made on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage, or

(2) The area of land served, or subject to being served, by the project, at an equal rate per unit of area, or

(3) The value added to the land served by the project, or subject to being served by it, being the difference between the appraised value of the land without improvements as shown on the tax records of the county, and the appraised value of the land with improvements according to the appraisal standards and rules adopted by the county at its last revaluation, at an equal rate per dollar of value added; or

(4) The number of lots served, or subject to being served, where the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot; or

(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either area or value added, the council may provide for the laying out of benefit zones according to the distance of benefited property from the project being undertaken, and may establish differing rates of assessment to apply uniformly throughout each benefit zone.

For each project, the council shall endeavor to establish an assessment method from among the bases set out in this section which will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The council's decision as to the method of assessment shall be final and conclusive and not subject to further review or challenge. (1971, c. 698, s. 1.)

§ 160A-219. Corner lot exemptions.

The council shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may not provide exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater. (1971, c. 698, s. 1.)

§ 160A-220. Lands exempt from assessment.

No lands within a city, except as herein provided, shall be exempt from special assessments except lands belonging to the United States that are exempt under the provisions of federal statutes. (1971, c. 698, s. 1.)

§ 160A-221. Assessments against lands owned by the State.

When any city proposes to make local improvements that would benefit lands owned by the State of North Carolina or any board, agency, commission, or institution thereof, the council may request the Council of State to consent to special assessments against the property. The Council of State may authorize the Secretary of Administration to give consent for special assessments against State property, but the city may appeal to the Council of State if the Secretary of Administration refuses to give consent. When consent is given for special assessments against State lands, the Council of State may direct that the assessment be paid from the Contingency and Emergency Fund of the State of North Carolina or from any other available funds. If consent to the assessment is refused, the state-owned property shall be exempt from assessment. (1971, c. 698, s. 1; 1975, c. 879, s. 46.)

§ 160A-222. Assessments against railroads.

Assessments shall not be made against land owned, leased or controlled by a railroad company, except that if there is a building on the land, the portion of railroad property subject to assessment shall be a lot whose frontage equals the actual front footage occupied by the building plus 25 feet on each side thereof, but not more than the amount of land owned, leased, or controlled by the railroad. If a building is placed on land that would have been subject to assessment but for the limitations imposed by this section after an improvement is made, then the railroad company shall

be subject to an assessment without interest on the same basis as if the building had been on the property when the improvement was made.

It is the intent of this section to make uniform the law concerning assessments against railroads. To this end, all provisions of law, whether general or local, in conflict with this section are repealed; and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it shall specifically so provide by reference hereto. (1965, c. 839, s. 2; 1971, c. 698, s. 1.)

§ 160A-223. Preliminary resolution; contents.

Whenever the council decides to finance a proposed project by special assessments, it shall first adopt a preliminary resolution that shall contain the following:

(1) A statement of intent to undertake the project;
(2) A general description of the nature and location of the project;
(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
(4) A statement as to the percentage of the cost of the work that is to be assessed;
(5) A statement as to which, if any, assessments shall be held in abeyance and for how long;
(6) A statement as to the proposed terms of payment of the assessment; and
(7) An order setting a time and place for a public hearing on all matters covered by the preliminary resolution which shall be not earlier than three weeks nor later than 10 weeks from the date of the adoption of the preliminary resolution. (1971, c. 698, s. 1.)

§ 160A-224. Notice of preliminary resolution.

At least 10 days before the date set for the public hearing, the council shall publish a notice that a preliminary assessment resolution has been adopted and that a public hearing will be held on it at a specified time and place. The notice shall generally describe the nature and location of the improvement. In addition, at least 10 days prior to the hearing, the council shall cause a copy of the preliminary resolution to be mailed to the owners, as shown on the county tax records, of all property subject to assessment if the project should be undertaken. The person designated to mail these resolutions shall file with the council a certificate showing that they were mailed by first-class mail and on what date. The certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud. (1971, c. 698, s. 1.)

§ 160A-225. Hearing on preliminary resolution; assessment resolution.

At the public hearing, the council shall hear all interested persons who appear with respect to any matter covered by the preliminary resolution. After the public hearing, the council may adopt a resolution directing that the project or portions thereof be undertaken. The assessment resolution shall describe the project in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments shall be levied, together with a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
(2) The percentage of the cost to be specially assessed;

(3) The terms of payment, including the conditions under which assessments are to be held in abeyance, if any.

The percentage of cost to be assessed may not be different from the percentage proposed, and the projects authorized may not be greater in scope than the projects described in the preliminary resolution. If the council decides that a different percentage of the cost should be assessed than that proposed in the preliminary resolution, or that any project should be enlarged, it shall adopt and advertise a new preliminary resolution as herein provided. (1915, c. 56, s. 6; C.S., s. 2708; 1971, c. 698, s. 1.)

§ 160A-226. Determination of costs.

When the project is complete, the council shall ascertain the total cost. In addition to construction costs, the cost of all necessary legal services, the amount of interest paid during construction, costs of rights-of-way, and the costs of publication of notices and resolutions may be included. The determination of the council as to the total cost of any project shall be conclusive. (1915, c. 56, s. 9; C.S., s. 2711; 1971, c. 698, s. 1.)

§ 160A-226.1. Discounts authorized.

The council is authorized to establish a schedule of discounts to be applied to assessments paid before the expiration of 30 days from the date that notice is published of confirmation of the assessment roll pursuant to G.S. 160A-229. Such a schedule of discounts may be established even though it was not included among the terms of payment as specified in the preliminary assessment resolution or assessment resolution. The amount of any discount may not exceed thirty percent (30%). (1983, c. 381, s. 4.)

§ 160A-227. Preliminary assessment roll; publication.

When the total cost of a project has been determined, the council shall have a preliminary assessment roll prepared. The preliminary roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, including the schedule of discounts, if such a schedule is to be established and the name of the owner of each parcel of land as far as this can be ascertained from the county tax records. A map of the project on which is shown each parcel assessed with the basis of its assessment, the amount assessed against it, and the name of the owner, as far as this can be ascertained from the county tax records, shall be a sufficient assessment roll.

After the preliminary assessment roll has been completed, it shall be filed in the city clerk's office where it shall be available for public inspection. A notice of the completion of the assessment roll, setting forth in general terms a description of the project, noting the availability of the assessment roll in the clerk's office for inspection, and stating the time and place for a hearing on the preliminary assessment roll, shall be published at least 10 days before the date set for the hearing on the preliminary assessment roll. The council shall also cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property listed thereon at least 10 days before the hearing. The notice mailed to each property owner shall give notice of the time and place of the hearing, shall note the availability of the preliminary assessment roll for inspection in the city clerk's office and shall state the amount of the assessment against the property of the owner as shown on the preliminary assessment roll. The person designated to mail these notices shall file with the council a certificate showing they were mailed by first-class mail and on what date. Such a certificate shall be conclusive as to compliance with the mailing provisions of this

section in the absence of fraud. (1915, c. 56, s. 9; C.S., s. 2712; 1971, c. 698, s. 1; 1983, c. 381, s. 5.)

§ 160A-228. Hearing on preliminary assessment roll; revision; confirmation; lien.

At the public hearing, which may be adjourned from time to time until all persons have had an opportunity to be heard, the council shall hear objections to the preliminary assessment roll from all interested persons who appear. Then or thereafter, the council shall annul, modify, or confirm the assessments, in whole or in part, either by confirming the preliminary assessments against any or all of the lots or parcels described in the preliminary assessment roll, or by canceling, increasing, or reducing them as may be proper in compliance with the basis of assessment. If any property is omitted from the preliminary assessment roll, the council may place it on the roll and levy the proper assessment. Whenever the council confirms assessments for any project, the city clerk shall enter in the minutes of the council the date, hour, and minute of confirmation. From and after the time of confirmation, the assessments shall be a lien on the property assessed of the same nature and to the same extent as the lien for county and city property taxes, according to the priorities set out in G.S. 160A-233(c). After the assessment roll is confirmed, a copy of it shall be delivered to the city tax collector for collection in the same manner as property taxes, except as herein provided. (1915, c. 56, s. 9; C.S., s. 2713; 1971, c. 698, s. 1; 1973, c. 426, s. 34.)

§ 160A-229. Publication of notice of confirmation of assessment roll.

After the expiration of 20 days from the confirmation of the assessment roll, the city tax collector shall publish once a notice that the assessment roll has been confirmed, and that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published, and that if they are not paid within this time, all installments thereof shall bear interest as provided in G.S. 160A-233. The notice shall also state the schedule of discounts, if one has been established, to be applied to assessments paid before the expiration date for payment of assessments without interest. (1971, c. 698, s. 1; 1983, c. 381, s. 6.)

§ 160A-230. Appeal to General Court of Justice.

If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within 10 days after the confirmation of the assessment roll, file a notice of appeal to the appropriate division of the General Court of Justice. He shall then have 20 days after the confirmation of the assessment roll to serve on the council or the city clerk a statement of facts upon which the appeal is based. The appeal shall be tried like other actions at law. (1915, c. 56, s. 9; C.S., s. 2714; 1971, c. 698, s. 1.)

§ 160A-231. Reassessment.

The council shall have the power, when in its judgment any irregularity, omission, error or lack of jurisdiction in any of the proceedings related thereto, has occurred, to set aside the whole of any special assessment made by it and thereupon to make a reassessment. In that case, all additional interest paid, or to be paid, as a result of the delay in confirming the assessment shall be included as a part of the project cost. The proceeding shall, as far as practicable, in all respects take place as it had with the original assessments, and the reassessment shall have the same force as if it had originally been properly made. (1915, c. 56, s. 9; C.S., s. 2715; 1971, c. 698, s. 1.)

§ 160A-232. Payment of assessments in cash or by installments.

The owners of assessed property shall have the option, within 30 days after the publication of the notice that the assessment roll has been confirmed, of paying the assessment either in cash or in not more than 10 annual installments, as may have been determined by the council in the resolution directing the project giving rise to the assessment to be undertaken. With respect to payment by installment, the council may provide

(1) That the first installment with interest shall become due and payable on the date when property taxes are due and payable, and one subsequent installment and interest shall be due and payable on the same date in each successive year until the assessment is paid in full, or

(2) That the first installment with interest shall become due and payable 60 days after the date that the assessment roll is confirmed, and one subsequent installment and interest shall be due and payable on the same day of the month in each successive year until the assessment is paid in full. (1915, c. 56, s. 10; C.S., s. 2716; 1971, c. 698, s. 1.)

§ 160A-233. Enforcement of assessments; interests; foreclosure; limitations.

(a) Any portion of an assessment that is not paid within 30 days after publication of the notice that the assessment roll has been confirmed shall bear interest until paid at a rate to be fixed in the assessment resolution but not more than eight percent (8%) per annum.

(b) If any installment of an assessment is not paid on or before the due date, all of the installments remaining unpaid shall immediately become due and payable, unless the council waives acceleration. The council may waive acceleration and permit the property owner to pay all installments in arrears together with interest due thereon and the cost to the city of attempting to obtain payment. If this is done, the remaining installments shall be reinstated so that they fall due as if there had been no default. Waiver of acceleration and reinstatement of future installments may be done at any time before foreclosure proceedings have been instituted.

(c) Assessment liens may be foreclosed under any procedure prescribed by law for the foreclosure of property tax liens, except that lien sales and lien sale certificates shall not be required, and foreclosure may be begun at any time after 30 days after the due date. The city shall not be entitled to a deficiency judgment in an action to foreclose an assessment lien. The lien of special assessments shall be inferior to all prior and subsequent liens for State, local, and federal taxes, and superior to all other liens.

(d) No city may maintain an action or proceeding to enforce any remedy for the foreclosure of special assessment liens unless the action or proceeding is begun within 10 years from the date that the assessment or the earliest installment thereof included in the action or proceeding became due. Acceleration of installments under subsection (b) shall not have the effect of shortening the time within which foreclosure may be begun, but in that event the statute of limitations shall continue to run as to each installment as if acceleration had not occurred. (1915, c. 56, s. 11; C.S., s. 2717; 1923, c. 87; 1929, c. 331, s. 1; 1971, c. 698, s. 1.)

§ 160A-234. Assessments on property held by tenancy for life or years.

(a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid by the holder of the remainder or reversion, as the case may be.

(b) Repealed by Session Laws 1979, c. 107, s. 12. (1911, c. 7, ss. 1, 2, 3; C.S., ss. 2718, 2719, 2720; 1971, c. 698, s. 1; 1979, c. 107, s. 12; 2003-232, s. 6.)

§ 160A-235. Lien in favor of a cotenant or joint owner paying special assessments.

Any one of several tenants in common, or joint tenants, or copartners shall have the right to pay the whole or any part of any special assessment levied against property held jointly or in common, and all sums by him so paid in excess of his share of the assessment, interests, costs, and amounts required for redemption, shall constitute a lien upon the shares of his cotenants or associates, which he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding. The lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in the clerk's office. (1935, c. 174; 1971, c. 698, s. 1.)

§ 160A-236. Apportionment of assessments.

When special assessments are made against property which has been or is about to be subdivided, the council may, with the consent of the owner of the property, apportion the assessment among the lots or tracts within the subdivision, or release certain lots or tracts from the assessments if, in the opinion of the council, some of the lots or tracts in the subdivision are not benefited by the project. Upon an apportionment, each of the lots and tracts in the subdivision shall be released from the lien of the original assessment, and the portions of the original assessment assessed against each lot or tract shall have the same force and effect as the original assessment as to the particular lot or tract assessed. At the time of making an apportionment under this section, the council shall enter on its minutes a statement to the effect that the apportionment is made with the consent of the owners of the property affected, and this entry shall be conclusive in the absence of fraud. Reassessments made under this section may include past due installments of principal and interest as well as installments not then due, and any installments not then due shall fall due at the same dates as they would have under the original assessment. The council may delegate authority to make apportionment of assessments to the chief financial officer, but apportionments shall in all cases be reported to the council at its next regular meeting and entered in the minutes. (1929, c. 331, s. 1; 1935, c. 125; 1971, c. 698, s. 1.)

§ 160A-237. Authority to hold water and sewer assessments in abeyance.

The assessment resolution may provide that assessments levied under this Article for water or sewer improvements be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system for which the assessment was levied, or a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event first occurs. Upon termination of the period of abeyance, the assessment shall be paid in accordance with the terms set out in the assessment resolution. If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system, or other relevant factors, and shall provide that the period of abeyance shall be the same for all assessed property in the same class.

All statutes of limitations are suspended during the time that any assessment is held in abeyance without interest. (1973, c. 426, s. 35.)

§ 160A-238. Authority to make assessments for beach erosion control and flood and hurricane protection works.

A city may make special assessments, according to the procedures of this Article, against benefited property within the city for all or part of the costs of acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works. Assessments for these projects may be made on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage; or
(2) The frontage abutting on a beach or shoreline protected or benefited by the project, at an equal rate per foot of frontage; or
(3) The area of land benefited by the project, at an equal rate per unit of area; or
(4) The valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or
(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either area or valuation, the council shall provide for the laying out of one or more benefit zones according to the distance from the shoreline, the distance from the project, the elevation of the land, or other relevant factors. If more than one benefit zone is established, the council shall establish differing rates of assessment to apply uniformly throughout each benefit zone. (1973, c. 822, s. 7.)

§ 160A-239. Reserved for future codification purposes.

Article 10A.

Special Assessments for Critical Infrastructure Needs.

§ 160A-239.1. (See note for expiration of Article) Purpose; sunset.

(a) Purpose. – This Article enables cities that face increased demands for infrastructure improvements as a result of rapid growth and development to impose special assessments as provided under this Article on benefited property and to use the resulting revenues as provided in this Article. This Article supplements the authority cities have in Article 10 of this Chapter. The provisions of Article 10 of this Chapter apply to this Article, to the extent they do not conflict with this Article.

(b) Sunset. – This Article expires July 1, 2020, for projects that have not been approved under a final assessment resolution. The expiration does not affect the validity of assessments imposed or to be imposed or bonds issued or authorized or to be issued or authorized under the provisions of this Article if a final assessment resolution has been adopted prior to the effective date of the expiration. (2008-165, s. 3; 2013-371, ss. 2(a), 3; 2015-121, s. 2; 2017-40, s. 2.)

§ 160A-239.2. (See note for expiration of Article) Assessments.

(a) Projects. – The council of a city may make special assessments as provided in this Article against benefited property within the city for the purpose of assisting in arranging for payment of the capital costs of projects (i) for which project development financing debt instruments may be issued under G.S. 159-103 or (ii) for the purpose of the installation of distributed generation renewable energy sources or energy efficiency

improvements that are permanently fixed to residential, commercial, industrial, or other real property.

(b) Costs. – The city council must determine a project's total estimated cost and the amount of costs to be paid from assessments. In addition to the costs allowed under G.S. 160A-226, the costs may include any expenses allowed under G.S. 159-84 and expenses for the administration of the assessments. A preliminary assessment roll may be prepared before the costs are incurred based on the estimated cost of the project.

(c) Method. – The city council must establish an assessment method that will, in the city council's judgment, accurately assess each lot or parcel of land subject to the assessments according to the benefits conferred upon it by the project for which the assessment is made. In addition to other bases upon which assessments may be made under G.S. 160A-218, the council may select any other method designed to allocate the costs in accordance with benefits conferred. In doing so, the council may provide that the benefits conferred are measured on the basis of use being made on the lot or parcel of land and provide for adjustments of assessments upon a change in use, provided that the total amount of all assessments is sufficient to pay the portion of the costs of the project to be funded from assessments after the adjustments have been made. (2008-165, s. 3; 2008-187, s. 47.5(b); 2009-525, s. 2(a); 2013-371, ss. 2(b), 3; 2017-40, s. 2.)

§ 160A-239.3. (See note for expiration of Article) Petition required.

(a) Petition. – The city council may not impose a special assessment under this Article unless it receives a petition for the project to be financed by the assessment signed by (i) at least a majority of the owners of real property to be assessed and (ii) owners who represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. For purposes of determining whether the petition has been signed by a majority of owners, an owner who holds title to a parcel of real property alone shall be treated as having one vote each, and an owner who shares title to a parcel of real property with one or more other owners shall have a vote equal to one vote multiplied by a fraction, the numerator of which is one, and the denominator of which is the total number of owners of the parcel. For purposes of determining whether the assessed value represented by those signing the petition constitutes at least sixty-six percent (66%) of the assessed value of all real property to be assessed, an owner who holds title to a parcel of real property alone shall have the full assessed value of the parcel included in the calculation, and an owner who shares title to a parcel of real property with one or more other owners shall have their proportionate share of the full assessed value of the parcel included in the calculation. The petition must include the following:

(1) A statement of the project proposed to be financed in whole or in part by the imposition of an assessment under this Article.
(2) An estimate of the cost of the project.
(3) An estimate of the portion of the cost of the project to be assessed.

(a1) Preliminary Assessment Resolution. – Upon the receipt of a petition as provided for under subsection (a) of this section, the city council shall adopt a preliminary assessment resolution containing all of the following:

(1) A statement of intent to undertake the project.
(2) A general description of the nature and location of the project.
(3) An estimate of the total cost of the project.
(4) A statement as to the proposed terms of payment of the assessment.
(5) An order setting a time and place for a public hearing on all matters covered by the preliminary assessment resolution. The hearing shall be not earlier than three weeks and not later than 10 weeks from the day on which the preliminary resolution is adopted.

(a2) Hearing on Preliminary Assessment Resolution; Assessment Resolution. – At the public hearing, the city council shall hear all interested persons who appear with respect to any matter covered by the preliminary assessment resolution. Not earlier than 10 days after the public hearing, the city council may adopt a final assessment resolution directing that the project or portions thereof be undertaken. The final assessment resolution shall include all of the information provided for in subdivisions (1) through (4) of subsection (a1) of this section.

(b) Petition Withdrawn. – The city council must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting a final assessment resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of petition withdrawal is given in writing to the council signed by at least a majority of the owners who signed the petition submitted under subsection (a) of this section representing at least fifty percent (50%) of the assessed value of all real property to be assessed. The council may not adopt a final assessment resolution if it receives a timely notice of petition withdrawal.

(c) Validity of Assessment. – No right of action or defense asserting the invalidity of an assessment on grounds that the city did not comply with this section may be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (2008-165, s. 3; 2013-371, ss. 2(c), 3; 2017-40, s. 2.)

§ 160A-239.4. (See note for expiration of Article) Funding a project for which an assessment is imposed.

(a) Funding Sources. – In addition to funding from sources otherwise authorized for use by a city in connection with a project, a city council may provide for the payment of all or a portion of the cost of a project for which an assessment may be imposed under this Article from one or more funding sources listed in this subsection. The assessment resolution must include the estimated cost of the project to be funded from assessments and the amount of the cost estimated to be derived from each respective funding source.

(1) Revenue bonds issued under G.S. 160A-239.6.
(2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.
(3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.

(4) General revenues.

(5) Funds from private parties.

(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 160A-239.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the city council must covenant to enforce the payment of the assessments.

(c) Reimbursement From Assessments. – If a city contracts with a private party to construct a project on behalf of the city as provided in G.S. 160A-239.7, the city council may agree to impose one or more assessments pursuant to this Article in order to reimburse the private party for actual costs incurred by the private party related to the project and documented to the city. The city council shall not be obligated to reimburse a private party any amount in excess of assessment revenues actually collected less the city's related administrative costs.

A reimbursement shall not include reimbursement to the private party for any interest costs, whether actual or imputed, of the funds invested by the private party in the project except in the event that an abeyance in the collection of assessments is permitted pursuant to G.S. 160A-239.5. If an abeyance in the collection of assessments is permitted, the amount to be reimbursed may include an inflationary factor applicable for the period of the abeyance.

(d) Performance Bond. – A subdivision control ordinance adopted by a city under G.S. 160A-372 providing for a performance bond or guarantee to assure successful completion of required improvements will apply to a project funded in whole or in part by an assessment under this Article. (2008-165, s. 3; 2009-525, s. 2(b); 2010-95, s. 40; 2013-371, s. 3; 2017-40, s. 2.)

§ 160A-239.5. (See note for expiration of Article) Payment of assessments by installments.

(a) An assessment imposed under this Article is payable in annual installments. The city council must set the number of annual installments, which may not be more than 25. The installments are due on the date that real property taxes are due.

(b) The city council may provide for the abeyance of assessments as authorized in Article 10 of this Chapter. The abeyance may apply to any assessed property. Annual installments shall be deferred until the period of abeyance ends. The assessment shall be payable on the first annual installment payment date after the period of abeyance ends. (2008-165, s. 3; 2013-371, s. 3; 2015-121, s. 4; 2017-40, s. 2.)

§ 160A-239.6. (See note for expiration of Article) Revenue bonds.

(a) Authorization. – A city council that imposes an assessment under this Article may issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which the assessment is imposed and use the proceeds of the assessment imposed as revenues pertaining to the project.

(b) Modifications. – This Article specifically modifies the authority of a city to issue revenue bonds under Article 5 of Chapter 159 of the General Statutes by extending the authority in that Article to include a project for which an assessment may be imposed under this Article. In applying the provisions of Article 5, the following definitions apply:

(1) Revenue bond project. – Defined in G.S. 159-81(3). The term includes projects for which an assessment is imposed under this Article.

(2) Revenues. – Defined in G.S. 159-81(4). The term includes assessments imposed under this Article to finance a project allowed under this Article. (2008-165, s. 3; 2013-371, s. 3.)

§ 160A-239.7. (See note for expiration of Article) Project implementation.

A city may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project funded in whole or in part by the imposition of an assessment imposed under this Article. Initial funding for the project may be provided by the public or private agencies. If no more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenue, excluding assessments imposed pursuant to this Article, a private agency that enters into a contract with a city for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. In the event any contract relating to construction a substantial portion of which is to be performed on publicly owned property is excluded from the provisions of Article 8 of Chapter 143, the city or any trustee or fiduciary responsible for disbursing funds shall obtain certification acceptable to the city in the amount due for work done or materials supplied for which payment will be paid from such disbursement. If the city or any trustee or fiduciary responsible for disbursing funds receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to publicly owned property, then either no disbursement of funds may be made until the city, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim. (2009-525, s. 2(c); 2013-371, s. 3; 2017-40, s. 2.)

Article 11.

Eminent Domain.

§ 160A-240. Repealed by Session Laws 1981, c. 919, s. 28, effective January 1, 1982.

§ 160A-240.1. Power to acquire property.

A city may acquire, by gift, grant, devise, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the city or any department, board, commission or agency of the city. In exercising the power of eminent

domain a city shall use the procedures of Chapter 40A. (1981, c. 919, s. 29; 1983, c. 768, s. 23; 2011-284, s. 112.)

§§ 160A-241 through 160A-261. Repealed by Session Laws 1981, c. 919, s. 28, effective January 1, 1982.

§ 160A-262. Repealed by Session Laws 1973, c. 426, s. 42.

§ 160A-263. Repealed by Session Laws 1981, c. 919, s. 28, effective January 1, 1982.

§ 160A-264. Reserved for future codification purposes.

Article 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

In the discretion of the council, a city may: (i) hold, use, change the use thereof to other uses, or (ii) sell or dispose of real and personal property, without regard to the method or purpose of its acquisition or to its intended or actual governmental or other prior use. (1981 (Reg. Sess., 1982), c. 1236.)

§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of similar items. Real property, of any value, and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or

conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456; 1987, c. 692, s. 2; 1987 (Reg. Sess., 1988), c. 1108, s. 9; 1997-174, s. 6; 2001-328, s. 4; 2005-227, s. 3.)

§ 160A-267. Private sale.

When the council proposes to dispose of property by private sale, it shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, specify a minimum price. A notice summarizing the contents of the resolution or order shall be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 24.)

§ 160A-268. Advertisement for sealed bids.

The sale of property by advertisement for sealed bids shall be done in the manner prescribed by law for the purchase of property, except that in the case of real property the advertisement for bids shall be begun not less than 30 days before the date fixed for opening bids. (1971, c. 698, s. 1.)

§ 160A-269. Negotiated offer, advertisement, and upset bids.

A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars ($1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no

further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder. The council may at any time reject any and all offers. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 25.)

§ 160A-270. Public auction.

(a) Real Property. – When it is proposed to sell real property at public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require the highest bidder at the sale to make a bid deposit in a specified amount. The council shall then publish a notice of the sale at least once and not less than 30 days before the sale. The notice shall contain a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be reported to the council, and the council shall accept or reject it within 30 days thereafter. If the bid is rejected, the council may readvertise the property for sale.

(b) Personal Property. – When it is proposed to sell personal property at public auction, the council shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property at public auction. The resolution or order shall identify the property to be sold and set out the date, time, place, and terms of the sale. The resolution or order (or a notice summarizing its contents) shall be published at least once and not less than 10 days before the date of the auction.

(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular auction or for all auctions under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all requirements of subsections (a) and (b) of this section apply to electronic auctions. (1971, c. 698, s. 1; 1973, c. 426, s. 43; 2001-328, s. 5; 2005-227, s. 4; 2006-264, s. 74.)

§ 160A-271. Exchange of property.

A city may exchange any real or personal property belonging to the city for other real or personal property by private negotiation if the city receives a full and fair consideration in exchange for its property. A city may also exchange facilities of a city-owned enterprise for like facilities located within or outside the corporate limits. Property shall be exchanged only pursuant to a resolution authorizing the exchange adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the properties to be exchanged, stating the value of the properties and other consideration changing hands, and announcing the council's intent to authorize the exchange at its next regular meeting. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1.)

§ 160A-272. Lease or rental of property.

(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided in subsection (b1) of this section) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.

(a1) Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 30 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

(b) No public notice as required by subsection (a1) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

(b1) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

(c) Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

(1) For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.

(2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.

(3) For the operation and use of components of a wired or wireless network, for a term up to 25 years; provided, however, that the lease is entered into with a private broadband provider or a cooperative in connection with a grant agreement pursuant to G.S. 143B-1373 and is for a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served.

(d) Notwithstanding subsection (a) of this section, any lease by a city of any duration for components of a wired or wireless network shall be entered into on a competitively neutral and nondiscriminatory basis and made available to similarly situated providers on comparable terms and conditions and shall not be used to subsidize the provision of competitive service. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 26; 2009-149, ss. 2, 3; 2010-57, s. 2; 2010-63, s. 2(b); 2011-150, s. 1; 2014-120, s. 34; 2015-246, s. 9; 2018-5, s. 37.1(c).)

§ 160A-272.1. Lease of utility or enterprise property.

Subject to this Article and G.S. 160A-321, a city-owned utility or public service enterprise, or part thereof, may be leased. (1979, 2nd Sess., c. 1247, s. 27; 2018-5, s. 37.1(d).)

§ 160A-273. Grant of easements.

A city shall have authority to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right-of-way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right-of-way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as a grant of an easement. (1971, c. 698, s. 1.)

§ 160A-274. Sale, lease, exchange and joint use of governmental property.

(a) For the purposes of this section, "governmental unit" means a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.

(b) Any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any interest in real or personal property.

(c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the Department of Transportation, shall be taken only after approval by the Department of Administration. Action with regard to State property under the control of the Department of Transportation shall be taken by the Department of Transportation or its duly authorized delegate. Provided, any county board of education or board of education for any city administrative unit may, upon such terms and conditions as it deems wise, lease to another governmental unit for one dollar ($1.00) per year any real property owned or held by the board which has been determined by the board to be unnecessary or undesirable for public school purposes. (1969, c. 806; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1975, c. 455; c. 664, s. 9; c. 879, s. 46; 1977, c. 464, s. 34; 2001-328, s. 6.)

§ 160A-275. Warranty deeds.

Any city, county, or other municipal corporation is authorized to execute and deliver deeds to any real property with full covenants of warranty, without regard to how the property was acquired, when, in the opinion of the governing body, it is in the best interest of the city, county, or other municipal corporation to convey by warranty deed. Members of the governing boards of counties, cities, and other municipal corporations are hereby relieved of any personal or individual liability by reason of the execution of warranty deeds to governmentally owned property unless they act in fraud, malice, or bad faith. (1945, c. 962; 1955, c. 935; 1969, cc. 48, 223, 332; c. 1003, s. 5; 1971, c. 698, s. 1.)

§ 160A-276. Sale of stocks, bonds, and other securities.

A city may sell through a broker without complying with the preceding sections of this Article shares of common and preferred stock, bonds, options, and warrants or other rights with respect to stocks and bonds, and other securities, when the stock, bond, or other right or security has an established market and is traded in the usual course of business on a national stock exchange or over-the-counter by reputable brokers and securities dealers. The city may pay the usual fees and

taxes incident to such transactions. Nothing in this section authorizes a city to deal in its own bonds in any manner inconsistent with Chapter 159 of the General Statutes, nor to invest in any securities not authorized by G.S. 159-30. (1973, c. 426, s. 44.)

§ 160A-277. Sale of land to volunteer fire departments and rescue squads; procedure.

(a) A city, upon such terms and conditions as it deems wise, with or without monetary consideration may lease, sell or convey to a volunteer fire department or to a volunteer rescue squad any land or interest in land, for the purpose of constructing or expanding fire department or rescue squad facilities, if the volunteer fire department or volunteer rescue squad provides fire protection or rescue services to the city.

(b) Any lease, sale or conveyance under this section must be approved by the city council by resolution adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or sold, stating the value of the properties, the proposed monetary consideration or lack thereof, and the council's intent to authorize the lease, sale or conveyance. (1979, c. 583.)

§ 160A-278. Lease of land for housing.

A city may lease land upon such terms and conditions as it deems wise to any person, firm or corporation who will use the land to construct housing for the benefit of persons of low income, or moderate income, or low and moderate income. Such a housing project may also provide housing to persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for the exclusive use of persons of low income. Despite the provisions of G.S. 160A-272, a lease authorized pursuant to this section may be made by private negotiation and may extend for longer than 10 years. Property may be leased under this section only pursuant to a resolution of the council authorizing the execution of the lease adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased, stating the value of the property, stating the proposed consideration for the lease, and stating the council's intention to authorize the lease. (1987, c. 464, s. 9.)

§ 160A-279. Sale of property to entities carrying out a public purpose; procedure.

(a) Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; provided no property acquired by the exercise of eminent domain may be conveyed under this section; provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply. Provided, however, that a city or county may convey to any public or private entity, which is authorized to receive appropriations from a city or county, surplus automobiles without compensation or without the requirement that the automobiles be used for a public purpose. Provided, however, this conveyance is conditioned upon conveyance by the public or private entity to Work First participants selected by the county department of social services under the rules adopted by the local department of social services. In the discretion of the public or private entity to which the city or county conveys the surplus automobile, when that entity conveys the

vehicle to a Work First participant it may arrange for an appropriate security interest in the vehicle, including a lien or lease, until such time as the Work First participant satisfactorily completes the requirements of the Work First program. This subsequent conveyance by the public or private entity to the Work First participant may be without compensation. The participant may be required to pay for license, tag, and/or title.

(b) Notwithstanding any other provision of law, this section applies only to cities and counties and not to any other entity which this Article otherwise applies to.

(c) Repealed by Session Laws 1993, c. 491, s. 1.

(d) This section does not limit the right of any entity to convey property by private sale when that right is conferred by another law, public, or local. (1987, c. 692, s. 1; 1993, c. 491, s. 1; 1998-195, s. 1.)

§ 160A-280. Donations of personal property to other governmental units.

(a) A city may donate to another governmental unit within the United States, a sister city, or a nonprofit organization incorporated by (i) the United States, (ii) the District of Columbia, or (iii) one of the United States, any personal property, including supplies, materials, and equipment, that the governing board deems to be surplus, obsolete, or unused. The governing board of the city shall post a public notice at least five days prior to the adoption of a resolution approving the donation. The resolution shall be adopted prior to making any donation of surplus, obsolete, or unused personal property. For purposes of this section a sister city is a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas. The agreement or memorandum of understanding establishing the sister city relationship shall be signed by the mayors or chief elective officer of both the donor and recipient cities.

(b) For the purposes of this section, the term "governmental unit" shall have the same meaning as defined by G.S. 160A-274(a) and shall include North Carolina charter schools.

(c) The authority granted to a city under this section is in addition to any authority granted under any other provision of law. (2007-430, s. 1; 2009-141, ss. 1, 2, 3.)

Article 13.

Law Enforcement.

§ 160A-281. Policemen appointed.

A city is authorized to appoint a chief of police and to employ other police officers who may reside outside the corporate limits of the city unless the council provides otherwise. (R.C., c. 111, s. 16; Code, c. 3803; Rev., s. 2926; C.S., s. 2641; 1969, c. 23, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 45.)

§ 160A-282. Auxiliary law-enforcement personnel; workers' compensation benefits.

(a) A city may by ordinance provide for the organization of an auxiliary police department made up of volunteer members.

(b) A city, by enactment of an ordinance, may provide that, while undergoing official training and while performing duties on behalf of the city pursuant to orders or

instructions of the chief of police of the city, auxiliary law-enforcement personnel shall be entitled to benefits under the North Carolina Workers' Compensation Act and to any fringe benefits for which such volunteer personnel qualify.

(c) The board of commissioners of any county may provide that persons who are deputized by the sheriff of the county as special deputy sheriffs or persons who are serving as volunteer law-enforcement officers at the request of the sheriff and under his authority, while undergoing official training and while performing duties on behalf of the county pursuant to orders or instructions of the sheriff, shall be entitled to benefits under the North Carolina Workers' Compensation Act and to any fringe benefits for which such persons qualify.

This subsection shall not apply to volunteer school safety resource officers as described in G.S. 162-26. (1969, c. 206, s. 1; 1971, c. 698, s. 1; 1973, c. 1263, s. 1; 1979, c. 714, s. 2; 1979, 2nd Sess., c. 1247, s. 28; 2013-360, s. 8.45(d).)

§ 160A-283. Joint county and city auxiliary police.

The governing body of any city, town, or county is hereby authorized to create and establish a joint law-enforcement officers' auxiliary force with one or more cities, towns, or counties. Each participating city, town, or county shall, by resolution or ordinance, establish the joint auxiliary police force. The resolution or ordinance shall specify whether the members of the joint auxiliary police force shall be volunteers or shall be paid. Members shall be appointed by the respective governmental units and shall take the oath required for regular police officers. The joint auxiliary force may be called into active service at any time by the mayor or chief of police of the participating town or city or the chairman of the board of commissioners or sheriff of a participating county. Members of the joint auxiliary force, while undergoing official training and while on active duty shall be members of the unit which called the auxiliary force into active duty and shall be entitled to all powers, privileges and immunities afforded by law to regularly employed law-enforcement officers of that unit including benefits under the Workers' Compensation Act. Members of the joint auxiliary force shall not be considered as public officers within the meaning of the North Carolina Constitution. Such members shall be dressed in the uniform prescribed by such auxiliary force at any time such members or member exercises any of the duties or authority herein provided for. (1971, c. 607; c. 896, s. 4; 1979, c. 714, s. 2.)

§ 160A-284. Oath of office; holding other offices.

(a) Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk.

(b) The offices of policeman and chief of police are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution. The offices of policeman and chief of police are hereby declared to be offices that may be held concurrently with any elective office, other than elective office in the municipality employing the policeman or chief of police, pursuant to Section 9 of Article VI of the Constitution.

(c) The office of auxiliary policeman is hereby declared to be an office that may be held concurrently with any elective office or appointive office pursuant to Article VI, Sec. 9, of the Constitution. (1971, c. 698, s. 1; c. 896, s. 4; 1975, c. 664, s. 10; 2018-13, s. 4(a).)

§ 160A-285. Powers and duties of policemen.

As a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. He shall also have power to serve all civil and criminal process that may be directed to him by any officer of the General Court of Justice and may enforce the ordinances and regulations of the city as the council may direct. (Code, s. 3811; Rev., s. 2927; C.S., s. 2642; 1971, c. 698, s. 1; c. 896, s. 4.)

§ 160A-286. Extraterritorial jurisdiction of policemen.

In addition to their authority within the corporate limits, city policemen shall have all the powers invested in law-enforcement officers by statute or common law within one mile of the corporate limits of the city, and on all property owned by or leased to the city wherever located.

Any officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all of the privileges, immunities, and benefits to which he would be entitled if acting within the city, including coverage under the workers' compensation laws. (1971, c. 698, s. 1; c. 896, s. 4; 1973, c. 426, s. 46; c. 1286, s. 24; 1991, c. 636, s. 3.)

§ 160A-287. City lockups.

A city shall have authority to establish, erect, repair, maintain and operate a lockup for the temporary detention of prisoners pending their transferal to the county or district jail or the State Division of Adult Correction and Juvenile Justice. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C.S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; c. 896, s. 4; 2011-145, s. 19.1(h); 2017-186, s. 3(a).)

§ 160A-288. Cooperation between law enforcement agencies.

(a) Unless specifically prohibited or limited by an ordinance officially adopted by the governing body of the city or county by which the person is employed, appointed, or elected to serve, the head of any law enforcement agency may temporarily provide assistance to another agency if so requested in writing by the head of the requesting agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those the officer normally possesses. While on duty with the requesting agency, the officer shall be subject to the lawful operational commands of the officer's superior officers in the requesting agency, but the officer shall for personnel and administrative purposes, remain under the control of the officer's own agency, including for purposes of pay. The officer shall furthermore be

entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though the officer were functioning within the normal scope of the officer's duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law enforcement agency including the chief of police of a local department, chief of police of county police department, and the sheriff of a county, or an officer of one of the above named agencies to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law enforcement agency" or "agency" means a municipal police department, a county police department, or a sheriff's office of this State. Subject to G.S. 15A-403, it also includes a municipal police department, a county police department, or a sheriff's office of another state if the laws of the other state allow for the provision of mutual aid with out-of-state law enforcement officers. All other State and local agencies are exempted from the provisions of this section.

(c) This section in no way reduces the jurisdiction or authority of State law enforcement officers.

(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a).

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes.

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2).

(4) Repealed by Session Laws 2013-360, s. 16B.4(d), effective July 1, 2013.

(5) A Company Police agency of the Department of Agriculture and Consumer Services commissioned by the Attorney General pursuant to Chapter 74E of the General Statutes. (1967, c. 846; 1971, c. 698, s.1; c. 896, s.4; 1977, c. 534; 1981, c. 93, s. 2; 1987, c. 671, s. 4; 1989, c. 518, s. 2; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 6; 1997-143, s. 1; 1999-68, s. 4; 2005-231, s. 8; 2006-159, s. 4; 2009-94, s. 1; 2011-260, s. 4; 2013-360, s. 16B.4(d); 2018-87, s. 1; 2019-130, s. 1.)

§ 160A-288.1. Assistance by State law-enforcement officers; rules; cost.

(a) The governing body of any city or county may request the Governor to assign temporarily State law-enforcement officers with statewide authority to provide law-enforcement protection when local law-enforcement officers: (i) are engaged in a strike; (ii) are engaged in a slowdown; (iii) otherwise refuse to fulfill their law-enforcement responsibilities; or (iv) submit

mass resignations. The request from the governing body of the city or county shall be in writing. The request from a county governing board shall be upon the advice of the sheriff of the county.

(b) The Governor shall formulate such rules, policies or guidelines as may be necessary to establish a plan under which temporary State law-enforcement assistance will be provided to cities and counties. The Governor may delegate the responsibility for developing appropriate rules, policies or guidelines to the head of any State department. The Governor may also delegate to a department head the authority to determine the number of officers to be assigned in a particular case, if any, and the length of time they are to be assigned.

(c) While providing assistance to a city or county, a State law-enforcement officer shall be considered an employee of the State for all purposes, including compensation and fringe benefits.

(d) While providing assistance to the city or county, a State officer shall be subject to the lawful operational commands of his State superior officers. The ranking representative of each State law-enforcement agency providing assistance shall consult with the appropriate city or county officials prior to deployment of the State officers under his command. (1979, c. 639, s. 1.)

§ 160A-288.2. Assistance to State law-enforcement agencies.

(a) Unless specifically prohibited or limited by an ordinance officially adopted by the governing body of the city or county by which the officer is employed, appointed, or elected to serve, the head of any local law-enforcement agency may temporarily provide assistance to a State law-enforcement agency in enforcing the laws of North Carolina if so requested in writing by the head of the State agency. The assistance may comprise allowing officers of the local agency to work temporarily with officers of the State agency (including in an undercover capacity) and lending equipment and supplies. While working with the State agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and the payment of judgments) as the officers of the State agency in addition to those the officer normally possesses. While on duty with the State agency, the officer shall be subject to the lawful operational commands of the officer's superior officers in the State agency, but the officer shall for personnel and administrative purposes, remain under the control of the local agency, including for purposes of pay. The officer shall furthermore be entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though the officer were functioning within the normal scope of the officer's duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of any State or local law-enforcement agency including the chief of police of a local department, chief of police of a county police department, and the sheriff of a county, or an officer of the agency to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Local law-enforcement agency" means any municipal police department, a county police department, or a sheriff's office.

(3) "State law-enforcement agency" means any State agency, force, department, or unit responsible for enforcing criminal laws.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

(d) For the purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a).

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes.

(3) Repealed by Session Laws 2013-360, s. 16B.4(e), effective July 1, 2013.

(1981, c. 878; 1989, c. 518, s. 3; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 7; 2005-231, s. 9; 2006-159, s. 5; 2011-260, s. 5; 2011-326, s. 10; 2013-360, s. 16B.4(e); 2018-87, s. 2.)

§ 160A-288.3. (Expires October 1, 2020) Assistance by out-of-state law enforcement officers; rules.

(a) In accordance with rules, policies, or guidelines adopted by the governing body of the city by which the officer is employed, and subject to any conditions or restrictions included therein, the head of any law enforcement agency of a municipality with a population that exceeds 500,000 may request and enter into temporary intergovernmental law enforcement agreements with out-of-state law enforcement agencies or out-of-state law enforcement officers to aid in enforcing the laws of North Carolina within the jurisdiction of the requesting municipality if so requested in writing by the head of the requesting agency. The assistance may comprise allowing out-of-state law enforcement officers to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an out-of-state law enforcement officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency. While on duty with the requesting agency, the out-of-state law enforcement officer shall be subject to the lawful operational commands of the chief of police and the chief's chain of command for the requesting agency.

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

(1) "Head" means any director or chief officer of a law enforcement agency, including the chief of police of the requesting agency or an officer of the requesting agency to whom the head of that agency has delegated authority to make or grant requests under this section.

(2) "Law enforcement agency" means a municipal police department for a municipality that has a population of more than 500,000. All other State and local agencies are exempted from the provisions of this section.

(3) "Out-of-state law enforcement officer" means a full-time paid employee of a governmental employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the officer's home jurisdiction or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the home jurisdiction, and who is in good standing and has no pending civil, criminal, or departmental action that would disqualify the officer if the officer were certified by this State.

(4) "Out-of-state law enforcement agency" means an employer which is a governmental agency outside of this State and which is assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the home jurisdiction or serving civil processes and which has employees who possess the power of arrest by virtue of an oath administered under the authority of the home jurisdiction.

(5) "Temporary intergovernmental law enforcement agreement" means any agreement entered into by the agency head with the head of another out-of-state law enforcement agency for the use of officers or equipment for a designated period of time.

(c) This section in no way reduces the jurisdiction or authority of State law enforcement officers.

(d) Notwithstanding the provisions of G.S. 128-1 and G.S. 128-1.1(c1), out-of-state law enforcement officers shall be authorized to hold dual offices when one of the appointive offices held is that of out-of-state law enforcement officer and the other appointive office is that of a law enforcement officer for a municipality authorized to enter into temporary intergovernmental law enforcement agreements pursuant to this section.

(e) Notwithstanding the provisions of Chapter 17C and Chapter 17E of the General Statutes, out-of-state law enforcement officers certified and sworn in the officers' home jurisdiction and subject to the provisions of an intergovernmental law enforcement agreement under this section shall be deemed to have met the certification requirements of this State for the purposes of being sworn as a law enforcement officer with the requesting agency.

(f) An intergovernmental law enforcement agreement entered into pursuant to this section shall address standards of conduct for the out-of-state law enforcement officers, including the requesting agencies' policies regarding the use of force. Additionally, the intergovernmental law enforcement agreement shall require all out-of-state law enforcement officers to successfully complete training as prescribed by the requesting agency. The intergovernmental law enforcement agreement shall also address the compensation of out-of-state law enforcement officers and the protocol for processing claims made against or by the out-of-state law enforcement officer.

(g) This section becomes effective January 1, 2020, applies to all intergovernmental law enforcement agreements entered into on or after that date, and expires October 1, 2020. (2019-109, s. 1.)

§ 160A-288.4. Police chief may establish volunteer school safety resource officer program.

(a) The chief of police of a local police department or of a county police department may establish a volunteer school safety resource officer program to provide nonsalaried special law enforcement officers to serve as school safety resource officers in public schools. To be a volunteer in the program, a person must have prior experience as either (i) a sworn law enforcement officer or (ii) a military police officer with a minimum of two years' service. If a person with experience as a military police officer is no longer in the armed services, the person must also have an honorable discharge. A program volunteer must receive training on research into the social and cognitive development of elementary, middle, and high school children and must also meet the selection standards and any additional criteria established by the chief of police.

(b) Each volunteer shall report to the chief of police and shall work under the direction and supervision of the chief of police or the chief's designee when carrying out the volunteer's duties as a school safety resource officer. No volunteer may be assigned to a school as a school safety resource officer until the volunteer has updated or renewed the volunteer's law enforcement training and has been certified by the North Carolina Criminal Justice Education and Training Standards Commission as meeting the educational and firearms proficiency standards required of persons serving as criminal justice officers. A volunteer is not required to meet the physical standards required by the North Carolina Criminal Justice Education and Training Standards Commission but must have a standard medical exam to ensure the volunteer is in good health. A person selected by the chief of police to serve as a volunteer under this section shall have the power of arrest while performing official duties as a volunteer school safety resource officer.

(c) The chief of police may enter into an agreement with the local board of education to provide volunteer school safety resource officers who meet both the criteria established by this section and the selection and training requirements set by the chief of police of the municipality or county in which the schools are located. The chief of police shall be responsible for the assignment of any volunteer school safety resource officer assigned to a public school and for the supervision of the officer.

(d) There shall be no liability on the part of and no cause of action shall arise against a volunteer school safety resource officer, the chief of police or employees of the local law enforcement agency supervising a volunteer school safety officer, or the public school system or its employees for any good-faith action taken by them in the performance of their duties with regard to the volunteer school safety resource officer program established pursuant to this section. (2013-360, s. 8.45(f).)

§ 160A-289. Training and development programs for law enforcement.

A city shall have authority to plan and execute training and development programs for law-enforcement agencies, and for that purpose may

(1) Contract with other cities, counties, and the State and federal governments and their agencies;
(2) Accept, receive, and disburse funds, grants and services;
(3) Create joint agencies to act for and on behalf of participating counties and cities;
(4) Make applications for, receive, administer, and expend federal grant funds; and
(5) Appropriate and expend available tax or nontax funds. (1969, c. 1145, s. 3; 1971, c. 698, s. 1; c. 896, s. 4.)

§ 160A-289.1. Resources to protect the public.

Subject to the requirements of G.S. 7A-41, 7A-44.1, 7A-64, 7A-102, 7A-133, and 7A-498.7, a city may appropriate funds under contract with the State for the provision of services for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving threats to public safety. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section. Further, nothing in this section shall be construed to obligate the Administrative Office of the Courts or the Office of Indigent Defense Services to maintain positions or services initially provided for under this section. (1999-237, s. 17.17(c); 2000-67, s. 15.4(f); 2001-424, s. 22.11(f).)

§ 160A-289.2. Neighborhood crime watch programs.

A city may establish neighborhood crime watch programs within the city to encourage residents and business owners to promote citizen involvement in securing homes, businesses, and personal property against criminal activity and to report suspicious activities to law enforcement officials. (2006-181, s. 2.)

§ 160A-290. Reserved for future codification purposes.

Article 14.

Fire Protection.

§ 160A-291. Firemen appointed.

A city is authorized to appoint a fire chief; to employ other firemen; to establish, organize, equip, and maintain a fire department; and to prescribe the duties of the fire department. (1917, c. 136, subch. 8, s. 1; C.S., s. 2801; 1969, c. 1065, s. 3; 1971, c. 698, s. 1.)

§ 160A-292. Duties of fire chief.

Where not otherwise prescribed, the duties of the fire chief shall be to preserve and care for fire apparatus, have charge of fighting and extinguishing fires and training the fire department, seek out and have corrected all places and conditions dangerous to the safety of the city and its citizens from fire, and make annual reports to the council concerning these duties. If these duties include State Building Code enforcement, they shall follow the provisions as defined in G.S. 143-151.13. (1969, c. 1065, s. 3; 1971, c. 698, s. 1; 1989, c. 681, s. 13.)

§ 160A-293. Fire protection outside city limits; immunity; injury to firemen.

(a) A city may install and maintain water mains, pipes, hydrants, buildings and equipment outside its corporate limits and may send its firemen and equipment outside its corporate limits to provide fire protection to rural or unincorporated areas pursuant to agreements between the city and the county, or between the city and the owner of the property to be protected. Counties are hereby authorized to enter into these agreements and to make from tax funds any payments agreed upon for rural fire protection.

(b) No city or any officer or employee thereof shall be held to answer in any civil action or proceeding for failure or delay in answering calls for fire protection outside the corporate limits, nor shall any city be held to answer in any civil action or proceeding for the acts or omissions of its officers or employees in rendering fire protection services outside its corporate limits.

(c) Any employee of a city fire department, while engaged in any duty or activity outside the corporate limits of the city pursuant to orders of the fire chief or council, shall have all of the jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, which they have within the corporate limits of the city. (1919, c. 244; C.S., s. 2804; 1941, c. 188; 1947, c. 669; 1949, c. 89; 1971, c. 698, s. 1; 1991, c. 636, s. 3.)

§ 160A-294. Loss of rural fire employment.

(a) Whenever a city annexes any territory under Parts 2 or 3 of Article 4A of this Chapter, and because of the annexation the rural fire department must terminate the employment of any full-time employee, then the annexing city must take one of the three actions listed below with respect to any person who has been in such full-time employment for two years or more at the time of adoption of the resolution of intent:

(1) The annexing city may offer employment without loss of salary or seniority and place the person in a position as near as possible in type to the position that was held in the rural fire department; or

(2) The annexing city may offer employment in some other department of the city at a comparable salary and seniority; or

(3) The city may choose to pay to the person a sum equal to the person's salary for one year as the equivalent of severance pay. For the purpose of this subsection, the person's salary was his total salary with the rural fire department for the 12-month period ending on the last pay period before the resolution of consideration was adopted, plus any increased salary due to reasonable cost-of-living increases and bona fide promotions; provided that if no resolution of consideration was required to be adopted because of either G.S. 160A-37(j) or G.S. 160A-49(j), or because the resolution of intent was adopted prior to July 1, 1984, the person's salary was his total salary with the rural fire department for the 12-month period ending on the last pay period before the resolution of intent was adopted, plus any increased salary due to reasonable cost-of-living increases and bona fide promotions.

(b) This section is effective with respect to all annexations where an annexation ordinance is adopted on or after January 1, 1983, except that it is also effective with respect to all annexations where an annexation ordinance was adopted before January 1, 1983, but on January 1, 1983, the annexation ordinance:

(1) Was under review under G.S. 160A-38 or G.S. 160A-50, and a stay is in effect under G.S. 160A-38(e) or G.S. 160A-50(e); or
(2) Was subject to the Voting Rights Act of 1965 but had not yet been approved under that act. (1983, c. 636, s. 25.)

§ 160A-294.1. Honoring deceased or retiring firefighters.

A fire department established by a municipality pursuant to this Article may, in the discretion of the governing body of the municipality, award to a retiring firefighter or a surviving relative of a deceased firefighter, upon request, the fire helmet of the deceased or retiring firefighter, at a price determined in a manner authorized by the governing body. The price may be less than the fair market value of the helmet. (2003-145, s. 2.)

Article 14A.

Municipal Firefighters.

§ 160A-295. (Contingent effective date – see Editor's note) Definitions.

As used in this Article, the following terms mean:

(1) Compensatory time. – Time off with regular compensation in lieu of immediate overtime premium pay when a fire department, under certain conditions, compensates the firefighter for overtime hours worked.
(2) Firefighter. – A full-time, paid employee of an employer, maintaining a fire department certified by the North Carolina Department of Insurance, who is actively serving in a position with assigned primary duties and responsibilities for the prevention, detection, and suppression of fire.
(3) Supervisory personnel. – An individual employed by a public safety employer who (i) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, or to adjust their grievances or effectively recommend an adjustment, provided that the exercise of the authority is not merely routine or clerical in nature, but requires consistent exercise of independent judgment; and (ii) devotes a majority of time at work exercising that authority.
(4) Trade time. – The time one individual substitutes for another during scheduled work hours in performance of work in the same capacity when two individuals are employed in any occupation by the same fire department, as agreed to solely at the individual's option and with the approval of the management of the fire department. The hours worked are excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under this Article. Where one employee substitutes for another, the employee being substituted for is credited as if he or she had worked his or her normal work schedule for that shift. (2008-151, s. 1.)

§ 160A-295.1. (Contingent effective date – see Editor's note) Municipal firefighters; hours of labor; overtime pay.

(a) A firefighter or a member of a fire department who provides emergency medical services, other than supervisory personnel, and who is required or permitted to work, on average,

more than 53 hours in a seven-day work period or up to the number of hours that bears the same ratio to 212 hours as the number of days in the work period bears to 28 days is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(b) A member of a fire department, other than supervisory personnel, who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, or maintenance worker, and who is required or permitted to average more hours in a week than the number of hours in a normal workweek of the majority of the employees of the municipality other than firefighters, emergency medical service personnel, and police officers, is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(c) In computing the hours worked in a workweek or the average number of hours worked in a workweek during a work cycle of a firefighter or other member of a fire department covered by this section, all hours are counted during which the firefighter or other member of a fire department is required to remain on call on the employer's premises or so close to the employer's premises that the person cannot use those hours effectively for that person's own purposes. Hours in which the firefighter or other member of a fire department is required only to leave a telephone number at which that person may be reached or to remain accessible by radio or pager are not to be used in computing the hours worked. In computing the hours in a workweek or the average number of hours in a workweek during a work cycle of a firefighter or a member of a fire department who provides emergency medical services, vacation, sick time, holidays, time in lieu of holidays, compensatory time, or trade time may be excluded as hours worked.

(d) A firefighter or other member of a fire department may be required or permitted to work overtime. A firefighter, other than supervisory personnel, who is required or permitted to work overtime as provided by subsection (a) of this section is entitled to be paid overtime for the excess hours worked without regard to the number of hours worked in any one week of the work cycle. Overtime hours as computed under this Article are to be paid at a rate equal to one and one-half times the compensation paid to the firefighter or member of the fire department for regular hours. To the extent that the municipality complies with the requirements of section 7(o) of the Fair Labor Standards Act (29 U.S.C. § 207(o)), it may compensate firefighters for their overtime hours with compensatory time in lieu of pay. A member of a fire department included under subsection (b) of this section shall be paid overtime in the same manner as other employees of the municipality entitled to overtime pay, excluding firefighters. (2008-151, s. 1.)

§ 160A-295.2. (Contingent effective date – see Editor's note) Authority of Department of Labor.

The Department of Labor shall have the authority to enforce the provisions of this Article to the extent that these provisions are not subject to enforcement under the Fair Labor Standards Act (29 U.S.C. § 207). (2008-151, s. 1.)

§ 160A-295.3. (Contingent effective date – see Editor's note) Applicability.

This Article applies only to full-time paid firefighters and other full-time paid members of a fire department of a municipality that employs five or more employees in fire protection during the workweek. (2008-151, s. 1.)

Article 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain.

(4) The power to close any street or alley either permanently or temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way. No fee or charge for activities conducted in the right-of-way shall be assessed on businesses listed in G.S. 160A-206(b), except the following:

a. Fees to recover any difference between a city's right-of-way management expenses related to the activities of businesses listed in G.S. 160A-206(b) and distributions under Article 5 of Chapter 105 of the General Statutes.

b. Payments under agreements subject to G.S. 62-350.

(7) The power to provide for lighting the streets, alleys, and bridges of the city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

(a1) A city with a population of 250,000 or over according to the most recent decennial federal census may also exercise the power granted by subdivision (a)(3) of this section within its extraterritorial planning jurisdiction. Before a city makes improvements

under this subsection, it shall enter into a memorandum of understanding with the Department of Transportation to provide for maintenance.

(b) Repealed by Session Laws 1991, c. 530, s. 6, effective January 1, 1992. (1917, c. 136, subch. 5, s. 1; subch. 10, s. 1; 1919, cc. 136, 237; C.S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1979, c. 598; 1991, c. 530, s. 6; 2001-261, s. 1; 2006-151, s. 14; 2016-103, s. 9(a).)

§ 160A-297. Streets under authority of Board of Transportation.

(a) A city shall not be responsible for maintaining streets or bridges under the authority and control of the Board of Transportation, and shall not be liable for injuries to persons or property resulting from any failure to do so.

(b) Nothing in this Article shall authorize any city to interfere with the rights and privileges of the Board of Transportation with respect to streets and bridges under the authority and control of the Board of Transportation. (1925, c. 71, s. 3; 1957, c. 65, s. 11; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1987, c. 747, s. 3.1.)

§ 160A-298. Railroad crossings.

(a) A city shall have authority to direct, control, and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings, and bridges be constructed so as not to interfere with drainage patterns or with the ordinary travel and use of the public streets and alleys.

(b) The costs of constructing, reconstructing, and improving public streets and alleys, including the widening thereof, within areas covered by railroad cross ties, including cross timbers, shall be borne equally by the city and the railroad company. The costs of maintaining and repairing such areas after construction shall be borne by the railroad company.

(c) A city shall have authority to require the installation, construction, erection, reconstruction, and improvement of warning signs, gates, lights, and other safety devices at grade crossings, and the city shall bear ninety percent (90%) of the costs thereof and the railroad company shall bear ten percent (10%) of the costs. The costs of maintaining warning signs, gates, lights, and other safety devices installed after January 1, 1972, shall be borne equally by the city and the railroad company. The maintenance shall be performed by the railroad company and the city shall pay annually to the railroad company fifty percent (50%) of these costs. In maintaining maintenance cost records and determining such costs, the city and the railroad company shall use the same methods and procedures as are now or may hereafter be used by the Board of Transportation.

(d) A city shall have authority to require that a grade crossing be eliminated and replaced by a railroad bridge or by a railroad underpass, if the council finds as a fact that the grade crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. In such event, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs. If the city constructs a new street which requires a grade separation and which does not replace an existing street, the city shall bear all of the costs. If a railroad company constructs a new track across at grade, or under, or over an

existing street, the railroad company shall pay the entire cost thereof. The city shall pay the costs of maintaining street bridges which cross over railroads. Railroad companies shall pay the cost of maintaining railroad bridges over streets, except that cities shall pay the costs of maintaining street pavement, sidewalks, street drainage, and street lighting where streets cross under railroads.

(e) Whenever the widening, improving, or other changes in a street require that a railroad bridge be relocated, enlarged, heightened, or otherwise reconstructed, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs.

(f) It is the intent of this section to make uniform the law concerning the construction and maintenance of railroad crossings, bridges, underpasses, and warning devices within cities. To this end, all general laws and local acts in conflict with this section are repealed, and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it specifically so provides by express reference to this section. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1; 1973, c. 507, s. 5.)

§ 160A-299. Procedure for permanently closing streets and alleys.

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance

with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted. The failure to send notice by registered or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

The provisions of this subsection regarding division of right- of-way in street or alley closings may be altered as to a particular street or alley closing by the assent of all property owners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each such owner. The plat shall be signed by each property owner who, under this section, has an ownership right in the closed street or alley.

(d) This section shall apply to any street or public alley within a city or its extraterritorial jurisdiction that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. This section also applies to unopened streets or public alleys that are shown on plats but that have not been accepted or maintained by the city, provided that this section shall not abrogate the rights of a dedicator, or those claiming under a dedicator, pursuant to G.S. 136-96.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) A city may reserve a right, title, and interest in any improvements or easements within a street closed pursuant to this section. An easement under this subsection shall include utility, drainage, pedestrian, landscaping, conservation, or other easements considered by the city to be in the public interest. The reservation of an easement under this subsection shall be stated in the order of closing. The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

(g) The city may retain utility easements, both public and private, in cases of streets withdrawn under G.S. 136-96. To retain such easements, the city council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements. Notice by certified or registered mail shall be provided to the party withdrawing the street from dedication under G.S. 136-96 at least five days prior to the hearing. The declaration must be passed prior to filing of any plat or map or declaration of withdrawal with the register of deeds. Any property owner filing such plats, maps, or declarations shall include the city declaration with the declaration of withdrawal and shall show the utilities retained on any map or plat showing the withdrawal. (1971, c. 698, s. 1;

1973, c. 426, s. 47; c. 507, s. 5; 1977, c. 464, s. 34, 1981, c. 401; c. 402, ss. 1, 2; 1989, c. 254; 1993, c. 149, s. 1; 2015-103, s. 1.)

§ 160A-299.1. Applications for intermittent closing of roads within watershed improvement project by municipality; notice; costs; markers.

(a) Upon proper application by the board of commissioners of a drainage district established under the provisions of Chapter 156 of the General Statutes by the board of trustees of a watershed improvement district established under the provisions of Article 2 of Chapter 139 of the General Statutes, by the board of county commissioners of any county operating a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes, by the board of commissioners of any watershed improvement commission appointed by a board of county commissioners, or by the board of supervisors of any soil and water conservation district designated by a board of county commissioners to exercise authority in carrying out a county watershed improvement program, any municipality for roads or streets coming under its jurisdictional control is hereby authorized to permit the intermittent closing of any highway or public road within the boundaries of any watershed improvement project operated by the applicants, whenever in the judgment of the municipality it is necessary to do so, and when the highway or public road will be intermittently subject to inundation by floodwaters retained by an approved watershed improvement project.

(b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the appropriate municipality by the public body having jurisdiction over the watershed improvement project. The application shall specify the highway, road, or street involved, and shall request that a permit be granted to the applicant public body to allow the intermittent closing of the road.

(c) Upon receipt of such an application the municipality shall give public notice of the proposed action by publication in a newspaper of general circulation in the county or counties, within which the proposed intermittent closing of road or roads would occur; and such notices shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition, the municipality shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notices to the appropriate offices of the public utility or common carrier having jurisdiction over the affected facilities of the public utility or common carrier. Not sooner than 14 days after publication and mailing of notices, the municipality may issue its permit with respect to such road.

(d) All cost in connection with the publication and mailing of notices shall be paid by the applicant. In the event any municipality issues a permit allowing the intermittent closing of a road, the permit shall contain a provision that the applicant public body having jurisdiction over the watershed improvement project causing the potential flooding shall cause suitable markers to be installed on the road to advise the general public of the intermittent closing of the road. (1975, c. 639, s. 2.)

§ 160A-300. Traffic control.

A city may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic upon the public streets, sidewalks, alleys, and bridges of the city. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

§ 160A-300.1. Use of traffic control photographic systems.

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(b1) Any traffic control photographic system installed on a street or highway must be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 30 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation either of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

(1a) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of

the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices.

(d) This section applies only to the Cities of Albemarle, Charlotte, Durham, Fayetteville, Greensboro, Greenville, High Point, Locust, Lumberton, Newton, Rocky Mount, and Wilmington, to the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, Pineville, and Spring Lake, and to the municipalities in Union County. (1997-216, ss. 1, 2; 1999-17, s. 1; 1999-181, ss. 1, 2; 1999-182, s. 2; 1999-456, s. 48(c); 2000-37, s. 1; 2000-97, s. 2; 2001-286, ss. 1, 2; 2001-487, s. 37; 2003-86, s. 1; 2003-380, s. 2; 2007-341, s. 2; 2010-132, s. 17.)

§ 160A-300.5: Repealed by Session Laws 2009-459, s. 2, effective October 1, 2009.

§ 160A-300.6. Regulation of golf carts on streets, roads, and highways.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a city may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12b), on any public street, road, or highway where the speed limit is 35 miles per hour or less within its municipal limits or on any property owned or leased by the city.

(b) By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway. (2009-459, s. 3.)

§ 160A-301. Parking.

(a) On-Street Parking. – A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by coins, tokens, cash, credit cards, debit cards, or electronic means. Proceeds from the use of parking meters on public streets must be used to defray the cost of enforcing and administering traffic and parking ordinances and regulations.

(b) Off-Street Parking. – A city may by ordinance regulate the use of lots, garages, or other facilities owned or leased by the city and designated for use by the public as parking facilities. The city may impose fees and charges for the use of these facilities, and may provide for the collection of these fees and charges through parking meters, attendants, automatic gates, or any other feasible means. The city may make it unlawful to park any vehicle in an off-street parking facility without paying the established fee or charge and may ordain other regulations pertaining to the use of such facilities.

Revenues realized from off-street parking facilities may be pledged to amortize bonds issued to finance such facilities, or used for any other public purpose.

(c) Nothing contained in Public Laws 1921, Chapter 2, Section 29, or Public Laws 1937, Chapter 407, Section 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom.

(d) The governing body of any city may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominium complex, or commercial office complex, or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle.

(e) The registered owner of a vehicle that has been leased or rented to another person or company shall not be liable for a violation of an ordinance adopted pursuant to this section if, after receiving notification of the civil violation within 90 days of the date of occurrence, the owner, within 30 days thereafter, files with the officials or agents of the municipality an affidavit including the name and address of the person or company that

leased or rented the vehicle. If notification is given to the owner of the vehicle after 90 days have elapsed from the date of the violation, the owner is not required to provide the name and address of the lessee or renter, and the owner shall not be held responsible for the violation. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1; 1973, c. 426, s. 48; 1979, c. 745, s. 2; 2003-380, s. 1; 2015-226, s. 1.)

§ 160A-302. Off-street parking facilities.

A city shall have authority to own, acquire, establish, regulate, operate, and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

§ 160A-302.1. Fishing from bridges regulated.

The governing body of any city is hereby authorized to enact an ordinance prohibiting or regulating fishing from any bridge for the purpose of protecting persons fishing on the bridge from passing vehicular or rail traffic. Such ordinance may also prohibit or regulate fishing from any bridge one mile beyond the corporate limits of the city where the board or boards of county commissioners by resolution agree to such prohibition or regulation; provided, however, that the board or boards of county commissioners may upon 30 days' written notice withdraw their respective approval of the municipal ordinance, and that ordinance shall have no further effect within that county's jurisdiction. The ordinance shall provide that signs shall be posted on any bridge where fishing is prohibited or regulated reflecting such prohibition or regulation. In any event, no one may fish from the drawspan of any regularly attended drawbridge.

The police department of the city is hereby vested with the jurisdiction and authority to enforce any ordinance passed pursuant to this section.

The authority granted under the provisions of this section shall be subject to the authority of the Board of Transportation to prohibit fishing on any bridge on the State highway system. (1971, c. 690, ss. 2, 3, 6; c. 896, s. 15; 1973, c. 426, s. 49; c. 507, s. 5.)

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

(a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(b1) An abandoned motor vehicle is one that:

(1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or

(2) Is left on property owned or operated by the city for longer than 24 hours; or

(3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or

(4) Is left on any public street or highway for longer than seven days or is determined by law enforcement to be a hazard to the motoring public.

(b2) A junked motor vehicle is an abandoned motor vehicle that also:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or

(3) Is more than five years old and worth less than one hundred dollars ($100.00) or is more than five years old and worth less than five hundred dollars ($500.00) as provided by the municipality in an ordinance adopted under this section; or

(3a) Repealed by Session Laws 2009-97, s. 1, effective October 1, 2009.

(4) Does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. – Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city, shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,

d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and

e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the

value of the vehicle is less than the amount of the lien, the city may destroy it.

(e) Repealed by Session Laws 1983, c. 420, s. 13.

(f) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(g) Nothing in this section shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(h) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983. (1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1; 1973, c. 426, s. 50; 1975, c. 716, s. 5; 1983, c. 420, ss. 11-13; 1997-456. s. 27; 2005-10, ss. 1, 3; 2006-15, s. 1; 2006-166, s. 2; 2006-171, s. 1; 2007-208, s. 1; 2009-97, s. 1; 2010-132, s. 20.)

§ 160A-303.1. Regulation of the placing of trash, refuse and garbage within municipal limits.

The governing body of any municipality is hereby authorized to enact an ordinance prohibiting the placing, discarding, disposing or leaving of any trash, refuse or garbage upon a street or highway located within that municipality or upon property owned or operated by the municipality unless such garbage, refuse or trash is placed in a designated location or container for removal by a specific garbage or trash service collector. Any ordinance adopted pursuant hereto may prohibit the placing, discarding, disposing or leaving of any trash, refuse or garbage upon private property located within the municipality without the consent of the owner, occupant, or lessee thereof and may provide that the placing, discarding, disposing or leaving of the articles forbidden by this section shall, for each day or portion thereof the articles or matter are left, constitute a separate offense.

The governing body of a municipality, in any ordinance adopted pursuant hereto, may provide that a person who violates the ordinance may be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 953.)

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to

authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or
(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00) or is more than five years old and appears to be worth less than five hundred dollars ($500.00) as provided by the municipality in an ordinance adopted under this section.
(4) Repealed by Session Laws 2009-97, s. 2, effective October 1, 2009.

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;
(2) Promotion of tourism and other economic development opportunities;
(3) Indirect protection of public health and safety;
(4) Preservation of the character and integrity of the community; and
(5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) Hearing Procedure. – Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
    a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,
c. Provide for an appeal to district court from that hearing,
d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any ordinance adopted pursuant to this section shall include a prohibition against removing or disposing of any motor vehicle that is used on a regular basis for business or personal use. (1983, c. 841, s. 2; 1985, c. 737, s. 2; 1987, c. 42, s. 2; c. 451, s. 2; 1989, c. 3; c. 743, s. 2; 2005-10, ss. 2, 3; 2006-15, s. 3; 2006-166, s. 2; 2006-171, s. 1; 2007-208, s. 2; 2007-505, s. 3; 2009-97, s. 2.)

§ 160A-304. Regulation of taxis.

(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city; provided, however, that the license or permit fee for taxicab drivers shall not exceed fifteen dollars ($15.00). As a condition of licensure, the city may require an applicant for licensure to pass a controlled substance examination. The ordinances may also specify the types of taxicab services that are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger or party requests exclusive use of the taxicab. In the event the applicant is to be subjected to a national criminal history background check, the ordinance shall specifically authorize the use of FBI records. The ordinance shall require any applicant who is subjected to a national criminal history background check to be fingerprinted.

The Department of Public Safety may provide a criminal record check to the city for a person who has applied for a license or permit through the city. The city shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a

search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The city shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
(2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;
(4) Violation of any federal or State law relating to prostitution;
(5) Noncitizenship in the United States;
(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(b) When a city ordinance grants a taxi franchise for operation of a stated number of taxis within the city, the holder of the franchise shall report at least quarterly to the council the average number of taxis actually in operation during the preceding quarter. The council may amend a taxi franchise to reduce the number of authorized vehicles by the average number not in actual operation during the preceding quarter, and may transfer the unused allotment to another franchised operator. Such amendments of taxi franchises shall not be subject to G.S. 160A-76. Allotments of taxis among franchised operators may be transferred only by the city council, and it shall be unlawful for any franchised operator to sell, assign, or otherwise transfer allotments under a taxi franchise.

(c) Nothing in this Chapter authorizes a city to adopt an ordinance doing any of the following with respect to a TNC service regulated under Article 10A of Chapter 20 of the General Statutes:

(1) Requiring licensing or regulating.
(2) through (5) Repealed by Session Laws 2015-237, s. 6, effective October 1, 2015.
(6) Requiring or prohibiting taxi franchises or taxi operators from contracting with a transportation network company regulated under Article 10A of

Chapter 20 of the General Statutes. (1943, c. 639, s. 1; 1945, c. 564, s. 2; 1971, c. 698, s. 1; 1981, c. 412, s. 4; c. 606, s. 5; c. 747, s. 66; 1987, c. 777, s. 7; 2002-147, s. 14; 2003-65, s. 1; 2013-413, s. 12.1(b); 2014-100, s. 17.1(o); 2014-115, s. 17; 2015-237, s. 6.)

§ 160A-305. Agreements under National Highway Safety Act.

Any city is hereby authorized to enter into agreements with the State of North Carolina and its agencies, and with the federal government and its agencies, to secure the full benefits available to the city under the National Highway Safety Act of 1966, and to cooperate with State and federal agencies, other public and private agencies, interested organizations, and individuals, to effectuate the purposes of the act and subsequent amendments thereof. (1967, c. 1255; 1971, c. 698, s. 1.)

§ 160A-306. Building setback lines.

(a) A city shall have authority to (i) classify all or a portion of the streets in the city according to their size, present and anticipated traffic loads, and other characteristics relevant to the achievement of the purposes of this section, and (ii) establish by ordinance minimum distances that buildings and other permanent structures or improvements constructed along each class or type of street shall be set back from the right-of-way line or the center line of an existing or proposed street. Portions of any street may be classified in a manner different from other portions of the same street where the characteristics of the portions differ.

(b) Any setback line shall be designed

(1) To promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrian traffic on the street and sidewalks and providing adequate fire lanes between buildings, and

(2) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.

(c) A setback-line ordinance shall permit affected property owners to appeal to the council for variance or modification of setback requirements as they apply to a particular piece of property. The council may vary or modify the requirements upon a showing that

(1) The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement,

(2) The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted, and

(3) Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity.

In granting relief, the council may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties. The council may delegate authority to hear appeals under setback-line ordinances to any authorized body to hear appeals under zoning ordinances. If this is done, appeal to the council from the board shall be governed by the same laws and rules as appeals from decisions granting or denying variances or modifications under the zoning ordinance. (1971, c. 698, s. 1; 1987, c. 747. ss. 13, 14.)

§ 160A-307. Curb cut regulations.

(a) A city may by ordinance regulate the size, location, direction of traffic flow, and manner of construction of driveway connections into any street or alley. The ordinance may require the construction or reimbursement of the cost of construction and public dedication of medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any street or alley if all of the following apply:

(1) The need for such improvements is reasonably attributable to the traffic using the driveway.

(2) The improvements serve the traffic of the driveway.

(b) No street or alley under the control of the Department of Transportation may be improved without the consent of the Department of Transportation. A city shall not require the applicant to acquire right-of-way from property not owned by the applicant. However, an applicant may voluntarily agree to acquire such right-of-way. (1971, c. 698, s. 1; 1987, c. 747, s. 16; 2019-111, s. 1.16.)

§ 160A-307.1. Limitation on city requirements for street improvements related to schools.

A city may only require street improvements related to schools that are required for safe ingress and egress to the municipal street system and that are physically connected to a driveway on the school site. The required improvements shall not exceed those required pursuant to G.S. 136-18(29). G.S. 160A-307 shall not apply to schools. A city may only require street improvements related to schools as provided in G.S. 160A-372. The cost of any improvements to the municipal street system pursuant to this section shall be reimbursed by the city. Any agreement between a school and a city to make improvements to the municipal street system shall not include a requirement for acquisition of right-of-way by the school, unless the school is owned by an entity that has eminent domain power. Any right-of-way costs incurred by a school for required improvements pursuant to this section shall be reimbursed by the city. Notwithstanding any provision of this Chapter to the contrary, a city may not condition the approval of any zoning, rezoning, or permit request on the waiver or reduction of any provision of this section. The term "school," as used in this section, means any facility engaged in the educational instruction of children in any grade or combination of grades from kindergarten through the twelfth grade at which attendance satisfies the compulsory attendance law and includes charter schools authorized under G.S. 115C-218.5. (2017-57, s. 34.6A(b); 2017-197, s. 7.5; 2018-5, s. 34.18(a); 2018-97, s. 7.4(a); 2018-114, s. 26.)

§ 160A-308. Regulation of dune buggies.

A municipality may by ordinance regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the municipality on the foreshore, beach strand and the barrier dune system. Violation of any ordinance adopted by the governing body of a municipality pursuant to this section is a Class 3 misdemeanor.

Provided, a municipality shall not prohibit the use of such specified vehicles from the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities. Commercial fishermen, however, shall abide by all other regulations or restrictions duly enacted by municipalities under this section. (1973, cc. 856, 1401; 1993, c. 539, s. 1086; 1994, Ex. Sess., c. 14, s. 68, c. 24, s. 14(c).)

§ 160A-309. Intersection and roadway improvements.

A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the city or its designated agency determines that: (i) the public cost will not exceed the estimated cost of providing for those public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements, and the adjacent or ancillary private land development improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section. (2005-426, s. 8(c).)

§ 160A-310. Reserved for future codification purposes.

Article 16.

Public Enterprise.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

As used in this Article, the term "public enterprise" includes:

(1) Electric power generation, transmission, and distribution systems.

(2) Water supply and distribution systems.

(3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.

(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and

any other activities related to the exploration for natural gas, whether within the State or without.

(5) Public transportation systems.

(6) Solid waste collection and disposal systems and facilities.

(7) Cable television systems.

(8) Off-street parking facilities and systems.

(9) Airports.

(10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. (1971, c. 698, s. 1; 1975, c. 549, s. 2; c. 821, s. 3; 1977, c. 514, s. 2; 1979, c. 619, s. 2; 1989, c. 643, s. 5; 1991 (Reg. Sess., 1992), c. 944, s. 14; 2000-70, s. 3.)

§ 160A-312. Authority to operate public enterprises.

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the corporate limits of the city, and may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise. (1971, c. 698, s. 1; 1973, c. 426, s. 51; 1975, c. 821, s. 5; 1979, 2nd Sess., c. 1247, s. 29; 1991 (Reg. Sess., 1992), c. 836, s. 1.)

§ 160A-313. Financing public enterprise.

Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a city shall have full authority to finance the cost of any public enterprise by levying taxes, borrowing money, and appropriating any other revenues therefor, and by accepting and administering gifts and grants from any source on behalf thereof. (1971, c. 698, s. 1.)

§ 160A-314. Authority to fix and enforce rates.

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished or to be furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given

at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(4) A city may adopt an ordinance providing that any fee imposed under this subsection may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

This subdivision applies only to the Cities of Creedmoor, Durham and Winston-Salem, the Towns of Bolton, Butner, Fairmont, Garner, Kernersville, Knightdale, La Grange, Morrisville, Pembroke,

Proctorville, Rowland, St. Pauls, Stem, Wendell, and Zebulon, and the Village of Clemmons.

(5) A city shall not impose a stormwater utility fee on a runway or taxiway located on military property.

(6) For all airports other than those covered by the exemption in subdivision (5) of this subsection, a city shall list separately the amount of a stormwater utility fee levied on airport runways and taxiways from the amount levied on the remainder of the airport property. An airport shall be exempt from paying a stormwater utility fee levied on its runways and taxiways. To qualify for an exemption under this subdivision, an airport shall use the amount of savings realized from this exemption for attracting business to the airport and shall provide certification to the city that the savings realized shall be used for this purpose. Except as otherwise prohibited under federal law, and upon request, an airport shall provide the levying city with evidence that the full amount of savings realized from the exemption authorized under this subdivision has been used or encumbered for the purpose set forth in this subdivision. Any amount of savings realized from the exemption authorized under this subdivision that is not used or encumbered for the purpose set forth in this subdivision shall be remitted to the city to be used in accordance with applicable law governing the use of stormwater utility fee proceeds. Savings realized from the exemption authorized under this subdivision shall be in addition to, and not in lieu of, any local funding provided by the city to the airport.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons. A city may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds accruing due to imposition of a surcharge imposed on another local government located within the State for use of the disposal facility, as authorized by G.S. 160A-314.1, to be used to support the other services supported by the city's general fund.

(a3) Revisions in the rates, fees, or charges for electric service for cities that are members of the North Carolina Eastern Municipal Power Agency must comply with the public hearing provisions applicable to those cities under G.S. 159B-17.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent

customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(b1) A city shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

c. The person is or becomes responsible for the bill for the service to the customer.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the city shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer.

(b3), (b4) Reserved.

(b5) **(Applicable to certain localities)** Except as provided in subsections (a1) and (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

This subsection applies only to the Cities of Creedmoor, Durham and Winston-Salem, the Towns of Butner, Garner, Kernersville, Knightdale, Morrisville, Stem, Wendell, and Zebulon, and the Village of Clemmons.

(c) **(Applicable to other localities)** Except as provided in subsection (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Notwithstanding subsection (b1) of this section, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith.

(f) (1) A city may adopt an ordinance providing that a fee charged by the city for sewer services and remaining unpaid for a period of 90 days may be collected in any manner by which delinquent personal or real property taxes can be collected. If the ordinance states that delinquent fees may be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property owned by the person contracting with the city for the service, and the ordinance shall provide for an appeals process. If a lien is placed on real property, the lien shall be valid from the time of filing in the office of the clerk of superior court of the county in which the service was provided and shall include a statement containing the name and address of the person against whom the lien is claimed, the name of the city claiming the lien, the specific service that was provided, the amount of the unpaid charge for that service, and the date and place of furnishing that service. A lien on real property is not effective against an interest in real property conveyed after the fees become delinquent if the interest is recorded in the office of the register of deeds prior to the filing of the lien for delinquent water or sewer services. No lien under this act shall be valid unless filed in accordance with this section after 90 days of the date of the failure to pay for the service or availability fees and within 180 days of the date of the failure to pay for the service or fees. The lien may be discharged as provided in G.S. 44-48.

The city shall adopt an appeals process providing notice and an opportunity to be heard in protest of the imposition of such liens. The county tax office, once notified of the city's lien, shall include the lien amount on any tax bills printed subsequent to the notification. The county tax office shall add or remove liens from the tax bill at the request of the city (such as in the case of an appeal where the city decides to cancel the lien).

(2) This section [subsection] applies only to the City of Locust and to the Towns of Bolton, Fairmont, La Grange, New London, Pembroke, Proctorville, Rowland, St. Pauls, and Stanfield.

(g) A city may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes. (1971, c. 698, s. 1; 1991, c. 591, s. 1; c. 652, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 46; 1995 (Reg. Sess., 1996), c. 594, s. 28; 2000-70, s. 4; 2005-441, ss. 3(a), (b), 4; 2009-302, s. 3(a), (b); 2010-59, ss. 1, 2; 2011-109, s. 1; 2012-55, s. 2; 2012-167, s. 2; 2013-413, s. 59.4(d); 2017-44, ss. 1, 2(a)-(c); 2017-132, s. 2; 2017-138, s. 4(a).)

§ 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid waste fees.

(a) A city may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

A city may impose a fee for the use of a disposal facility provided by the city. Except as provided in this subsection, the fee for use may not exceed the cost of operating the facility. The fee may exceed those costs if the city enters into a contract with another local government located within the State to accept the other local government's solid waste and the city by ordinance levies a surcharge on the fee. The fee authorized by this paragraph may only be used to cover the costs of operating the facility. The surcharge authorized by this paragraph may be used for any purpose for which the city may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal.

(a1) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the city disposal facility is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city. To the extent that the services provided by the city disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same city, the city may charge an availability fee to cover the costs of the additional services provided by the city disposal facility.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city.

(b) A city may adopt an ordinance providing that any fee imposed under subsection (a) or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with

property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee. (1991, c. 652, s. 5; 2007-550, s. 10(b); 2013-413, s. 59.4(c).)

§ 160A-315. Billing and collecting agents for certain sewer systems.

Any city that maintains and operates a sewage collection and disposal system but does not maintain and operate a water distribution system is authorized to contract with the owner or operator of the water distribution system operating within the area served by the city sewer system to act as the billing and collection agent of the city for any charges, rents, or penalties imposed by the city for sewer services. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

§ 160A-316. Independent water companies to supply information.

The owner or operator of any independent or private water distribution system operating within a city that maintains and operates a sewage collection and disposal system shall furnish to the city upon request copies of water meter readings and any other water consumption records and data that the city may require to bill and collect its sewer rents and charges. The city shall pay the reasonable cost of supplying this information. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.

(a) Connections. – A city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line or sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(a4) System Development Fees. – A city may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes.

(b) Solid Waste. – A city may require an owner of improved property to do any of the following:

(1) Place solid waste in specified places or receptacles for the convenience of city collection and disposal.

(2) Separate materials before the solid waste is collected.

(3) Participate in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm,

company, corporation, or unit of local government. A city may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the city or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the city or its designee, then ownership of these materials is transferred to the city or its designee.

(4) Participate in any solid waste collection service provided by the city or by a person who has a contract with the city if the owner or occupant of the property has not otherwise contracted for the collection of solid waste from the property.

(c) A city may impose a fee for the solid waste collection service provided under subdivision (4) of subsection (b) of this section. The fee may not exceed the costs of collection.

(d) In accordance with G.S. 87-97.1, when developed property is located so as to be served by a city water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the city water line and the city shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well. (1917, c. 136, subch. 7, s. 2; C.S., s. 2806; 1971, c. 698, s. 1; 1979, c. 619, s. 14: 1981, c. 823; 1989, c. 741, s. 2; 1991, c. 698, s. 2; 1993, c. 165, s. 2; 1995, c. 511, s. 4; 2015-246, s. 3.5(f); 2017-138, s. 4(b).)

§ 160A-318. Mutual aid contracts.

(a) Any two or more cities, counties, water and sewer authorities, metropolitan sewage districts, sanitary districts, or private utility companies or combination thereof may enter into contracts with each other to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies under such terms and conditions as may be agreed upon. Mutual aid contracts may include provisions for furnishing personnel, equipment, apparatus, supplies and materials; for reimbursement or indemnification of the aiding party for loss or damage incurred by giving aid; for delegating authority to a designated official or employee to send aid upon request; and any other provisions not inconsistent with law.

(b) Officials and employees furnished by one party in aid of another party pursuant to a mutual aid contract entered into under authority of this section shall be conclusively deemed for all purposes to remain officials and employees of the aiding party. While providing aid to another and while traveling to and from another city or county pursuant to giving aid, they shall retain all rights, privileges, and immunities, including coverage under the North Carolina Workers' Compensation Act, as they enjoy while performing their normal duties.

(c) Notwithstanding any other provisions of law to the contrary, any party to a mutual aid contract entered into under authority of this section, may sell or otherwise convey or deliver to another party to the contract personal property to be used in restoring utility services pursuant to the contract, without following procedures for the sale or disposition of property prescribed by any general law, local act, or city charter.

(d) Nothing in this section shall be construed to deprive any party to a mutual aid contract of its discretion to send or decline to send its personnel, equipment, and apparatus in aid of another

party to the contract under any circumstances, whether or not obligated by the contract to do so. In no case shall a party to a mutual aid contract or any of its officials or employees be held to answer in any civil or criminal action for declining to send personnel, equipment, or apparatus to another party to the contract, whether or not obligated by contract to do so. (1967, c. 450; 1971, c. 698, s. 1; 1991, c. 636, s. 3.)

§ 160A-319. Utility franchises.

(a) A city shall have authority to grant upon reasonable terms franchises for a telephone system and any of the enterprises listed in G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years. A franchise granted for a sanitary landfill shall be subject to all requirements pertaining thereto under G.S. 130A-294. A franchise for solid waste collection or disposal systems and facilities, other than sanitary landfills, shall not be granted for a period of more than 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

(b) For the purposes of this section, "cable television system" means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. "Cable television system" does not include providing master antenna services only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1975, c. 664, s. 11; 1991 (Reg. Sess., 1992), c. 1013, s. 2; 2006-151, s. 15; 2017-10, s. 3.2(c); 2018-114, s. 21(b).)

§ 160A-320. Public enterprise improvements.

(a) Authorization. – A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. – The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project. (2005-426, s. 8(d).)

§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.

(a) A city is authorized to sell or lease as lessor any public enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfers to another governmental entity pursuant to G.S. 160A-274 or as provided in subsection (b) of this section, a city-owned public enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems.

(b) For the sale, lease, or discontinuance of water treatment systems, water distribution systems, or wastewater collection and treatment systems, a city may, but is not required to, submit to its voters the question of whether such sale, lease, or discontinuance shall be undertaken. The referendum is to be conducted pursuant to the general and local laws applicable to special elections in such city. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C.S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1973, c. 489, s. 2; 2011-212, s. 1; 2018-5, s. 37.1(e).)

§ 160A-322. Contracts for electric power and water.

A city is authorized to enter into contracts for a period not exceeding 40 years for the supply of water, and for a period not exceeding 30 years for the supply of electric power or other public commodity or services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1.)

§ 160A-323. Load management and peak load pricing of electric power.

In addition and supplemental to the powers conferred upon municipalities by the laws of the State and for the purposes of conserving electricity and increasing the economy of operation of municipal electric systems, any municipality owning or operating an electric distribution system, any municipality engaging in a joint project pursuant to Chapter 159B of the General Statutes and any joint agency created pursuant to Chapter 159B of the General Statutes, shall have and may exercise the power and authority:

(1) To investigate, study, develop and place into effect procedures and to investigate, study, develop, purchase, lease, own, operate, maintain, and put into service devices, which will temporarily curtail or cut off certain types of appliances or equipment for short periods of time whenever an unusual peak

demand threatens to overload the electric system or economies would result; and

(2) To fix rates and bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the electric system. (1977, c. 232.)

§ 160A-324. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in an act of the General Assembly includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation, was providing solid waste collection services in the area to be annexed, (iii) is still providing such services on the date the act becomes law, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have, subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the effective date of the annexation a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) The city shall make a good faith effort to provide at least 30 days before the effective date of the annexation a copy of the act to each private firm providing solid waste collection services in the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure, substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards existing at the time of notice provided pursuant to subsection (b) of this section, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which the bill making the annexation is enacted on or after January 1, 2007.

(g) If the city fails to offer a contract to the firm within 30 days following the effective date of the annexation act, the firm may appeal within 60 days following the effective date of the annexation act to the Local Government Commission for an order directing the city to offer a contract. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall order the city to pay to the firm a civil penalty of the amount of payments it finds that the city would have had to make under the contract, during the noncompliance period until the contract offer is made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the introduction of the bill under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. – A private solid waste collection firm. (1989, c. 598, s. 1; 2006-193, s. 3.)

§ 160A-325. Selection or approval of sites for certain sanitary landfills; solid waste defined.

(a) The governing board of a city shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(b) As used in this Part, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1991 (Reg. Sess., 1992), c. 1013, s. 3.)

§ 160A-326. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The City, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.2, or agent of: the City, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the City.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the City and all services performed by a railroad pursuant to a contract with the City in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right-of-way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail-related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the City or a railroad, or otherwise occupied by the City or a railroad, pursuant to charter grant, fee-simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the City concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. – The City may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. –

(1) If the City enters into any contract authorized by subsection (b) of this section, the contract shall require the City to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the City, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the City does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the City, the City shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for

property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. – The aggregate liability of the City, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. – This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

(f) Applicability. – This section shall apply only to municipalities with a population of more than 500,000 persons, according to the latest decennial census, or to municipalities that have entered into a transit governance interlocal agreement with, among other local governments, a city with a population of more than 500,000 persons. (2002-78, s. 3; 2012-79, s. 1.14(f).)

§ 160A-327. Displacement of private solid waste collection services.

(a) A unit of local government shall not displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, except as provided for in this section.

(b) Before a local government may displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, the unit of local government shall publish notice of the first meeting where the proposed change in solid waste collection service will be discussed. Notice shall be published once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government. The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of this section, but in no event later than six months after the date of the first meeting pursuant to subsection (b) of this section, the unit of local government may proceed to take formal action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 15 months from the date of the first publication of notice, unless the unit of local government provides compensation to the displaced private company as follows:

(1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for collection services provided in the displacement area for the six months prior to the first publication of notice required under subsection (b) of this section.

(2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than six months prior to the first publication of notice required under subsection (b) of this section, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for the period of time that the private company provided such services in the displacement area.

(3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be for six months based on the monthly average total gross revenues for three months the immediate preceding the first publication of notice required under subsection (b) of this section.

(d) If the local government elects to provide compensation pursuant to subsection (c) of this section, the amount due from the unit of local government to the displaced company shall be paid as follows: one-third of the compensation to be paid within 30 days of the displacement and the balance paid in six equal monthly installments during the next succeeding six months.

(e) If the unit of local government fails to change the provision of solid waste services as described in the notices required under subsection (b) of this section within six months of the date of the first meeting pursuant to subsection (b) of this section, the unit of local government shall not take action to displace without complying again with the provisions of subsection (b) of this section.

(f) Notice of the provision of solid waste collection service shall be filed with the unit of local government clerk of all cities and counties located in the private company's collection area or within five miles thereof.

(g) This section shall not apply when a private company is displaced as the result of an annexation under Article 4A of Chapter 160A of the General Statutes or an annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, 160-49.3, or 160A-324 shall apply.

(h) If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (f) of this section, the private company shall make available to the unit of local government not later than 30 days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section.

(i) Nothing in this section shall affect the authority of a city or county to establish recycling service where recycling service is not currently being offered.

(j) As used in this section, the following terms mean:

(1) Collection. – The gathering of municipal solid waste, recovered materials, or recyclables from residential, commercial, industrial, governmental, or institutional customers and transporting it to a sanitary landfill or other disposal facility. Collection does not include transport from a transfer station or processing point to a disposal facility.

(2) Displacement. – Any formal action by a unit of local government that prohibits a private company from providing all or a portion of the collection services for municipal solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to fund competing collection services for municipal solid waste, recovered materials, or recyclables that the private company is providing in the affected areas at least 90 days prior to the date of the first publication of notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:

a. Failure to renew a franchise agreement or contract with a private company.

b. Taking action that results in a change in solid waste collection services because the private company's operations present an imminent and substantial threat to human health or safety or are causing a substantial public nuisance.

c. Taking action that results in a change in solid waste collection services because the private company has materially breached its franchise agreement or the terms of a contract with the local government, or the company has notified the local government that it no longer intends to honor the terms of the franchise agreement or contract. Notice of breach must be delivered in writing, delivered by certified mail to the firm in question with 30 days to cure the violation of the contract.

d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.

e. Providing temporary collection services under a declared state of emergency.

f. Taking action that results in a change in solid waste collection services due to the existing providers' felony conviction of a violation in the State of federal or State law governing the solid waste collection or disposal.

g. Contracting with a private company to continue its existing services or provide a different level of service at a negotiated price on terms agreeable to the parties.

(3) Municipal solid waste. – As defined in G.S. 130A-290(18a).

(4) Unit of local government. – A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both. (2006-193, s. 4.)

§ 160A-328. Local government landfill liaison.

(a) A city that has planning jurisdiction over any portion of the site of a sanitary landfill may employ a local government landfill liaison. No person who is responsible for any aspect of the management or operation of the landfill may serve as a local government landfill liaison. A local government landfill liaison shall have a right to enter public or private lands on which the landfill facility is located at reasonable times to inspect the landfill operation in order to:

(1) Ensure that the facility meets all local requirements.

(2) Identify and notify the Department of suspected violations of applicable federal or State laws, regulations, or rules.

(3) Identify and notify the Department of potentially hazardous conditions at the facility.

(b) Entry pursuant to this section shall not constitute a trespass or taking of property. (2007-550, s. 11(b).)

§ 160A-329. Provision of municipal services to certain properties.

(a) A municipality shall provide municipal services as defined under subsection (b) of this section to any property if that property owner submitted a petition for voluntary annexation under Article 4A of this Chapter, and the municipal governing board voted on an annexation ordinance for that property but the annexation ordinance failed of adoption. This section applies if the property owner (i) submits to the governing board a notice exercising the provisions of this section within 60 days of this section becoming law and (ii) agrees in writing to all the requirements contained in any utility extension agreement that was presented to the governing board at the same meeting as the annexation that failed of adoption. The municipal governing board may not impose more burdensome requirements or commitments on the property owner that are inconsistent with the requirements and commitments that are contained in the utility extension agreement.

(b) For purposes of this section, prior to the effective date of the annexation of the property, the term "municipal services" only means water and sewer services, but only if the municipality has water and sewer capacity. For purposes of this section, prior to or after the effective date of annexation into a municipality, for any property subject to a declaration of covenants, conditions, and restrictions of a subdivision that permits an association to enter into agreement with utility providers prior to July 1, 2014, "municipal services" includes water service but not sewer service despite any language to the contrary in an executed and recorded utility extension agreement. For purposes of this section, prior to the effective date of annexation, the term "municipal services" specifically does not include any of the following services of the municipality: police protection, fire protection, solid waste services, or street maintenance services.

(c) Requirements and commitments contained in the utility extension agreement that was presented to the governing board at the same meeting as the annexation ordinance that failed of adoption shall continue as obligations of the agreement unless the city council relieves the property owner of the requirement or commitment. Those requirements and commitments include, but are not limited to, the committed elements of a development plan in a zoning map case approved by the county where the property is located. (2013-386, s. 1; 2014-47, s. 2.)

§ 160A-330. Reserved for future codification purposes.

Part 2. Electric Service in Urban Areas.

§ 160A-331. Definitions.

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) "Assigned area" means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) "Assigned supplier" means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

(1b) The "determination date" is

a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;

b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;

c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) "Line" means any conductor located inside the city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, except as follows:

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises.

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

(3) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one "premises," except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

(4) "Primary supplier" means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.

(5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other

than itself within the limits of a city, or that has a conductor located within 300 feet of an area annexed by a city that is a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 52; 1997-346, s. 1; 1999-111, s. 1; 2003-24, s. 1; 2005-150, s. 2.)

§ 160A-331.1: Repealed by Session Laws 2007-419, s. 3, effective August 21, 2007.

§ 160A-331.2. Agreements of electric suppliers.

(a) The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries, or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city.

(b) Repealed by Session Laws 2007-419, s. 1, effective August 21, 2007.

(c) To the extent negotiations undertaken pursuant to subsection (b) of this section, as enacted by S.L. 2005-150, have not resulted in an agreement between a negotiating electric membership corporation and a negotiating city by May 31, 2007, jurisdiction shall immediately lie in the North Carolina Utilities Commission to resolve all issues related to those negotiations. Either party to the negotiations may petition the Commission to exercise the jurisdiction conferred in this subsection upon the filing of a petition and the payment of a filing fee of five hundred dollars ($500.00). In reaching its decision, the Commission shall include consideration of the public convenience and necessity. The Commission shall not consider rate differentials between the involved city and the involved electric membership corporation.

(d) Notwithstanding an order of the Commission issued pursuant to subsection (c) of this section:

(1) Any electric membership corporation or city may furnish electric service to any consumer who desires service from that electric membership corporation or city at any premises being served by another electric membership corporation or city, or at premises which another electric membership corporation or city has the right to serve pursuant to subsection (c) of this section, upon agreement of the affected electric membership corporation or city, subject to approval by the Commission.

(2) The Commission shall have the authority and jurisdiction, after notice to all affected electric membership corporations and cities and after a hearing, if a hearing is requested by any affected electric membership corporation or city, or any other interested party, to order any electric membership corporation or city which may reasonably do so to furnish electric service to any consumer who desires service from that electric membership corporation or city at any premises being served by another electric membership corporation or city pursuant to subsection (c) of this section or subdivision (1) of this subsection, or which another electric membership corporation or city has the right to serve pursuant to subsection (c) of this section or subdivision (1) of this subsection, and to order the other electric membership corporation or city to cease and desist from furnishing electric service to such premises, upon finding that service to the consumer by the electric membership corporation or city which is then furnishing service, or which has the right to furnish service to those premises, is or will be inadequate or undependable, or that the rates, conditions of service, or service regulations, applied to such consumer, are unreasonably discriminatory.

(e) Assignments or reassignments made or approved by the Commission pursuant to subsection (c) or (d) of this section shall be deemed to be service area agreements approved pursuant to subsection (a) of this section. (2005-150, s. 3; 2007-419, s. 1.)

§ 160A-332. Electric service within city limits.

(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date, as defined in G.S. 160A-331(1b), shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.

(3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but

wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except with the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.

(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier for the premises, shall not have the right to serve those premises.

(7) Except as provided in subdivisions (1), (2), (3), (5), (6), and (6a) of this section, a secondary supplier shall not furnish electric service within the

corporate limits of any city unless it first obtains the written consent of the city and the primary supplier.

(b) In any city that is first incorporated after April 20, 1965, in which, on the effective date of the incorporation, there is more than one supplier of electric service, all suppliers of electric service therein shall continue to have the rights and be subject to the restrictions in effect before the city was incorporated until there is a primary supplier within the city.

(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within 30 days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1997-346, s. 2; 1999-111, s. 1; 2003-24, s. 1; 2005-150, ss. 4, 5; 2017-102, s. 30.)

§ 160A-333. Temporary electric service.

No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this Part if such premises were already constructed. The construction of lines for, and the furnishing of, temporary electric service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish service to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier that furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 53.)

§ 160A-334. Authority and jurisdiction of Utilities Commission.

Notwithstanding G.S. 160A-332 and 160A-333, if the North Carolina Utilities Commission finds that service being furnished to or to be furnished to the consumer by a secondary supplier is or will be inadequate or undependable, or that rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory, the Commission shall have the

authority and jurisdiction, after notice to each affected electric supplier, and after hearing, if a hearing is requested by an interested party, to:

(1) Order a primary supplier that is subject to the jurisdiction of the Commission to furnish electric service to any consumer who desires service from the primary supplier at any premises served by a secondary supplier, or at premises which a secondary supplier has the right to serve pursuant to other sections of this Part, and to order such secondary supplier to cease and desist from furnishing electric service to such premises, or

(2) Order any secondary supplier to cease and desist from furnishing electric service to any premises being served by it or to any premises which it has the right to serve pursuant to other sections of this Part, if the consumer desires service from a primary supplier that is not subject to the jurisdiction of the Commission and which is willing to furnish service to such premises. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 54.)

§ 160A-335. Discontinuance of service and transfer of facilities by secondary supplier.

A secondary supplier may voluntarily discontinue its service to any premises and remove any of its electric facilities located inside the corporate limits of a city or sell and transfer such facilities to a primary supplier in such city, subject to approval by the North Carolina Utilities Commission, if the Commission determines that the public interest will not thereby be adversely affected. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ 160A-336. Electric service for city facilities.

No provisions of this Part shall prevent a city that is a primary supplier from furnishing its own electric service for city facilities, or prevent any other primary supplier from furnishing electric street lighting service to a city inside its corporate limits. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ 160A-337. Effect of Part on rights and duties of primary supplier.

Except for the rights granted to and restrictions upon primary suppliers contained in the provisions of this Part, nothing in this Part shall diminish, enlarge, alter, or affect in any way the rights and duties of a primary supplier to furnish electric service to premises within the corporate limits of a city. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ 160A-338. Electric suppliers subject to police power.

No provisions of this Part shall restrict the exercise of the police power of a city over the erection and maintenance of poles, wires, and other facilities of electric suppliers in streets, alleys, and other public ways. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§§ 160A-339 through 160A-340. Reserved for future codification purposes.

Article 16A.

Provision of Communications Service by Cities.

§ 160A-340. Definitions.

The following definitions apply in this Article:

(1) City-owned communications service provider. – A city that provides communications service using a communications network, whether directly, indirectly, or through an interlocal agreement or a joint agency.

(2) Communications network. – A wired or wireless network for the provision of communications service.

(3) Communications service. – The provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public, or any sector of the public, for a fee, regardless of the technology used to deliver the service. The terms "cable service," "telecommunications service," and "video programming service" have the same meanings as in G.S. 105-164.3. The following is not considered the provision of communications service:

a. The sharing of data or voice between governmental entities for internal governmental purposes.

b. The remote reading or polling of data from utility or parking meters, or the provisioning of energy demand reduction or smart grid services for an electric, water, or sewer system.

c. The provision of free services to the public or a subset thereof.

(4) High-speed Internet access service. – Internet access service with transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband data gathering and reporting.

(5) Interlocal agreement. – An agreement between units of local government as authorized by Part 1 of Article 20 of Chapter 160A of the General Statutes.

(6) Joint agency. – A joint agency created under Part 1 of Article 20 of Chapter 160A of the General Statutes. (2011-84, s. 1(a).)

§ 160A-340.1. City-owned communications service provider requirements.

(a) A city-owned communications service provider shall meet all of the following requirements:

(1) Comply in its provision of communications service with all local, State, and federal laws, regulations, or other requirements applicable to the provision of the communications service if provided by a private communications service provider.

(2) In accordance with the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, establish one or more separate enterprise funds for the provision of communications service, use the enterprise funds to separately account for revenues, expenses, property, and source of investment dollars associated with the provision of communications service, and prepare and publish an independent annual report and audit in accordance with generally accepted accounting principles that reflect the fully allocated cost of providing the

communications service, including all direct and indirect costs. An annual independent audit conducted under G.S. 159-34 and submitted to the Local Government Commission satisfies the audit requirement of this subdivision.

(3) Limit the provision of communications service to within the corporate limits of the city providing the communications service.

(4) Shall not, directly or indirectly, under the powers of a city, exercise power or authority in any area, including zoning or land-use regulation, or exercise power to withhold or delay the provision of monopoly utility service, to require any person, including residents of a particular development, to use or subscribe to any communications service provided by the city-owned communications service provider.

(5) Shall provide nondiscriminatory access to private communications service providers on a first-come, first-served basis to rights-of-way, poles, or conduits owned, leased, or operated by the city unless the facilities have insufficient capacity for the access and additional capacity cannot reasonably be added to the facilities. For purposes of this subdivision, the term "nondiscriminatory access" means that, at a minimum, access shall be granted on the same terms and conditions as that given to a city-owned communications service provider.

(6) Shall not air advertisements or other promotions for the city-owned communications service on a public, educational, or governmental access channel if the city requires another communications service provider to carry the channel. The city shall not use city resources that are not allocated for cost accounting purposes to the city-owned communications service to promote city-owned communications service in comparison to private services or, directly or indirectly, require city employees, officers, or contractors to purchase city services.

(7) Shall not subsidize the provision of communications service with funds from any other noncommunications service, operation, or other revenue source, including any funds or revenue generated from electric, gas, water, sewer, or garbage services.

(8) Shall not price any communications service below the cost of providing the service, including any direct or indirect subsidies received by the city-owned communications service provider and allocation of costs associated with any shared use of buildings, equipment, vehicles, and personnel with other city departments. The city shall, in calculating the costs of providing the communications service, impute (i) the cost of the capital component that is equivalent to the cost of capital available to private communications service providers in the same locality and (ii) an amount equal to all taxes, including property taxes, licenses, fees, and other assessments that would apply to a private communications service provider, including federal, State, and local taxes; rights-of-way,

franchise, consent, or administrative fees; and pole attachment fees. In calculating the costs of the service the city may amortize the capital assets of the communications system over the useful life of the assets in accordance with generally accepted principles of governmental accounting.

(9) The city shall annually remit to the general fund of the city an amount equivalent to all taxes or fees a private communications service provider would be required to pay the city or county in which the city is located, including any applicable tax refunds received by the city-owned communications service provider because of its government status and a sum equal to the amount of property tax that would have been due if the city-owned communications service provider were a private communications service provider.

(b) A city-owned communications service provider shall not be required to obtain voter approval under G.S. 160A-321 prior to the sale or discontinuance of the city's communications network. (2011-84, s. 1(a).)

§ 160A-340.2. Exemptions.

(a) The provisions of G.S. 160A-340.1, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to the purchase, lease, construction, or operation of facilities by a city to provide communications service within the city's corporate limits for the city's internal governmental purposes, including the sharing of data or voice between governmental entities for internal governmental purposes, or within the corporate limits of another unit of local government that is a party with the city to an interlocal agreement under Part 1 of Article 20 of Chapter 160A of the General Statutes for the provision of internal government services.

(b) The provisions of G.S. 160A-340.1, 160A-340.4, and 160A-340.5 do not apply to the provision of communications service in an unserved area. A city seeking to provide communications service in an unserved area shall petition the North Carolina Utilities Commission for a determination that an area is unserved. The petition shall identify with specificity the geographic area for which the designation is sought. Any private communications service provider, or any other interested party, may, within a time established by order of the Commission, which time shall be no fewer than 30 days, file with the Commission an objection to the designation on the grounds that one or more areas designated in the petition is not an unserved area or that the city is not otherwise eligible to provide the service. For purposes of this subsection, the term "unserved area" means a census block, as designated by the most recent census of the U.S. Census Bureau, in which at least fifty percent (50%) of households either have no access to high-speed Internet service or have access to high-speed Internet service only from a satellite provider. A city may petition the Commission to serve multiple contiguous unserved areas in the same proceeding.

(c) The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to a city or joint agency providing communications service as of

January 1, 2011, provided the city or joint agency limits the provision of communications service to any one or more of the following:

(1) Persons within the corporate limits of the city providing the communications service. For the purposes of this subsection, corporate limits shall mean the corporate limits of the city as of April 1, 2011, or as expanded through annexation.

(2) Existing customers of the communications service as of April 1, 2011. Service to a customer outside the service area of the city or joint agency who is also a public entity must comply with the open bidding procedures of G.S. 143-129.8 upon the expiration or termination of the existing service contract.

(3) The following service areas:

a. For the joint agency operated by the cities of Davidson and Mooresville, the service area is the combined areas of the city of Cornelius; the town of Troutman; the town of Huntersville; the unincorporated areas of Mecklenburg County north of a line beginning at Highway 16 along the west boundary of the county, extending eastward along Highway 16, continuing east along Interstate 485, and continuing eastward to the eastern boundary of the county along Eastfield Road; and the unincorporated areas of Iredell County south of Interstate 40, excluding Statesville and the extraterritorial jurisdiction of Statesville.

b. For the city of Salisbury, the service area is the municipalities of Salisbury, Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, Landis and the corridors between those cities. The service area also includes the economic development sites, public safety facilities, governmental facilities, and educational schools and colleges located outside the municipalities and the corridors between the municipalities and these sites, facilities, schools, and colleges. The corridors between Salisbury and these municipalities and these sites, facilities, schools, and colleges includes only the area necessary to provide service to these municipalities and these sites, facilities, schools, and colleges and shall not be wider than 300 feet. The elected bodies of Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, and Landis shall vote to approve the service extension into each respective municipality before Salisbury can provide service to that municipality. The Rowan County Board of County Commissioners shall vote to approve service extension to any governmental economic development site, governmental facility, school, or college owned by Rowan County. The Rowan Salisbury School Board shall also vote to approve service extension to schools.

c. For the city of Wilson, the service area is the county limits of Wilson County, including the incorporated areas within the County. Notwithstanding any other provision of this Article, the city of Wilson may continue the provision of communication services to persons and businesses in the temporary extension areas under the condition that the

provision of communication services in such areas is terminated by a date which is 30 days after the date retail service is first available in the area from a competitive provider of communications service that will provide Fiber to the Premises (FTTP) service. For purposes of this subdivision, "temporary extension areas" shall mean (i) the corporate limits of the Town of Pinetops and (ii) any service connection located within 800 feet of the centerline of Christian Road (State Road No. 1942) between its intersection with Bloomery Road (State Road No. 1996) and West Hornes Church Road (State Road No. 1941). Prior to the cessation of service, the city of Wilson may establish rates, fees, charges, and penalties for the communication services provided in the temporary extension areas in the same manner as communication services provided in the county limits of Wilson County, including the incorporated areas within the County. Service will be deemed available for purposes of this provision upon the certification by a competitive provider to the city that service is available in a temporary extension area. For purposes of this subdivision, a competitive provider is an incumbent local exchange carrier or cable telecommunications company that is not presently providing Fiber to the Premises (FTTP) service in the temporary extension areas.

d. For all other cities or joint agencies offering communications service, the service area is the area designated in the map filed as part of the initial notice of franchise with the Secretary of State as of January 1, 2011.

(d) The exemptions provided in this section do not exempt a city or joint agency from laws and rules of general applicability to governmental services, including nondiscriminatory obligations.

(e) In the event a city subject to the exemption set forth in subsection (c) of this section provides communications service to a customer outside the limits set forth in that subsection, the city shall have 30 days from the date of notice or discovery to cease providing service to the customer without loss of the exemption. (2011-84, s. 1(a); 2017-180, s. 1.)

§ 160A-340.3. Notice; public hearing.

A city or joint agency that proposes to provide communications service shall hold not fewer than two public hearings, which shall be held not less than 30 days apart, for the purpose of gathering information and comment. Notice of the hearings shall be published at least once a week for four consecutive weeks in the predominant newspaper of general circulation in the area in which the city is located. The notice shall also be provided to the North Carolina Utilities Commission, which shall post the notice on its Web site, and to all companies that have requested service of the notices from the city clerk. The city shall deposit the notice in the U.S. mail to companies that have requested notice at least 45 days prior to the hearing subject to the notice. Private communications service providers shall be permitted to participate fully in the public hearings by presenting testimony and documentation relevant to their service offerings and the city's plans. Any feasibility study,

business plan, or public survey conducted or prepared by the city in connection with the proposed communications service project is a public record as defined by G.S. 132-1 and shall be made available to the public prior to the public hearings required by this section. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto. (2011-84, s. 1(a).)

§ 160A-340.4. Financing.

(a) A city or joint agency subject to the provisions of G.S. 160A-340.1 shall not enter into a contract under G.S. 160A-19 or G.S. 160A-20 to purchase or to finance the purchase of property for use in a communications network or to finance the construction of fixtures or improvements for use in a communications network unless it complies with subsection (b) of this section. The provisions of this section shall not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto.

(b) A city shall not incur debt for the purpose of constructing a communications system without first holding a special election under G.S. 163-297 on the question of whether the city may provide communications service. If a majority of the votes cast in the special election are for the city providing communications service, the city may incur the debt for the service. If a majority of the votes cast in the special election are against the city providing communications service, the city shall not incur the debt. However, nothing in this section shall prohibit a city from revising its plan to offer communications service and calling another special election on the question prior to providing or offering to provide the service. A special election required under Chapter 159 of the General Statutes as a condition to the issuance of bonds shall satisfy the requirements of this section. (2011-84, s. 1(a); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-340.5. Taxes; payments in lieu of taxes.

(a) A communications network owned or operated by a city or joint agency shall be exempt from property taxes. However, each city possessing an ownership share of a communications network and a joint agency owning a communications network shall, in lieu of property taxes, pay to any county authorized to levy property taxes the amount which would be assessed as taxes on real and personal property if the communications network were otherwise subject to valuation and assessment. Any payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the case of taxes on other property.

(b) A city-owned communications service provider shall pay to the State, on an annual basis, an amount in lieu of taxes that would otherwise be due the State if the communications service was provided by a private communications service provider, including State income, franchise, vehicle, motor fuel, and other similar taxes. The amount of the payment in lieu of taxes shall be set annually by the Department of Revenue and shall approximate the taxes that would be due if the communications service was undertaken by a private communications service provider. A city-owned communications service provider must provide information requested by the Secretary of Revenue necessary for calculation of the assessment. The Department must inform each city-owned

communications service provider of the amount of the assessment by January 1 of each year. The assessment is due by March 15 of each year. If the assessment is unpaid, the State may withhold the amount due, including interest on late payments, from distributions otherwise due the city under G.S. 105-164.44I.

(c) A city-owned communications service provider or a joint agency that provides communications service shall not be eligible for a refund under G.S. 105-164.14(c) for sales and use taxes paid on purchases of tangible personal property and services related to the provision of communications service, except to the extent a private communications service provider would be exempt from taxation. (2011-84, s. 1(a).)

§ 160A-340.6. Public-private partnerships for communications service.

(a) Prior to undertaking to construct a communications network for the provision of communications service, a city shall first solicit proposals from private business in accordance with the procedures of this section.

(b) The city shall issue requests for proposals that specify the nature and scope of the requested communications service, the area in which it is to be provided, any specifications and performance standards, and information as to the city's proposed participation in providing equipment, infrastructure, or other aspects of the service. The city may prescribe the form and content of proposals and may require that proposals contain sufficiently detailed information to allow for an objective evaluation of proposals using the factors stated in subsection (d) of this section. Each proposal shall at minimum contain all of the following:

(1) Information regarding the proposer's experience and qualifications to perform the requirements of the proposal.

(2) Information demonstrating the proposer's ability to secure financing needed to perform the requirements of the proposal.

(3) Information demonstrating the proposer's ability to provide staffing, implement work tasks, and carry out all other responsibilities necessary to perform the requirements of the proposal.

(4) Information clearly identifying and specifying all elements of cost of the proposal for the term of the proposed contract, including the cost of the purchase or lease of equipment and supplies, design, installation, operation, management, and maintenance of any system, and any proposed services.

(5) Any other information the city determines has a material bearing on its ability to evaluate the proposal.

(c) The city shall provide notice that it is requesting proposals in accordance with this subsection. The notice shall state the time and place where plans and specifications for the proposed service may be obtained and the time and place for opening proposals. Any notice given under this subsection shall reserve to the city the right to reject any or all proposals. Notice of request for proposals shall be given by all of the following methods:

(1) By mailing a notice of request for proposals to each firm that has obtained a license or permit to use the public rights-of-way in the city to provide a

communications service within the city by depositing such notices in the U.S. mail at least 30 days prior to the date specified for the opening of proposals. In identifying firms, the city may rely upon lists provided by the Office of the Secretary of State and the North Carolina Utilities Commission.

(2) By posting a notice of request for proposals on the city's Web site at least 30 days before the time specified for the opening of proposals.

(3) By publishing a notice of request for proposals in a newspaper of general circulation in the county in which the city is predominantly located at least 30 days before the time specified for the opening of proposals.

(d) In evaluating proposals, the city may consider any relevant factors, including system design, system reliability, operational experience, operational costs, compatibility with existing systems and equipment, and emerging technology. The city may negotiate aspects of any proposal with any responsible proposer with regard to these factors to determine which proposal is the most responsive. A determination of most responsive proposer by the city shall be final.

(e) The city may negotiate a contract with the most responsive proposer for the performance of communications service specified in the request for proposals. All contracts entered into pursuant to this section shall be approved and awarded by the governing body of the city.

(f) If the city is unable to successfully negotiate the terms of a contract with the most responsive proposer within 60 days of the opening of the proposals, the city may proceed to negotiate with the firm determined to be the next most responsive proposer if such a proposer exists. If the city is unable to successfully negotiate the terms of a contract with the next most responsive proposer within 60 days, it may proceed under this Article to provide communications service.

(g) All proposals shall be sealed and shall be opened in public. Provided, that trade secrets shall remain confidential as provided under G.S. 132-1.2. (2011-84, s. 1(a).)

Article 17.

Cemeteries.

§ 160A-341. Authority to establish and operate cemeteries.

A city shall have authority to establish, operate, and maintain cemeteries either inside or outside its corporate limits, may acquire and hold real and personal property for cemetery purposes by gift, purchase, or (for real property) by exercise of the power of eminent domain, may devote any property owned by the city to use as a cemetery, may prohibit burials at any place within the city other than city cemeteries, and may regulate the manner of burial in city cemeteries. Nothing in this section shall confer upon any city authority to prohibit or regulate burials in cemeteries licensed by the State Burial Association Commissioner, or in church cemeteries.

As used in this Article "cemetery" includes columbariums and facilities for cremation. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

§ 160A-342. Authority to transfer cemeteries.

A city may transfer and convey any city cemetery property, together with any accumulated perpetual care trust funds set aside for the maintenance of the cemetery, to any religious organization or cemetery licensed by the State Burial Association Commissioner, upon condition that the transferee will continue use of the property as a cemetery, will perpetually maintain it, and will apply any perpetual care trust funds so transferred only for maintenance of the cemetery. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

§ 160A-343. Authority to abandon cemeteries.

A city shall have authority to abandon any cemetery that has not been used for interment purposes within 10 years. Upon abandonment, all monuments, tombstones, and the contents of all graves within the cemetery shall be transferred at city expense to another city cemetery, or to a cemetery licensed by the State Burial Association Commissioner. After the transfer of monuments, tombstones, and the contents of graves, the city may take possession of, convey, or use the former cemetery property for any lawful purpose. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

§ 160A-344. Authority to assume control of abandoned cemeteries.

(a) Whenever property not under the control or in the possession of any church or religious organization in any city has been heretofore set aside or used for cemetery purposes, and the trustees or owners named in the deed or deeds for the property have died, or are unknown, or the deeds of conveyance have been lost or misplaced and no record of title thereto has been found, and the property has been occupied and used for burial purposes for a time sufficient to identify its use as cemetery property, the city in which the cemetery is located is authorized to take possession of the land and any adjoining land not held by known claimants of title, have the property surveyed and lines established, and to designate and appropriate the property as a city cemetery.

(b) The city may have the land subdivided and laid off into family burial plots, may sell any of the unused lots so laid off to any person for burial purposes, and may use the proceeds of the sale for the improvement and upkeep of the cemetery.

(c) The city may appropriate and use funds for the improvement and maintenance of the cemetery, and all laws and ordinances applicable to city cemeteries shall apply to the cemetery from and after the date that the city assumes control of it. (1971, c. 698, s. 1.)

§ 160A-345. Authority to condemn cemeteries.

A city shall have authority to acquire title in fee simple by purchase or exercise of the power of eminent domain to any cemetery, graveyard, or burial place within the city and to operate and maintain the property so acquired as a city cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner, nor to property owned or controlled by any church or religious organization, unless the owner of the property consents to the acquisition. (1951, c. 385, s. 1; 1971, c. 698, s. 1.)

§ 160A-346. Authority to condemn easements for perpetual care.

A city shall have authority to acquire an easement for perpetual care by gift, grant, purchase, or exercise of the power of eminent domain in any cemetery, graveyard, or burial place within the city. When a perpetual care easement is acquired under this section, all city ordinances concerning

the care and upkeep of city cemeteries shall be applicable to the cemetery, and the income from city perpetual care trust funds may be used to care for and maintain the cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner or to property owned or controlled by any church or religious organization unless the owner of the property consents to the acquisition. (1951, c. 385, s. 2; 1971, c. 698, s. 1.)

§ 160A-347. Perpetual care trust funds.

(a) A city is authorized to create a perpetual care trust fund for any cemeteries under its ownership or control, to accept gifts, grants, and devises on behalf of the perpetual care trust fund, to deposit any revenues realized from the sale of lots in or the operation of city cemeteries in the perpetual care trust fund, and to hold and administer the trust fund for the purpose of perpetually caring for and beautifying the city's cemeteries. The city may make contracts with the owners of plots in city cemeteries obligating the city to maintain the plots in perpetuity upon payment of such sums as the council may fix.

(b) The principal of perpetual care trust funds shall be held intact, and the income from such funds shall be used to carry out contracts with plot owners for the perpetual care of the plots, and to maintain and perpetually care for the cemetery.

(c) Perpetual care trust funds shall be kept separate and apart from all other city funds, and shall in no case be appropriated by, lent to, or in any manner used by the city for any purpose other than the perpetual care of city cemeteries. (1917, c. 136, subch. 9, s. 1; C.S., ss. 2810, 2811, 2812; 1927, c. 254; 1971, c. 698, s. 1; 2011-284, s. 113.)

§ 160A-348. Regulation of city cemeteries.

A city may by ordinance adopt rules and regulations concerning the opening of graves, the erection of tombstones and monuments, the building of walls and fences, the hours of opening and closing and all other matters concerning the use, operation, and maintenance of city cemeteries. The ordinance may impose a schedule of prices for lots and fees for the opening of graves in the cemetery, but it may not require the owners of plots to purchase monuments, vaults, or other items from the city. (1971, c. 698, s. 1.)

§ 160A-349. Reserved for future codification purposes.

Article 17A.

Cemetery Trustees.

§ 160A-349.1. Creation of board authorized; official title; terms of office; vacancies.

The governing body of any municipal corporation which now owns or shall hereafter own a cemetery is authorized, if it is deemed proper, to create a board composed of not less than three nor more than five persons, to be known as "Cemetery Trustees of the Town or City of_____, North Carolina"; shall fix the term of office of each member, in no case to exceed five years, and in case of any vacancy by death, resignation or otherwise, elect a successor. (Pub. Loc. 1923, c. 583, s. 1.)

§ 160A-349.2. Members to meet and organize; meetings; bond of secretary and treasurer; record of proceedings.

The members of said board, when properly elected, shall within 30 days after notice of their election convene and designate one of their number chairman, one secretary and treasurer, and provide for regular meetings at such times as the said board shall fix; it shall also fix the bond to be given by the secretary and treasurer, conditioned for the faithful accounting of all moneys which shall come into his hands; shall provide for special meetings, and shall cause the secretary to keep a record of its proceedings. (Pub. Loc. 1923, c. 583, s. 2.)

§ 160A-349.3. Property vested.

Upon the creation of such board the title to all property held by the town or city and used for cemetery purposes shall pass to and vest in said board, subject to the same limitations, conditions and restrictions as it was held by the town or city; provided, that the governing body of the town or city may at any time by resolution direct that title to such property shall pass to and vest in the town or city itself, and in such event it shall be the duty of the board and its officers to execute all necessary documents to effect such transfer and vesting. (Pub. Loc. 1923, c. 583, s. 3; 1979, 2nd Sess., c. 1247, s. 30.)

§ 160A-349.4. Control and management; superintendent and assistants; enumeration of powers.

The said board shall have the exclusive control and management of such cemetery; shall have the power to employ a superintendent and such assistants as may be needed, and may do any and all things pertaining to the control, maintenance, management and upkeep of the cemetery which the governing body of the town or city could have done, or which by law the governing body of the town or city shall hereafter be authorized to do. (Pub. Loc. 1923, c. 583, s. 4.)

§ 160A-349.5. Rules continued in force.

All rules and regulations heretofore adopted by the town or city for the control, upkeep, management, and maintenance, as well as policing of the cemetery, shall continue in force and effect until and after the said board shall have changed the same as herein provided for. (Pub. Loc. 1923, c. 583, s. 5.)

§ 160A-349.6. Rules for maintaining order and policing; force of rules; copy to governing body; publication.

The said board shall have power to adopt rules and regulations for maintaining order in the cemetery and policing the same, and such rules and regulations, when adopted, shall have the same force and effect as ordinances adopted and passed by the governing body of the town or city. When any such rules and regulations shall be adopted the secretary of the board shall transmit a copy thereof to the governing body of the town or city, and shall cause a copy to be published in some newspaper published in the town or city, and the said rules and regulations shall be in force and effect 10 days after their publication. (Pub. Loc. 1923, c. 583, s. 6.)

§ 160A-349.7. Presentation of budget; details of budget; appropriation; payment to board.

Thirty days prior to the adoption of the annual budget by the governing body of the town or city, the said trustees shall present to such governing body a budget for the ensuing year, in which said budget there shall be set out in detail an accurate account of the receipts and expenditures of

the board for the previous year, the estimated expense for the ensuing year, the estimated source of income from all sources, other than appropriation by the governing body of the town or city, any balance on hand, and such other information as the said trustees may think proper; and the said governing body of the town or city shall in the annual budget include such appropriation as it deems proper for the care and maintenance of the said cemetery for the ensuing year, which shall be paid over to the board of trustees in monthly installments.

For purposes of the Local Government Budget and Fiscal Control Act (Chapter 159, Subchapter III), the board of trustees of a cemetery is a board of the municipal corporation establishing the board of trustees and is not a public authority as defined by G.S. 159-7. (Pub. Loc. 1923, c. 583, s. 7; 1971, c. 780, s. 37.3; 1973, c. 474, s. 31; 1979, 2nd Sess., c. 1247, s. 31.)

§ 160A-349.8. Commissioners to obtain maps, plats and deeds; list of lots sold and owners; surveys and plats to be made; additional lots, streets, walks and parkways; price of lots; regulation of sale of lots.

The board of trustees shall obtain from the governing body all maps, plats, deeds and other evidences relating to the lands, lots and property of the cemetery; they shall also obtain from the governing body of the town or city, as nearly as possible, an accurate list of the lots theretofore sold, together with the names of the owners thereof. The said board of trustees shall from time to time cause surveys to be made, maps and plats prepared, laying out additional lots, streets, paths, walks and parkways; shall fix a price at which such lots shall be sold, which price may from time to time, in the discretion of the board, be changed; shall adopt rules and regulations as to the sale of said lots and deliver to the purchaser or purchasers deed or evidences of title thereto. (Pub. Loc. 1923, c. 583, s. 8.)

§ 160A-349.9. Power to acquire land; adjacent property; disposal of money from lot sales; investments; income from investment.

The said board shall have the power to acquire additional lands for cemetery purposes, either by purchase or otherwise. In making such additional acquisitions of property, if possible, they shall acquire adjacent property; all moneys received from the sale of lots shall be held by the board of trustees intact and used for the purchase of additional lands; to beautify and otherwise maintain and keep the present property and the future acquired property. The board may, if it seems best to it, invest the said money in good, interest-bearing securities, payable to the said board, and the income derived therefrom shall be by the board used in the beautifying, maintenance and upkeep of the cemetery or cemeteries under its control. (Pub. Loc. 1923, c. 583, s. 9.)

§ 160A-349.10. Power to condemn land; procedure for condemnation; board incorporated.

If it becomes necessary to acquire additional lands for cemetery purposes and the board cannot agree with the owners upon the price thereof, the board shall have the power to condemn the lands for cemetery purposes, and in so doing the provisions of Chapter 40A of the General Statutes shall be followed as nearly as possible, and to that end, and for that purpose, the board of trustees of any cemetery acquired under this Article shall be deemed and considered a corporation and a body politic. (Pub. Loc. 1923, c. 583, s. 10; 2001-487, s. 38(i).)

§ 160A-349.11. Price of lands included in budget.

If any lands are acquired by purchase or condemnation for cemetery purposes and the board of trustees shall not have sufficient funds with which to pay for the same, the amount necessary shall

be included in their budget request, and the governing body of any town or city may make an appropriation to complete the purchase. (Pub. Loc. 1923, c. 583, s. 11; 1979, 2nd Sess., c. 1247, s. 32.)

§ 160A-349.12. Power to accept gifts; exclusive use of gifts.

The board of trustees of any cemetery shall have the power to accept gifts, either by devise or otherwise, and hold the same for the purposes expressed in the gift, and any monies coming into the hands of such board by devise or otherwise shall be by the board used exclusively for the purposes for which it is given. (Pub. Loc. 1923, c. 583, s. 12; 2011-284, s. 114.)

§ 160A-349.13. Sale of unnecessary property.

The board of trustees of any cemetery, created pursuant to this Article, shall have the power to sell at public auction, as provided by G.S. 160-59, any real property, title to which is held by it, which it shall determine to be unfit or unnecessary for cemetery purposes, except when such sale would violate the terms of any deed, gift or trust pursuant to which the property proposed to be sold was acquired. Any such sales and conveyances heretofore made by any such board of trustees are hereby validated. (1951, c. 87.)

§ 160A-349.14. Exercise of powers subject to approval.

The board may not act to acquire or sell land pursuant to G.S. 160A-349.9, G.S. 160A-349.10, or G.S. 160A-349.13 unless such action was approved in advance by the governing body of the town or city. (1979, 2nd Sess., c. 1247, s. 33.)

§ 160A-349.15. Termination.

The governing body of the town or city shall have the authority to terminate the existence of the board at any time. In the event of such termination, all property and assets of the board shall automatically become the property of the town or city and the town or city shall succeed to all rights, obligations and liabilities of the board. Further, in the event of such termination, it shall be the duty of the board and its officers to execute all necessary documents to effect the transfer of property and assets to the town or city. (1979, 2nd Sess., c. 1247, s. 34.)

Article 18.

Parks and Recreation.

§ 160A-350. Short title.

This Article shall be known and may be cited as the "Recreation Enabling Law." (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-351. Declaration of State policy.

The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, that the

creation, establishment, and operation of parks and recreation programs is a proper governmental function, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all its citizens. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-352. Recreation defined.

"Recreation" means activities that are diversionary in character and aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural development and leisure time experiences. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-353. Powers.

In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

(1) Establish and conduct a system of supervised recreation;

(2) Set apart lands and buildings for parks, playgrounds, recreational centers, and other recreational programs and facilities;

(3) Acquire real property, either within or without the corporate limits of the city or the boundaries of the county, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method.

(4) Provide, acquire, construct, equip, operate, and maintain parks, playgrounds, recreation centers, and recreation facilities, including all buildings, structures, and equipment necessary or useful in connection therewith;

(5) Appropriate funds to carry out the provisions of this Article;

(6) Accept any gift, grant, lease, loan, or devise of real or personal property for parks and recreation programs. Devises and gifts may be accepted and held subject to such terms and conditions as may be imposed by the grantor or trustor, except that no county or city may accept or administer any terms that require it to discriminate among its citizens on the basis of race, sex, or religion. (1945, c. 1052; 1971, c. 698, s. 1; 1973, c. 426, s. 55; 2011-284, s. 115.)

§ 160A-354. Administration of parks and recreation programs.

A city or county may operate a parks and recreation system as a line department, or it may create a parks and recreation commission and vest in it authority to operate the parks and recreation system. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-355. Joint parks and recreation systems.

Any two or more units of local government may cooperate in establishing parks and recreation systems as authorized in Article 20, Part 1, of this Chapter. (1945, c. 1052; 1967, c. 1228; 1971, c. 698, s. 1.)

§ 160A-356. Financing parks and recreation.

Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law. (1945, c. 1052; 1971, c. 698, s. 1; 1975, c. 664, s. 12.)

§ 160A-357. Repealed by Session Laws 1975, c. 664, s. 13.

§ 160A-358. Reserved for future codification purposes.

§ 160A-359. Reserved for future codification purposes.

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. (Repealed effective January 1, 2021) Territorial jurisdiction.

(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration.

(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160A-364, and the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning board and the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least four weeks prior to the public hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud.

(b) Any council wishing to exercise extraterritorial jurisdiction under this Article shall adopt, and may amend from time to time, an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development. Boundaries shall be defined, to the extent feasible, in terms of geographical features identifiable on the ground. A council may, in its discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the office of the register of deeds of each county in which any portion of the area lies.

(c) Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the city councils agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

(d) If a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by this Article in any area beyond the city's corporate limits. The county may also, on request of the city council, exercise any or all these powers in any or all areas lying within the city's corporate limits or within the city's specified area of extraterritorial jurisdiction.

(e) No city may hereafter extend its extraterritorial powers under this Article into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. However, the city may do so where the county is not exercising all three of these powers, or when the city and the county have agreed upon the area within which each will exercise the powers conferred by this Article.

(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(f1) When a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. During this period the county may hold hearings and take other measures that may be required in order to adopt its regulations for the area.

(g) When a local government is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement

shall be evidenced by a formally adopted resolution of that government's legislative body. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other legislative bodies concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the legislative bodies concerned.

(h) Nothing in this section shall repeal, modify, or amend any local act which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

(i) Whenever a city or county, pursuant to this section, acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or county acquiring jurisdiction may take any action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided in this subsection, any building, structure, or other land use in a territory over which a city or county has acquired jurisdiction is subject to the ordinances and regulations of the city or county.

(j) Repealed by Session Laws 1973, c. 669, s. 1.

(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from exercise of the municipality's extraterritorial jurisdiction under this Article. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to exercise of the municipality's extraterritorial jurisdiction under this Article. For purposes of complying with 44 C.F.R. Part 60, Subpart A, property that is exempt from the exercise of extraterritorial jurisdiction pursuant to this subsection shall be subject to the county's floodplain ordinance or all floodplain regulation provisions of the county's unified development ordinance.

(*l*) A municipality may provide in its zoning ordinance that an accessory building of a "bona fide farm" as defined by G.S. 153A-340(b) has the same exemption from the building code as it would have under county zoning as provided by Part 3 of Article 18 of Chapter 153A of the General Statutes.

This subsection applies only to the City of Raleigh and the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 13/4; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; c. 1076, s. 3; 1973, c. 426, s. 56; c. 525; c. 669, s. 1; 1977, c. 882; c. 912, ss. 2, 4; 1995 (Reg. Sess., 1996), c. 746, s. 1; 2005-418, s. 10; 2011-34, ss. 1, 2; 2011-363, s. 4; 2014-120, s. 15; 2019-111, s. 2.3.)

§ 160A-360.1. (Repealed effective January 1, 2021) Permit choice.

(a) If a rule or ordinance is amended, including an amendment to any applicable land development regulation, between the time a development permit application is submitted and a development permit decision is made or if a rule or ordinance is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, then G.S. 143-755 shall apply.

(b) For purposes of this section, the definitions in G.S. 143-755 shall apply. (2014-120, s. 16(c); 2019-111, ss. 1.2(a), 2.3.)

§ 160A-361. (Repealed effective January 1, 2021) Planning boards.

(a) Any city may by ordinance create or designate one or more boards or commissions to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the council concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
(7) Perform any other related duties that the council may direct.

(b) A board or commission created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57; 1979, 2nd Sess., c. 1247, s. 35; 1997-309, s. 7; 1997-456, s. 27; 2004-199, s. 41(a); 2019-111, s. 2.3.)

§ 160A-362. (Repealed effective January 1, 2021) Extraterritorial representation.

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning board provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing at least one resident of the entire extraterritorial zoning and subdivision regulation area to the planning board and the board of adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the planning board or board of adjustment to achieve proportional representation only when

the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the planning board or board of adjustment. Membership of joint municipal county planning agencies or boards of adjustment may be appointed as agreed by counties and municipalities. Any advisory board established prior to July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the planning board and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. When selecting a new representative to the planning board or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The board of county commissioners shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within 45 days following the public hearing. Once a city provides proportional representation, no power available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 13/4; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; 1983, c. 584, ss. 1-4; 1995 (Reg. Sess., 1996), c. 746, s. 2; 2005-418, s. 11; 2019-111, s. 2.3.)

§ 160A-363. (Repealed effective January 1, 2021) Supplemental powers.

(a) A city or its designated planning board may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning board with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning board for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning board that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance.

(e) If the city is found to have illegally exacted a tax, fee, or monetary contribution for development or a development permit not specifically authorized by law, the city shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1983, c. 377, s. 9; 2004-199, s. 41(b); 2005-418, s. 1(a); 2007-371, s. 2; 2019-111, s. 2.3.)

§ 160A-364. (Repealed effective January 1, 2021) Procedure for adopting, amending, or repealing ordinances under Article.

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

(b) If the adoption or modification of the ordinance would result in any of the changes listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, or by any other written means reasonably designed to provide actual notice, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the military may provide comments or analysis to the board [governing body of the local government] regarding the compatibility of the proposed changes with military operations at the base. If the board [governing body of the local government] does not receive a response within 30 days of the notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment

with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. The proposed changes requiring notice are:

(1) Changes to the zoning map.
(2) Changes that affect the permitted uses of land.
(3) Changes relating to telecommunications towers or windmills.
(4) Changes to proposed new major subdivision preliminary plats.
(5) An increase in the size of an approved subdivision by more than fifty percent (50%) of the subdivision's total land area including developed and undeveloped land. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 58; 1977, c. 912, s. 5; 1979, 2nd Sess., c. 1247, s. 36; 1981, c. 891, s. 1; 2004-75, s. 2; 2005-426, s. 1(a); 2013-59, s. 2; 2019-111, s. 2.3.)

§ 160A-364.1. (Repealed effective January 1, 2021) Statute of limitations.

(a) A cause of action as to the validity of any ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district request adopted under this Article or other applicable law shall accrue upon adoption of such ordinance and shall be brought within two months as provided in G.S. 1-54.1.

(b) Except as otherwise provided in subsection (a) of this section, an action challenging the validity of any zoning or unified development ordinance or any provision thereof adopted under this Article or other applicable law shall be brought within one year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.

(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action involving the enforcement of a zoning or unified development ordinance or in an action authorized by G.S. 160A-393.1 from raising as a claim or defense in such proceedings the enforceability or the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that such party is in violation of a zoning or unified development ordinance from raising in the appeal the invalidity of such ordinance as a defense to such order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance.

(d) When a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, a city shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to

health or public safety. (1981, c. 891, s. 3; 1995 (Reg. Sess., 1996), c. 746, s. 7; 2011-326, s. 22(b); 2011-384, s. 4; 2013-413, s. 5(b); 2019-111, ss. 1.8, 2.3.)

§ 160A-365. (Repealed effective January 1, 2021) Enforcement of ordinances.

(a) Subject to the provisions of the ordinance, any ordinance adopted pursuant to authority conferred by this Article may be enforced by any remedy provided by G.S. 160A-175.

(b) When any ordinance adopted pursuant to authority conferred by this Article is to be applied or enforced in any area outside the territorial jurisdiction of the city as described in G.S. 160A-360(a), the city and the property owner shall certify that the application or enforcement of the city ordinance is not under coercion or otherwise based upon any representation by the city that the city's approval of any land use planning would be withheld from the property owner without the application or enforcement of the city ordinance outside the territorial jurisdiction of the city. The certification may be evidenced by a signed statement of the parties on any approved plat recorded in accordance with this Article. (1971, c. 698, s. 1; 2015-246, s. 3; 2019-111, s. 2.3.)

§ 160A-366. (Repealed effective January 1, 2021) Validation of ordinance.

Any city ordinance regularly adopted before January 1, 1972, under authority of general laws revised and reenacted in Chapter 160A, Article 19, or under authority of any city charter or local act concerning the same subject matter, is validated with respect to its application within the corporate limits of the city and as to its application within the extraterritorial jurisdiction of the city. Such an ordinance, and any city ordinance adopted since January 1, 1972, under authority of general laws revised and reenacted in Chapter 160A, Article 19, are hereby validated, notwithstanding the fact that such ordinances were not recorded pursuant to G.S. 160A-360(b) or 160A-364 and notwithstanding the fact that the adopting city council did not also adopt an ordinance defining or delineating by specific description the areas within its extraterritorial jurisdiction pursuant to G.S. 160A-360; provided that this act shall be deemed to validate ordinances of cities in Mecklenburg County only with respect to their application within the corporate limits of such cities. (1973, c. 669, s. 2; 2019-111, s. 2.3.)

§§ 160A-367 through 160A-370. Reserved for future codification purposes.

Part 2. Subdivision Regulation.

§ 160A-371. (Repealed effective January 1, 2021) Subdivision regulation.

A city may by ordinance regulate the subdivision of land within its territorial jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance.

Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 2005-418, s. 2(a); 2019-111, s. 2.3.)

§ 160A-372. (Repealed effective January 1, 2021) Contents and requirements of ordinance.

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

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

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements.

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

board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

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

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

(f1) The ordinance shall not require a developer or builder to bury power lines meeting all of the following criteria:

(1) The power lines existed above ground at the time of first approval of a plat or development plan by the city, whether or not the power lines are subsequently relocated during construction of the subdivision or development plan.

(2) The power lines are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development plan.

(f2) The ordinance shall not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.

(g) For purposes of this section, all of the following shall apply with respect to performance guarantees:

(1) Type. – The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" shall mean any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.
b. Letter of credit issued by any financial institution licensed to do business in this State.
c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(1a) Duration. – The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.

(1b) Extension. – A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the city or county, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period; provided, however, that the extension shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (3) of this subsection and shall include the total cost of all incomplete improvements.

(2) Release. – The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city or county that the improvements for which the performance guarantee is being required are complete. The city or county shall return letters of credit or escrowed funds upon completion of the required improvements to the specifications of the city or county, or upon acceptance of the required improvements, if the required improvements are subject to city or county acceptance. When required improvements that are secured by a bond are completed to the specifications of the city or county, or are accepted by the city or county, if subject to city or county acceptance, upon request by the developer, the city or county shall timely provide written acknowledgement that the required improvements have been completed.

(3) Amount. – The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The city or county may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs

for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

(3a) Timing. – A city or county, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.

(4) Coverage. – The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(5) Legal Responsibilities. – No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

a. The local government to whom such performance guarantee is provided.

b. The developer at whose request or for whose benefit such performance guarantee is given.

c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

(6) Multiple Guarantees. – The developer shall have the option to post one type of a performance guarantee as provided for in subdivision (1) of this subsection, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section. (1955, c. 1334, s. 1; 1961, c. 1168; 1971, c. 698, s. 1; 1973, c. 426, s. 59; 1985, c. 146, ss. 1, 2; 1987, c. 747, ss. 9, 18; 1989 (Reg. Sess., 1990), c. 1024, s. 39; 2005-426, s. 2(a); 2015-187, s. 1(a); 2017-40, s. 3(a); 2017-102, s. 31(a), (b); 2019-79, s. 1; 2019-111, s. 2.3; 2019-174, s. 3(a).)

§ 160A-373. (Repealed effective January 1, 2021) Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final decisions on preliminary plats and final plats are to be made by:

(1) The city council,

(2) The city council on recommendation of a designated body, or

(3) A designated planning board, technical review committee, or other designated body or staff person.

From and after the effective date of a subdivision ordinance that is adopted by the city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1997-309, s. 8; 2005-418, s. 3(a); 2019-111, s. 2.3.)

§ 160A-374. (Repealed effective January 1, 2021) Effect of plat approval on dedications.

The approval of a plat shall not be deemed to constitute or effect the acceptance by the city or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, any city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision-regulation jurisdiction but outside the corporate limits of a city shall not place on the city any duty to open, operate, repair, or maintain any street, utility line, or other land or facility, and a city shall in no event be held to answer in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits. Unless a city, county or other public entity operating a water system shall have agreed to begin operation and maintenance of the water system or water system facilities within one year of the time of issuance of a certificate of occupancy for the first unit of housing in the subdivision, a city or county shall not, as part of its subdivision regulation applied to facilities or land outside the corporate limits of a city, require dedication of water systems or facilities as a condition for subdivision approval. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1983 (Reg. Sess., 1984), c. 1080; 1985, c. 635; 2019-111, s. 2.3.)

§ 160A-375. (Repealed effective January 1, 2021) Penalties for transferring lots in unapproved subdivisions.

(a) If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a

subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the

purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1977, c. 820, s. 2; 1993, c. 539, s. 1087; 1994, Ex. Sess., c. 24, s. 14(c); 2005-426, s. 3(a); 2019-111, s. 2.3.)

§ 160A-376. (Repealed effective January 1, 2021) Definition.

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

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations.

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

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

(c) The city may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

(1) The tract or parcel to be divided is not exempted under subdivision (2) of subsection (a) of this section.

(2) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.

(3) The entire area of the tract or parcel to be divided is greater than five acres.

(4) After division, no more than three lots result from the division.

(5) After division, all resultant lots comply with all of the following:

a. Any lot dimension size requirements of the applicable land-use regulations, if any.

b. The use of the lots is in conformity with the applicable zoning requirements, if any.

c. A permanent means of ingress and egress is recorded for each lot. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 61; 1977, c. 912, s. 6; 2003-284, s. 29.23(a); 2005-426, s. 4(a); 2017-10, s. 2.5(b); 2019-111, s. 2.3.)

§ 160A-377. (Repealed effective January 1, 2021) Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), 160A-388(e2)(2), and 160A-393 shall apply to those appeals.

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

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the city council or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board. (2009-421, s. 2(a); 2013-126, s. 12; 2019-111, s. 2.3.)

§ 160A-378. Reserved for future codification purposes.

§ 160A-379. Reserved for future codification purposes.

§ 160A-380. Reserved for future codification purposes.

Part 3. Zoning.

§ 160A-381. (Repealed effective January 1, 2021) Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate

ordinance. Except as provided in subsection (a1) of this section, a zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land. The ordinance shall provide density credits or severable development rights for dedicated rights of way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(a1) A zoning ordinance shall not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.

(b) Expired.

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

(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the city, including, without limitation, taxes, impact fees, building design elements within the scope of subsection (h) of this section, driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities.

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

reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law, except for the purpose of developing and adopting new or amended plans or ordinances as to residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

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

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

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

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this subsection.

(f) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a city may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:

(1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.

(2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.

(3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection.

(g) A zoning 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.

(h) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

(1) The structures are located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes.

(2) The structures are located in an area designated as a historic district on the National Register of Historic Places.

(3) The structures are individually designated as local, State, or national historic landmarks.

(4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.

(5) Where the regulations are applied to manufactured housing in a manner consistent with G.S. 160A-383.1 and federal law.

(6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160A-383 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

(i) Nothing in subsection (h) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements.

(j) 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 city 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 subsection 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. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5; 1985, c. 442, s. 1; 1987, c. 747, s. 11; 1995, c. 357, s. 1; 2005-426, s. 5(a); 2007-381, s. 2; 2011-286, s. 2; 2013-126, s. 4; 2013-413, s. 6(b); 2014-115, s. 17; 2015-86, s. 1; 2015-246, ss. 3.1(a), 4(b), 16; 2015-286, s. 1.8(b); 2019-111, ss. 1.12, 2.3; 2019-174, s. 3(b).)

§ 160A-382. (Repealed effective January 1, 2021) Districts.

(a) For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of

uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by the petitioner or the city or its agencies, but only those conditions approved by the city and consented to by the petitioner in writing may be incorporated into the zoning regulations or permit requirements. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, including the establishment of special or conditional use districts or conditional zoning, a city may not require, enforce, or incorporate into the zoning regulations or permit requirements any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160A-381(h), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (1923, c. 250, s. 2; C.S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7; 1963, c. 1058, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1985, c. 607, s. 1; 2005-426, s. 6(a); 2019-111, ss. 1.14, 2.3.)

§ 160A-383. (Repealed effective January 1, 2021) Purposes in view.

(a) Zoning regulations shall be made in accordance with a comprehensive plan.

(b) Prior to adopting or rejecting any zoning amendment, the governing board shall adopt one of the following statements which shall not be subject to judicial review:

(1) A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.

(2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.

(3) A statement approving the zoning amendment and containing at least all of the following:

a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.

b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.

c. Why the action was reasonable and in the public interest.

(c) Prior to consideration by the governing board of the proposed zoning amendment, the planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

(d) Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city. The regulations may not include, as a basis for denying a zoning or rezoning request from a school, the level of service of a road facility or facilities abutting the school or proximately located to the school.

(e) As used in this section, "comprehensive plan" includes a unified development ordinance and any other officially adopted plan that is applicable. (1923, c. 250, s. 3; C.S., s. 2776(t); 1971, c. 698, s. 1; 2005-426, s. 7(a); 2006-259, s. 28; 2017-10, s. 2.4(c); 2018-5, s. 34.18(b); 2019-111, s. 2.3.)

§ 160A-383.1. (Repealed effective January 1, 2021) Zoning regulations for manufactured homes.

(a) The General Assembly finds and declares 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 which severely restrict the placement of manufactured homes. It is the intent of the General Assembly in enacting this section that cities 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 city may not adopt or enforce zoning regulations or other provisions which have the effect of excluding manufactured homes from the entire zoning jurisdiction.

(d) A city 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 city's comprehensive plan and based on local housing needs, a city 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. (1987, c. 805, s. 1; 2019-111, s. 2.3.)

§ 160A-383.2. (Repealed effective January 1, 2021) Voluntary agricultural districts.

A city may amend the ordinances applicable within its planning 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 ordinances may include provisions regarding on-farm sales, pick-your-own operations, road signs, agritourism, and other activities incident to farming. For purposes of this section, the term "farming" shall have the same meaning as set forth in G.S. 106-581.1. (2005-390, s. 7; 2019-111, s. 2.3.)

§ 160A-383.3. (Repealed effective January 1, 2021) Reasonable accommodation of amateur radio antennas.

A city 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 city. A city 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 city. (2007-147, s. 1; 2019-111, s. 2.3.)

§ 160A-383.4. (Repealed effective January 1, 2021) Local energy efficiency incentives.

(a) Land-Use Development Incentives. – Counties and municipalities, for the purpose of reducing the amount of energy consumption by new development, and thereby promoting the public health, safety, and welfare, may adopt ordinances to grant a density

bonus, make adjustments to otherwise applicable development requirements, or provide other incentives to a developer or builder within the county or municipality and its extraterritorial planning jurisdiction if the developer or builder agrees to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.

(b) Repealed by Session Laws 2009-95, s. 1, effective June 11, 2009. (2007-241, ss. 1, 2; 2008-22, s. 1; 2009-95, s. 1; 2019-111, s. 2.3.)

§ 160A-383.5. (Repealed effective January 1, 2021) Zoning of 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 city 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 city 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 as 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 city. The city 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 city may not withhold a permit if the applicant provides sufficient proof of compliance with this section. The city 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 city 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 Part 5 of this Article, 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 city 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 city 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. (2014-94, s. 2; 2019-111, s. 2.3.)

§ 160A-384. (Repealed effective January 1, 2021) Method of procedure.

(a) Subject to the limitations of this Chapter, the city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts

shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the city. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

(1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Repealed by Session Laws 2019-111, s. 1.4, effective July 11, 2019.

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1; 1985, c. 595, s. 2; 1987, c. 807, s. 1; 1989 (Reg. Sess., 1990), c. 980, s. 1; 1993, c. 469, s. 1; 1995, c. 546, s. 1; 2005-418, s. 4(a); 2009-178, s. 2; 2019-111, ss. 1.4, 2.3.)

§ 160A-385. (Repealed effective January 1, 2021) Changes to land development regulations.

(a) Citizen Comments. –

(1) Subject to the limitations in this Chapter, zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance, including a zoning map or text, that has been properly initiated as provided in G.S. 160A-384, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

(2), (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and applicable to zoning ordinance changes initiated on or after that date.

(b) Amendments in land development regulations, shall not be applicable or enforceable without the written consent of the owner with regard to any of the following:

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

(3) A vested right established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1.

(4) A vested right established by the terms of a development agreement authorized by Part 3D of this Article.

(5) A multi-phased development as provided for in this subdivision, in accordance with G.S. 143-755. A multi-phased development shall be vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subdivision shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(c) Recodified as subdivision (b)(5) of this section by Session Laws 2019-111, s. 1.3(a), effective July 11, 2019.

(d) Subject to subsection (f) of this section, upon issuance of a development permit, the statutory vesting granted by this section for a development shall be effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by statute, local development permits expire one year after issuance unless work authorized by such permit has substantially

commenced. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

(e) Subject to subsection (f) of this section, where multiple local development permits are required to complete a development project, this section, together with G.S. 143-755, authorizes the development permit applicant to choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit shall not be considered an initial development permit.

(f) The establishment of a vested right under any subdivision of subsection (b) of this section does not preclude vesting under one or more other subdivisions of subsection (b) of this section or vesting by application of common law principles. A vested right, once established as provided for in this section, precludes any action by a city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on such development or use. Except where a longer vesting period is provided by statute, the statutory vesting granted by this section shall expire for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property shall expire if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period shall be automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period shall also be tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting. The vested rights granted by this section shall run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and G.S. 136-131.2, in which case the rights granted by this section shall run with the owner of a permit issued by the North Carolina Department of Transportation.

(g) As used in this section, the following terms mean:

(1) Development. – As defined in G.S. 143-755(e)(1).

(2) Development permit. – As defined in G.S. 143-755(e)(2).

(3) Land development regulation. – As defined in G.S. 143-755(e)(3).

(4) Multi-phased development. – A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase. (1923, c. 250, s. 5; C.S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1; 1971, c. 698, s. 1; 1977, c. 912, s. 7; 1985, c. 540, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 1; 1991, c. 512, s. 4; 2005-418, s. 5; 2015-160, s. 1; 2016-111, s. 1; 2019-111, ss. 1.3(a), (b), 2.3.)

§ 160A-385.1. (Repealed effective January 1, 2021) Vested rights.

(a) The General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that city approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

The ability of a landowner to obtain a vested right after city approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(b) Definitions. –

(1) "Landowner" means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

(2) "City" shall have the same meaning as set forth in G.S. 160A-1(2).

(3) "Phased development plan" means a plan which has been submitted to a city by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the city to be a site specific development plan.

(4) "Property" means all real property subject to zoning regulations and restrictions and zone boundaries by a city.

(5) "Site specific development plan" means a plan which has been submitted to a city by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use

permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a city. Unless otherwise expressly provided by the city, such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the city pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the city shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan.

(6) "Vested right" means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

(7) Repealed by Session Laws 2019-111, s. 1.3(c), effective July 11, 2019.

(c) Establishment of vested right. – A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the city with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A city may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A city shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phase development plan shall be deemed approved upon the effective date of the city's action or ordinance relating thereto.

(d) Duration and termination of vested right. –

(1) A right which has been vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the city.

(2) Notwithstanding the provisions of subsection (d)(1), a city may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the city.

(3) Notwithstanding the provisions of (d)(1) and (d)(2), the city may provide by ordinance that approval by a city of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The city still may require the landowner to submit a site specific development plan for approval by the city with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications. Nothing in this section shall be construed to require a city to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.

(4) Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the city to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the city from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

(5) Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

(6) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(e) Subsequent changes prohibited; exceptions. –

(1) A vested right, once established as provided for in this section, precludes any zoning action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

a. With the written consent of the affected landowner;

b. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan;

c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

d. Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the city of the site specific development plan or the phased development plan; or

e. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the city may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(2) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by a city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.

(3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of a city to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.

(f) Miscellaneous provisions. –

(1) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.

(2) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right

exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(3) In the event a city fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice. (1989 (Reg. Sess., 1990), c. 996, s. 2; 2016-111, s. 2; 2019-111, ss. 1.3(c), 2.3.)

§ 160A-386: Repealed by Session Laws 2015-160, s. 2, effective August 1, 2015, and applicable to zoning ordinance changes initiated on or after that date.

§ 160A-387. (Repealed effective January 1, 2021) Planning board; zoning plan; certification to city council.

In order to initially exercise the powers conferred by this Part, a city council shall create or designate a planning board under the provisions of this Article or of a special act of the General Assembly. The planning board shall prepare or shall review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning board shall make a written recommendation regarding adoption of the ordinance to the city council. The city council shall not hold its required public hearing or take action until it has received a recommendation regarding ordinance from the planning board. Following its required public hearing, the city council may refer the ordinance back to the planning board for any further recommendations that the board may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance.

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board. (1923, c. 250, s. 6; C.S., s. 2776(w); 1967, c. 1208, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 8; 2005-418, s. 7(a); 2019-111, s. 2.3.)

§ 160A-388. (Repealed effective January 1, 2021) Board of adjustment.

(a) Composition and Duties. – The zoning or unified development ordinance may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the city council may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. The council may appoint and provide

compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals.

(a1) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

(a2) Notice of Hearing. – Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(b) Repealed by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.

(b1) Appeals. – The board of adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

(1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to

appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from, including any accumulation of fines, during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160A-393 or during the pendency of any civil proceeding authorized by law, including G.S. 160A-393.1, or appeals therefrom, unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. – The ordinance may provide that the board of adjustment may hear and decide special and conditional use permits in accordance with standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits.

(d) Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. –

(1) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(2) A member of any board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e1) Recodified as subdivision (e)(2) by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.

(e2) Quasi-Judicial Decisions and Judicial Review. –

(1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(2) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this

subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(f) Oaths. – The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) Subpoenas. – The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. (1923, c. 250, s. 7; C.S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1; 1971, c. 698, s. 1; 1977, c. 912, ss. 9-12; 1979, c. 50; 1979, 2nd Sess., c. 1247, s. 37; 1981, c. 891, s. 7; 1985, c. 397, s. 2; c. 689, s. 30; 1991, c. 512, s. 2; 1993, c. 539, s. 1088; 1994, Ex. Sess., c. 24, s. 14(c); 2005-418, s. 8(a); 2009-421, s. 5; 2013-126, ss. 1, 2(a), 2(b); 2013-410, s. 25(a); 2019-111, ss. 1.6, 2.3.)

§ 160A-389. (Repealed effective January 1, 2021) Remedies.

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Part or of any ordinance or other regulation made under authority conferred thereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises. (1923, c. 250, s. 8; C.S., s. 2776(y); 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-390. (Repealed effective January 1, 2021) Conflict with other laws.

(a) When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, regulations made under authority of this Part shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the

regulations made under authority of this Part, the provisions of that statute or local ordinance or regulation shall govern.

(b) When adopting regulations under this Part, a city may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is inconsistent with any definition of the same in another statute or in a rule adopted by a State agency, including the State Building Code Council. (1923, c. 250, s. 9; C.S., s. 2776(z); 1971, c. 698, s. 1; 2015-246, s. 18(b); 2019-111, ss. 1.17(b), 2.3.)

§ 160A-391. (Repealed effective January 1, 2021) Other statutes not repealed.

This Part shall not repeal any zoning act or city planning act, local or general, now in force, except those that are repugnant to or inconsistent herewith. This Part shall be construed to be an enlargement of the duties, powers, and authority contained in other laws authorizing the appointment and proper functioning of city planning commissions or zoning commissions by any city or town in the State of North Carolina. (1923, c. 250, s. 11; C.S., s. 2776(aa); 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-392. (Repealed effective January 1, 2021) Part applicable to buildings constructed by State and its subdivisions; exception.

All of the provisions of this Part are hereby made 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, no land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the Council of State. (1951, c. 1203, s. 1; 1971, c. 698, s. 1; 1985, c. 607, s. 2; 2004-199, s. 41(e); 2005-280, s. 1; 2019-111, s. 2.3.)

§ 160A-393. (Repealed effective January 1, 2021) Appeals in the nature of certiorari.

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act or any interlocal agreement authorized by law.

(2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

(3) Quasi-judicial decision. – A decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. Decisions on the approval of site plans are quasi-judicial in nature if the ordinance

authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made.

(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(4) Set forth the relief the petitioner seeks.

(d) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:

a. Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed under this section shall not be rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under G.S. 160A-393.1.

(e) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(f) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent city, or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

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

(h) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (1) of subsection (d) of this section shall have standing to intervene and shall be allowed to intervene as a matter of right.

(2) Any person, other than one described in subdivision (1) of subsection (d) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being

appealed in accordance with subdivisions (2) through (4) of subsection (d) of this section.

(3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (2) through (4) of subsection (d) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

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

(j) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (i) of this section. Except that the court shall allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the petition raises any of the following issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure shall apply to the supplementation of the record of said issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review. –

(1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city, including preemption, or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by competent, material, and substantial evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the court is one set forth in sub-subdivisions a. through d. of subdivision (1) of this subsection, including whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate. Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable de novo.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) except for the items noted in sub-subdivisions a., b., and c. of this subdivision that are conclusively incompetent, the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(*l*) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (k) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

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

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

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued, subject to any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

c. If the court concludes that a zoning board decision upholding a zoning enforcement action was not supported by substantial competent evidence or was otherwise based on an error of law, the court shall reverse the decision.

(m) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. (2009-421, s. 1(a); 2013-126, ss. 13, 14; 2019-111, ss. 1.9, 2.3.)

§ 160A-393.1. (Repealed effective January 1, 2021) Civil action for declaratory relief, injunctive relief, other remedies; joinder of complaint and petition for writ of certiorari in certain cases.

(a) Review of Vested Rights Claim. – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The zoning administrator's or officer's determination may be appealed under G.S. 160A-388(b1). On appeal, the question of law regarding the existence of a vested right shall be reviewed de novo. In lieu of an appeal

under G.S. 160A-388(b1), a person claiming a vested right may bring an original civil action as provided by subsection (b) of this section.

(b) Civil Action. – Except as otherwise provided in this section for claims involving questions of interpretation, in lieu of any remedies available under G.S. 160A-388(b1), a person with standing, as defined in subsection (c) of this section, may bring an original civil action seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, in superior court or federal court to challenge the enforceability, validity, or effect of a local land development regulation for any of the following claims:

(1) The ordinance, either on its face or as applied, is unconstitutional.
(2) The ordinance, either on its face or as applied, is ultra vires, preempted, or otherwise in excess of statutory authority.
(3) The ordinance, either on its face or as applied, constitutes a taking of property.

If the decision being challenged is from an administrative official charged with enforcement of a local land development regulation, the party with standing must first bring any claim that the ordinance was erroneously interpreted to the applicable board of adjustment pursuant to G.S. 160A-388(b1). An adverse ruling from the board of adjustment may then be challenged in an action brought pursuant to this subsection with the court hearing the matter de novo together with any of the claims listed in this subsection.

(c) Standing. – Any of the following criteria shall provide standing to bring an action under this section:

(1) The person has an ownership, leasehold, or easement interest in, or possesses an option or contract to, purchase the property that is the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation.
(2) The person was a development permit applicant before the decision-making board whose decision is being challenged.
(3) The person was a development permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation.

Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed under this section shall not be rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under G.S. 160A-393.1.

(d) Time for Commencement of Action. – Any action brought pursuant to this section shall be commenced within one year after the date on which written notice of the final decision is delivered to the aggrieved party by personal delivery, electronic mail, or by first-class mail.

(e) Joinder. – An original civil action authorized by this section may, for convenience and economy, be joined with a petition for writ of certiorari and decided in the same proceedings. For the claims raised in the original civil action, the parties shall be

governed by the Rules of Civil Procedure. The record of proceedings in the appeal pursuant to G.S. 160A-393 may not be supplemented by discovery from the civil action unless supplementation is otherwise allowed under G.S. 160A-393(j). The standard of review in the original civil action for the cause or causes of action pled as authorized by subsection (b) of this section shall be de novo. The standard of review of the petition for writ of certiorari shall be as established in G.S. 160A-393(k).

(f) For the purposes of this section, the definitions in G.S. 143-755 shall apply. (2019-111, ss. 1.7, 2.3.)

§ 160A-393.2. (Repealed effective January 1, 2021) No estoppel effect when challenging development conditions.

A city or county may not assert before a board of adjustment or in any civil action the defense of estoppel as a result of actions by the landowner or permit applicant to proceed with development authorized by a development permit as defined in G.S. 143-755 if the landowner or permit applicant is challenging conditions that were imposed and not consented to in writing by a landowner or permit applicant. (2019-111, ss. 1.7, 2.3.)

§ 160A-394. Reserved for future codification purposes.

Part 3A. Historic Districts.

§§ 160A-395 through 160A-399: Repealed by Session Laws 1989, c. 706, s. 1.

Part 3B. Historic Properties Commissions.

§§ 160A-399.1 through 160A-400: Repealed by Session Laws 1989, c. 706.

Part 3C. Historic Districts and Landmarks.

§ 160A-400.1. (Repealed effective January 1, 2021) Legislative findings.

The historical 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 in their areas and strengthen the overall economy of the State. This Part authorizes cities and counties of the State within their respective zoning jurisdictions and by means of listing, regulation, and acquisition:

(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; and

(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. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.2. (Repealed effective January 1, 2021) Exercise of powers by counties as well as cities.

The term "municipality" or "municipal" as used in G.S. 160A-400.1 through 160A-400.14 shall be deemed to include the governing board or legislative board of a county, to the end that counties may exercise the same powers as cities with respect to the establishment of historic districts and designation of landmarks. (1989, c. 706, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 40; 2019-111, s. 2.3.)

§ 160A-400.3. (Repealed effective January 1, 2021) Character of historic district defined.

Historic districts established pursuant to this Part shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling, and association. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.4. (Repealed effective January 1, 2021) Designation of historic districts.

(a) Any municipal governing board may, as part of a zoning or other ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional 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:

(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, and

(2) The Department of Natural and 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 municipal governing board within 30 calendar days after a written request for such analysis has been received by the Department of Natural and Cultural Resources shall relieve the municipality of any responsibility for awaiting such analysis, and said board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(c) The municipal 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 ordinance. 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 local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Natural and Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

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

(d) The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to historic districts, and the authority under G.S. 160A-201(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. (1989, c. 706, s. 2; 2009-553, s. 4; 2015-241, s. 14.30(s); 2019-111, s. 2.3.)

§ 160A-400.5. (Repealed effective January 1, 2021) Designation of landmarks; adoption of an ordinance; criteria for designation.

Upon complying with G.S. 160A-400.6, the governing board may adopt and from time to time amend or repeal an ordinance 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 ordinance shall describe each property designated in the ordinance, 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 ordinance shall require that the waiting period set forth in this Part be observed prior to its demolition. For each designated landmark, the ordinance 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. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.6. (Repealed effective January 1, 2021) Required landmark designation procedures.

As a guide for the identification and evaluation of landmarks, the 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 ordinance

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 of a municipality, 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 Natural and Cultural Resources.

(3) The Department of Natural and Cultural Resources, acting through the State Historic Preservation Officer shall either 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 commission, the commission and any city or county governing board shall be relieved of any responsibility to consider such comments.

(4) The preservation commission and the governing board shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(5) Following the joint public hearing or separate public hearings, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(6) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance 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 zoning jurisdiction of a city, a second copy of the ordinance 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 ordinance and all amendments thereto shall be given to the city or county 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 county or city for such period as the designation remains in effect.

(7) Upon the adoption of the landmarks ordinance 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. (1989, c. 706, s. 2; 2002-159, s. 35(m); 2012-18, s. 1.24; 2015-241, s. 14.30(s); 2019-111, s. 2.3.)

§ 160A-400.7. (Repealed effective January 1, 2021) Historic Preservation Commission.

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks respectively, (ii) a planning board established pursuant to this Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission. (1989, c. 706, s. 2; 2005-418, s. 12; 2019-111, s. 2.3.)

§ 160A-400.8. (Repealed effective January 1, 2021) Powers of the Historic Preservation Commission.

A preservation commission established pursuant to this Part may, within the zoning jurisdiction of the municipality:

(1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

(2) Recommend to the municipal 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 the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which 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 with respect to 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 municipality'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; and

(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. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.9. (Repealed effective January 1, 2021) Certificate of appropriateness required.

(a) From and 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 such landmark or within such 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 municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other 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 shall be required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" shall 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" shall be construed to 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 (b) below, the commission shall have no jurisdiction over interior arrangement and 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 which would be incongruous with the special character of the landmark or district.

(b) Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces shall be 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. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such 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) Prior to any action to enforce a landmark or historic district ordinance, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines not inconsistent with this Part for new construction, alterations, additions, moving and demolition. The ordinance may provide, subject to prior adoption by the preservation commission of detailed standards, for the review and approval by an administrative official of applications for a certificate of appropriateness or of minor works as defined by ordinance; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such steps as may be reasonably required in the ordinance and/or rules of procedure to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(d) 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 ordinance 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) An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

(f) 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 shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of 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 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 commission shall be final and binding upon both the State and the preservation commission. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.10. (Repealed effective January 1, 2021) Conflict with other laws.

Whenever any ordinance 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. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.11. (Repealed effective January 1, 2021) Remedies.

In case any building, structure, site, area or object designated as a historic landmark or located within a historic district designated pursuant to this Part is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance or other provisions of this Part, the city or county, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object. Such remedies shall be in addition to any others authorized by this Chapter for violation of a municipal ordinance. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.12. (Repealed effective January 1, 2021) Appropriations.

A city or county governing board is authorized to make appropriations to a historic preservation commission established pursuant to this Part in any amount that it may determine 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. (1989, c. 706, s. 2; 2019-111, s. 2.3.)

§ 160A-400.13. (Repealed effective January 1, 2021) Protection of certain landmarks; permissible changes.

(a) Objects of Remembrance. – G.S. 100-2.1 supersedes this Part with regard to the removal or relocation of a historic landmark designated under this Part that meets the definition of an "object of remembrance" as defined in G.S. 100-2.1.

(b) Other Historic Landmarks. – 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 which 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 property that is not prohibited by other law. Nothing in this Part shall be construed to prevent a) the maintenance, or b) in the event of an emergency the immediate restoration, of any existing above-ground utility structure without approval by the preservation commission. (1989, c. 706, s. 2; 2015-170, s. 3(d); 2019-111, s. 2.3.)

§ 160A-400.14. (Repealed effective January 1, 2021) 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). 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 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 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 local 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 commission or planning board for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first.

(b) The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance 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 commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. (1989, c. 706, s. 2; 1991, c. 514, s. 1; 2005-418, s. 13; 2019-111, s. 2.3.)

§ 160A-400.15. (Repealed effective January 1, 2021) Demolition by neglect to contributing structures outside local historic districts.

Notwithstanding G.S. 160A-400.14 or any other provision of law, the governing board of any municipality may apply its demolition by neglect ordinances 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 ordinances as necessary to implement this section and to further its intent. This section is applicable to any municipality with a population in excess of 100,000, provided such municipality (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 (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. (2011-367, s. 1; 2019-111, s. 2.3.)

§ 160A-400.16. Reserved for future codification purposes.

§ 160A-400.17. Reserved for future codification purposes.

§ 160A-400.18. Reserved for future codification purposes.

§ 160A-400.19. Reserved for future codification purposes.

Part 3D. Development Agreements.

§ 160A-400.20. (Repealed effective January 1, 2021) Authorization for development agreements.

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law

regarding building permits, site-specific development plans, phased development plans, or other provisions of law. (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.21. (Repealed effective January 1, 2021) Definitions.

The following definitions apply in this Part:

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

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

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

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

(5) Governing body. – The city council of a municipality.

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

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

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

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

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

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

(12) Public facilities. – Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities. (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.22. (Repealed effective January 1, 2021) Local governments authorized to enter into development agreements; approval of governing body required.

(a) A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

(b) The development agreement may, by ordinance, be incorporated, in whole or in part, into any planning, zoning, or subdivision ordinance adopted by the local government. (2005-426, s. 9(a); 2015-246, s. 19(d); 2019-111, s. 2.3.)

§ 160A-400.23. (Repealed effective January 1, 2021) Developed property criteria; permissible durations of agreements.

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a reasonable term specified in the agreement.

(b) Repealed by Session Laws 2015-246, s. 19(b), effective October 1, 2015. (2005-426, s. 9(a); 2013-413, s. 44(b); 2014-115, s. 17; 2015-246, s. 19(b); 2019-111, s. 2.3.)

§ 160A-400.24. (Repealed effective January 1, 2021) Public hearing.

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A-364 regarding zoning ordinance adoption or amendment. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the

proposed development (such as meeting defined completion percentages or other performance standards). (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.25. (Repealed effective January 1, 2021) What development agreement must provide; what it may provide; major modification requires public notice and hearing.

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

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

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

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

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

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

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

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

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

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a

proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

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

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

(e) Any performance guarantees under the development agreement shall comply with G.S. 160A-372(g). (2005-426, s. 9(a); 2015-187, s. 1(c); 2019-111, s. 2.3.)

§ 160A-400.26. (Repealed effective January 1, 2021) Law in effect at time of agreement governs development; exceptions.

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

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

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

(d) This section does not abrogate any rights preserved by G.S. 160A-385 or G.S. 160A-385.1, or that may vest pursuant to common law or otherwise in the absence of a development agreement. (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.27. (Repealed effective January 1, 2021) Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.

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

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

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of

adjustment in the manner provided by G.S. 160A-388(b). (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.28. (Repealed effective January 1, 2021) Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.29. (Repealed effective January 1, 2021) Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.

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

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both. (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.30. (Repealed effective January 1, 2021) Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement. (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.31. (Repealed effective January 1, 2021) Applicability to local government of constitutional and statutory procedures for approval of debt.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt. (2005-426, s. 9(a); 2019-111, s. 2.3.)

§ 160A-400.32. (Repealed effective January 1, 2021) Relationship of agreement to building or housing code; comprehensive plan amendment.

(a) A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations.

(b) When the governing board approves the rezoning of any property associated with a development agreement adopted pursuant to this Chapter, the provisions of G.S. 160A-383 apply. (2005-426, s. 9(a); 2017-10, s. 2.4(d); 2019-111, s. 2.3.)

§ 160A-400.33. Reserved for future codification purposes.

§ 160A-400.34. Reserved for future codification purposes.

§ 160A-400.35. Reserved for future codification purposes.

§ 160A-400.36. Reserved for future codification purposes.

§ 160A-400.37. Reserved for future codification purposes.

§ 160A-400.38. Reserved for future codification purposes.

§ 160A-400.39. Reserved for future codification purposes.

§ 160A-400.40. Reserved for future codification purposes.

§ 160A-400.41. Reserved for future codification purposes.

§ 160A-400.42. Reserved for future codification purposes.

§ 160A-400.43. Reserved for future codification purposes.

§ 160A-400.44. Reserved for future codification purposes.

§ 160A-400.45. Reserved for future codification purposes.

§ 160A-400.46. Reserved for future codification purposes.

§ 160A-400.47. Reserved for future codification purposes.

§ 160A-400.48. Reserved for future codification purposes.

§ 160A-400.49. Reserved for future codification purposes.

Part 3E. Wireless Telecommunications Facilities.

§ 160A-400.50. (Repealed effective January 1, 2021) 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.

(a1) 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 that, consistent with section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), which creates 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, 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 city's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) 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 federal 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.

(c) This Part shall not 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. (2007-526, s. 1; 2013-185, s. 1; 2017-159, s. 2(c); 2019-111, s. 2.3.)

§ 160A-400.51. (Repealed effective January 1, 2021) 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.

(1a) 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.

(2) Application. – A request that is submitted by an applicant to a city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.

(2a) 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.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) 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.

(3b) City utility pole. – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

(4) 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 "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.

(4a) 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.

(4b) 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.

(4c) 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.

(4d) 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.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) 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.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(6a) 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.

(7) 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.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six 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 six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For 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.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. 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. 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.

(8) 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.

(8a) 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.

(9) 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 shall 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.

(9a) 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.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) 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.

(9d) Wireless services provider. – A person who provides wireless services.

(10) 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. (2007-526, s. 1; 2013-185, s. 1; 2017-159, s. 2(a)-(c); 2019-111, s. 2.3.)

§ 160A-400.51A. (Repealed effective January 1, 2021) Local authority.

A city 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 city 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. 160A-400.50. 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. (2013-185, s. 1; 2019-111, s. 2.3.)

§ 160A-400.52. (Repealed effective January 1, 2021) Construction of new wireless support structures or substantial modifications of wireless support structures.

(a) Repealed by Session Laws 2013-185, s. 1, effective October 1, 2013, and applicable to applications received on or after that date.

(b) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure within the planning and land-use jurisdiction of a city 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.

(c) A city'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 city 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 city 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 city 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 city 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 city 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. Cities may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

(d) Repealed by Session Laws 2013-185, s. 1, effective October 1, 2013, and applicable to applications received on or after that date.

(e) The city 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 land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(f) A city 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 city 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 city in connection with the regulatory review authorized under this section. The foregoing does not prohibit a city 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 city 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.

(g) The city 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 city shall not deny an initial land-use or zoning permit based on such documentation. A city may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

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

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article. (2007-526, s. 1; 2013-185, s. 1; 2019-111, s. 2.3.)

§ 160A-400.53. (Repealed effective January 1, 2021) Collocation and eligible facilities requests of wireless support structures.

(a) Pursuant to section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), a city 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 city may require an application for collocation or an eligible facilities request.

(a1) A collocation or eligible facilities request application is deemed complete unless the city 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 city 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 city 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.

(a2) The city 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 city shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

(a3) A city 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 city may engage a third-party consultant for technical consultation and the review of a collocation application. The fee imposed by a city for the review of the application may not be used for either of the following:

(1) Travel expenses incurred in a third-party's review of a collocation application.

(2) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

(b), (c) Repealed by Session Laws 2013-185, s. 1, effective October 1, 2013, and applicable to applications received on or after that date. (2007-526, s. 1; 2013-185, s. 1; 2019-111, s. 2.3.)

§ 160A-400.54. (Repealed effective January 1, 2021) 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. 160A-400.55(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 completes 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 subsection 160A-400.55(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 must include an attestation that the small wireless facilities shall be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities shall 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. (2017-159, s. 2(c); 2018-145, s. 7(a), (b); 2019-111, s. 2.3.)

§ 160A-400.55. (Repealed effective January 1, 2021) 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. 160A-400.54, 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

subsection (d) of G.S. 160A-400.54 if the wireless provider meets all 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 forty (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 3C of Article 19 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. 160A-400.54(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. (2017-159, s. 2(c); 2019-111, s. 2.3.)

§ 160A-400.56. (Repealed effective January 1, 2021) 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 this Chapter 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 this Chapter 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. (2017-159, s. 2(c); 2019-111, s. 2.3.)

§ 160A-400.57. (Repealed effective January 1, 2021) 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. (2017-159, s. 2(c); 2019-111, s. 2.3.)

§ 160A-400.58. Reserved for future codification purposes.

Part 4. Acquisition of Open Space.

§ 160A-401. (Repealed effective January 1, 2021) Legislative intent.

It is the intent of the General Assembly in enacting this Part to provide a means whereby any county or city may acquire, by purchase, gift, grant, devise, lease, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment. (1963, c. 1129, s. 1; 1971, c. 698, s. 1; 2011-284, s. 116; 2019-111, s. 2.3.)

§ 160A-402. (Repealed effective January 1, 2021) Finding of necessity.

The General Assembly finds that the rapid growth and spread of urban development in the State is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or esthetic values, which areas and

spaces if preserved and maintained in their present open state would constitute important physical, social, esthetic, or economic assets to existing and impending urban development. The General Assembly declares that it is necessary for sound and proper urban development and in the public interest of the people of this State for any county or city to expend or advance public funds for, or to accept by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser interest or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas within their respective jurisdictions as defined by this Article.

The General Assembly declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced. (1963, c. 1129, s. 2; 1971, c. 698, s. 1; 2011-284, s. 117; 2019-111, s. 2.3.)

§ 160A-403. (Repealed effective January 1, 2021) Counties or cities authorized to acquire and reconvey real property.

Any county or city in the State may acquire by purchase, gift, grant, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any county or city may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale. (1963, c. 1129, s. 3; 1971, c. 698, s. 1; 2011-284, s. 118; 2019-111, s. 2.3.)

§ 160A-404. (Repealed effective January 1, 2021) Joint action by governing bodies.

Any county or city may enter into any agreement with any other county or city for the purpose of jointly exercising the authority granted by this Part. (1963, c. 1129, s. 4; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-405. (Repealed effective January 1, 2021) Powers of governing bodies.

Any county or city, in order to exercise the authority granted by this Part, may:

(1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which grants or other assistance are made to the county or city;

(2) Accept any assistance or funds that may be granted by the State or federal government with or without a contract;

(3) Agree to and comply with any reasonable conditions imposed upon grants;

(4) Make expenditures from any funds so granted. (1963, c. 1129, s. 5; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-406. (Repealed effective January 1, 2021) Appropriations authorized.

For the purposes set forth in this Part, a county or city may appropriate funds not otherwise limited as to use by law. (1963, c. 1129, s. 6; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1975, c. 664, s. 14; 2019-111, s. 2.3.)

§ 160A-407. (Repealed effective January 1, 2021) Definitions.

(a) For the purpose of this Part an "open space" or "open area" is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

(b) For the purposes of this Part "open space" or "open area" and the "public use and enjoyment" of interests or rights in real property shall also include open space land and open space uses. The term "open space land" means any undeveloped or predominantly undeveloped land in an urban area that has value for one or more of the following purposes: (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. The term "open space uses" means any use of open space land for (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. (1963, c. 1129, s. 7; 1969, c. 35, s. 1; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§§ 160A-408 through 160A-410. Reserved for future codification purposes.

Part 5. Building Inspection.

§ 160A-411. (Repealed effective January 1, 2021) Inspection department.

Every city in the State is hereby authorized to create an inspection department, and may appoint one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections. Every city shall perform the duties and responsibilities set forth in G.S. 160A-412 either by: (i) creating its own inspection department; (ii) creating a joint inspection department in cooperation with one or more other units of local government, pursuant to G.S. 160A-413 or Part 1 of Article 20 of this Chapter; (iii) contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of this Chapter; or (iv) arranging for the county in which it is located to perform inspection services within the city's jurisdiction as authorized by G.S. 160A-413 and G.S. 160A-360. Such action shall be taken no later than the applicable date in the schedule below, according to the city's population as published in the 1970 United States Census:

Cities over 75,000 population – July 1, 1979

Cities between 50,001 and 75,000 – July 1, 1981

Cities between 25,001 and 50,000 – July 1, 1983

Cities 25,000 and under – July 1, 1985.

In the event that any city shall fail to provide inspection services by the date specified above or shall cease to provide such services at any time thereafter, the Commissioner of Insurance shall arrange for the provision of such services, either through personnel employed by his department or through an arrangement with other units of government. In either event, the Commissioner shall have and may exercise within the city's jurisdiction all powers made available to the city council with respect to building inspection under Part 5 of Article 19, and Part 1 of Article 20 of this Chapter. Whenever the Commissioner has intervened in this manner, the city may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; provided, however, that the Commissioner may waive this requirement or permit assumption at an earlier date if he finds that such earlier assumption will not unduly interfere with arrangements he has made for the provision of those services. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1977, c. 531, s. 5; 2019-111, s. 2.3.)

§ 160A-411.1. (Repealed effective January 1, 2021) Qualifications of inspectors.

On and after the applicable date set forth in the schedule in G.S. 160A-411, no city shall employ an inspector to enforce the State Building Code as a member of a city or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.13(c) and which shall become invalid if he does not successfully complete in-service training specified by the Qualification Board within the period specified in G.S. 143-151.13(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 6; 2019-111, s. 2.3.)

§ 160A-412. (Repealed effective January 1, 2021) Duties and responsibilities.

(a) The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to

(1) The construction of buildings and other structures;
(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition;
(4) Other matters that may be specified by the city council.

(a1) The duties and responsibilities set forth in subsection (a) of this section shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections in a timely manner, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of

judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The city council shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws.

(b) Except as provided in G.S. 160A-424, a city may not adopt or enforce a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a city and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the city to require inspections upon unforeseen or unique circumstances that require immediate action.

(b1) In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code.

(c)-(e) Recodified as G.S. 160A-413.5(a)-(c) by Session Laws 2018-29, s. 1(b)-(d), effective July 1, 2018.

(f) Each inspection department shall implement a process for an informal internal review of inspection decisions made by the department's inspectors. This process shall include, at a minimum, the following:

(1) Initial review by the supervisor of the inspector.

(2) The provision in or with each permit issued by the department of (i) the name, phone number, and e-mail address of the supervisor of each inspector and (ii) a notice of availability of the informal internal review process.

(3) Procedures the department shall follow when a permit holder or applicant requests an internal review of an inspector's decision.

Nothing in this subsection shall limit or abrogate any rights available under Chapter 150B of the General Statutes to a permit holder or applicant.

(g) (Expires October 1, 2021 – see note.) If a specific building framing inspection as required by the North Carolina Residential Code for One- and Two-Family Dwellings results in 15 or more separate violations of that Code, the inspector shall forward a copy of the inspection report to the Department of Insurance. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2013-118, s. 1(b); 2015-145, ss. 8.2, 9(c); 2017-130, ss. 1(b), 2(b), 3(b), 4(b); 2018-29, ss. 1(b)-(d), 6(b); 2019-174, s. 9; 2019-111, s. 2.3.)

§ 160A-413. (Repealed effective January 1, 2021) Joint inspection department; other arrangements.

A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or county. A city may also contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 160A-411.1 or G.S. 153A-351.1 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 160A-411.1 or G.S. 153A-351.1. The inspector, if designated from another city or county under this section, shall, while exercising the duties of the position, be considered a municipal employee. The city shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the city as it does for an individual who is an employee of the city. The company or individual with whom the city contracts shall have errors and omissions and other insurance coverage acceptable to the city.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request in the manner provided in G.S. 160A-360(g). (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 64; 1993, c. 232, s. 3; 1999-372, s. 3; 2001-278, s. 2; 2019-111, s. 2.3.)

§ 160A-413.1. Reserved for future codification purposes.

§ 160A-413.2. Reserved for future codification purposes.

§ 160A-413.3. Reserved for future codification purposes.

§ 160A-413.4. Reserved for future codification purposes.

§ 160A-413.5. (Repealed effective January 1, 2021) Alternate inspection method for component or element.

(a) Notwithstanding the requirements of this Article, a city shall accept, without further responsibility to inspect, a design or other proposal for a component or element in the construction of buildings from a licensed architect or licensed engineer provided all of the following apply:

(1) The design or other proposal is completed under valid seal of the licensed architect or licensed engineer.

(2) Field inspection of the installation or completion of the component or element of the building is performed by a licensed architect or licensed

engineer or a person under the direct supervisory control of the licensed architect or licensed engineer.

(3) The licensed architect or licensed engineer provides the city with a signed written document certifying that the component or element of the building so inspected under subdivision (2) of this subsection is in compliance with the North Carolina State Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings. The certification required under this subdivision shall be provided by electronic or physical delivery, its receipt shall be promptly acknowledged by the city through reciprocal means and shall be made on a form created by the North Carolina Building Code Council which shall include at least the following:

a. Permit number.
b. Date of inspection.
c. Type of inspection.
d. Contractor's name and license number.
e. Street address of the job location.
f. Name, address, and telephone number of the person responsible for the inspection.

(a1) In accepting certifications of inspections under subsection (a) of this section, a city shall not require information other than that specified in this section.

(b) Upon the receipt of a signed written document as required under subsection (a) of this section, notwithstanding the issuance of a certificate of occupancy, the city, its inspection department, and the inspectors shall be discharged and released from any liabilities, duties and responsibilities imposed by this Article or in common law from any claim arising out of or attributed to the component or element in the construction of the building for which the signed written document was submitted.

(c) Other than what may be required by subsection (a) of this section, no further certification by a licensed architect or licensed engineer shall be required for any component or element designed and sealed by a licensed architect or licensed engineer for the manufacturer of the component or element under the North Carolina State Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings.

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

(1) Component. – Any assembly, subassembly, or combination of elements designed to be combined with other components to form part of a building or structure. Examples of a component include an excavated footing trench containing no concrete, a foundation, and a prepared underslab with slab-related materials without concrete.

(2) Element. – A combination of products designed to be combined with other elements to form all or part of a building component.

Components and elements are not systems. (2015-145, ss. 8.2, 9(c); 2017-130, ss. 1(b), 2(b), 3(b), 4(b); 2018-29, s. 1(a)-(e); 2019-174, s. 1; 2019-111, s. 2.3.)

§ 160A-413.6. (Repealed effective January 1, 2021) Mutual aid contracts.

(a) Any two or more cities or counties may enter into contracts with each other to provide mutual aid and assistance in the administration and enforcement of State and local laws pertaining to the North Carolina State Building Code. Mutual aid contracts may include provisions addressing the scope of aid provided, for reimbursement or indemnification of the aiding party for loss or damage incurred by giving aid, for delegating authority to a designated official or employee to request aid or to send aid upon request, and any other provisions not inconsistent with law.

(b) Unless the mutual aid contract says otherwise, while working with the requesting city or county under the authority of this section, a Code-enforcement official shall have the same jurisdiction, powers, rights, privileges, and immunities, including those relating to the defense of civil actions and payment of judgments, as the Code-enforcement officials of the requesting agency.

(c) Nothing in this section shall deprive any party to a mutual aid contract under this section of its discretion to send or decline to provide aid to another party to the contract under any circumstances, whether or not obligated by the contract to do so. In no case shall a party to a mutual aid contract or any of its officials or employees be held to answer in any civil or criminal action for declining to send aid whether or not obligated by contract to do so. (2018-29, s. 5(b); 2019-111, s. 2.3.)

§ 160A-414. (Repealed effective January 1, 2021) Financial support; fee collection, accounting, and use limitation.

(a) A city council may appropriate any available funds for the support of its inspection department

any funds that it deems necessary.

It may provide for paying inspectors fixed salaries or it may reimburse them for their services by paying over part or all of any fees collected. It may fix reasonable fees for issuing permits, for inspections, and for other services of the inspection department.

(b) When an inspection, for which the permit holder has paid a fee to the city, is performed by a marketplace pool Code-enforcement official upon request of the Insurance Commissioner under G.S. 143-151.12(9)a., the city shall promptly return to the permit holder the fee collected by the city for such inspection. This applies to the following inspections: plumbing, electrical systems, general building restrictions and regulations, heating and air-conditioning, and the general construction of buildings.

(c) All fees collected under this section shall be used for support of the administration and activities of the inspection department and for no other purpose. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2015-145, s. 7.2; 2018-29, s. 3(b); 2019-111, s. 2.3.)

§ 160A-415. (Repealed effective January 1, 2021) Conflicts of interest.

No member of an inspection department shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless

he is the owner of the building. No member of an inspection department or other individual or an employee of a company contracting with a city to conduct inspections shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city. The city must find a conflict of interest if any of the following is the case:

(1) If the individual, company, or employee of a company contracting to perform inspections for the city has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.

(2) If the individual, company, or employee of a company contracting to perform inspections for the city is closely related to the owner, developer, contractor, or project manager of the project to be inspected.

(3) If the individual, company, or employee of a company contracting to perform inspections for the city has a financial or business interest in the project to be inspected.

The provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue, but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 232, s. 4; 1998-122, s. 1; 1999-372, s. 4; 2019-111, s. 2.3.)

§ 160A-416. (Repealed effective January 1, 2021) Failure to perform duties.

(a) If any member of an inspection department shall willfully fail to perform the duties required of him by law, or willfully shall improperly issue a permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, he shall be guilty of a Class 1 misdemeanor.

(b) A member of the inspection department shall not be in violation of this section when the city, its inspection department, or one of the inspectors accepted a signed written document of compliance with the North Carolina State Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings from a licensed architect or licensed engineer in accordance with G.S. 160A-412(c). (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 539, s. 1089; 1994, Ex. Sess., c. 24, s. 14(c); 2015-145, s. 9(d); 2019-111, s. 2.3.)

§ 160A-417. (Repealed effective January 1, 2021) Permits.

(a) Except as provided in subsection (a2) of this section, no person shall commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

However, a permit is not required for the installation, maintenance, or replacement of any load control device or equipment by an electric power supplier, as defined in G.S. 62-133.8, or an electrical contractor contracted by the electric power supplier, so long as the work is subject to supervision by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The electric power supplier shall provide such installation, maintenance, or replacement in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or G.S. 62-133.9 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption under this subdivision applies to all existing installations.

(a1) A permit shall be in writing and shall contain a provision that the work done shall comply with the North Carolina State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems

necessary. If a city chooses to review residential building plans for any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings, all initial reviews must be performed within 15 business days of submission of the plans. A city shall not require residential building plans for one- and two-family dwellings to be sealed by a licensed engineer or licensed architect unless required by the North Carolina State Building Code. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a licensed architect or licensed engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a licensed architect or of a licensed engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor.

(a2) No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration performed in accordance with the current edition of the North Carolina State Building Code and costing fifteen thousand dollars ($15,000) or less in any single family residence or farm building unless the work involves any of the following:

(1) The addition, repair or replacement of load bearing structures. However, no permit is required for replacements of windows, doors, exterior siding, or the pickets, railings, stair treads, and decking of porches and exterior decks.

(2) The addition or change in the design of plumbing. However, no permit is required for replacements otherwise meeting the requirements of this subsection that do not change size or capacity.

(3) The addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, other than like-kind replacement of electrical devices and lighting fixtures.

(4) The use of materials not permitted by the North Carolina Residential Code for One- and Two-Family Dwellings.

(5) The addition (excluding replacement) of roofing.

(a3) A city shall not require more than one permit for the complete installation or replacement of any natural gas, propane gas, or electrical appliance on an existing structure when the installation or replacement is performed by a person licensed under G.S. 87-21 or G.S. 87-43. The cost of the permit for such work shall not exceed the cost of any one individual trade permit issued by that city, nor shall the city increase the costs of any fees to offset the loss of revenue caused by this provision.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government

pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.

(c) Repealed by Session Laws 2014-115, s. 15(b), effective August 11, 2014.

(d) No permit shall be issued pursuant to subdivision (1) of subsection (a) of this section where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A-11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued. Where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143-143.9(6), the purchase price of the manufactured home shall be excluded in determining whether the cost of the work is thirty thousand dollars ($30,000) or more.

(e) No city may withhold issuing a building permit or certificate of occupancy that otherwise would be eligible to be issued under this section to compel, with respect to another property or parcel, completion of work for a separate permit or compliance with land use regulations under this Article unless otherwise authorized by law or unless the city reasonably determines the existence of a public safety issue directly related to the issuance of a building permit or certificate of occupancy.

(f) Violation of this section constitutes a Class 1 misdemeanor. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C.S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 65; 1981, c. 677, s. 1; 1983, c. 377, s. 3; c. 614, s. 1; 1987 (Reg. Sess., 1988), c. 1000, s. 2; 1993, c. 539, s. 1090; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 2; 2002-165, s. 2.20; 2008-198, s. 8(d); 2009-532, s. 3; 2012-158, s. 5; 2013-58, s. 3; 2013-117, s. 5; 2013-160, s. 2; 2014-115, s. 15(b); 2015-145, s. 4.3(a), (b); 2015-187, s. 2(a); 2016-59, s. 9; 2016-113, s. 13(c); 2018-74, s. 16.4(b); 2019-111, s. 2.3; 2019-174, s. 7(a).)

§ 160A-418. (Repealed effective January 1, 2021) Time limitations on validity of permits.

A permit issued pursuant to G.S. 160A-417 shall expire by limitation six months, or any lesser time fixed by ordinance of the city council, after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-419. (Repealed effective January 1, 2021) Changes in work.

After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of proposed changes or deviations has been obtained from the inspection department. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-420. (Repealed effective January 1, 2021) Inspections of work in progress.

Subject to the limitation imposed by G.S. 160A-412(b), as the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2011-376, s. 4; 2015-145, s. 1(b); 2019-111, s. 2.3.)

§ 160A-421. (Repealed effective January 1, 2021) Stop orders.

(a) Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed.

(b) The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his designee, with a copy to the local inspector. The Commissioner of Insurance or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner of Insurance or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal no further work shall take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or
(2) Appealing to the Superior Court as provided in G.S. 143-141.

(c) The owner or builder may appeal from a stop order involving alleged violation of a local zoning ordinance by giving notice of appeal in writing to the board of adjustment. The appeal shall be heard and decided within the period established by the ordinance, or if none is specified, within a reasonable time. No further work shall take place in violation of a stop order pending a ruling.

(d) Violation of a stop order shall constitute a Class 1 misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1983, c. 377, s. 5; 1989, c. 681, s. 6; 1991, c. 512, s. 3; 1993, c. 539, s. 1091; 1994, Ex. Sess., c. 24, s. 14(c); 2019-111, s. 2.3.)

§ 160A-422. (Repealed effective January 1, 2021) Revocation of permits.

The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-423. (Repealed effective January 1, 2021) Certificates of compliance; temporary certificates of occupancy.

(a) At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if the completed work complies with all applicable State and local laws and with the terms of the permit, the inspector shall issue a certificate of compliance. No new building or part thereof may be occupied, and no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or moved may be occupied, until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied prior to final completion of the entire building. Violation of this section shall constitute a Class 1 misdemeanor.

(b) A permit holder may request and be issued a temporary certificate of occupancy if the conditions and requirements of the North Carolina State Building Code are met. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 66; 1993, c. 539, s. 1092; 1994, Ex. Sess., c. 24, s. 14(c); 2019-111, s. 2.3; 2019-174, s. 5(a).)

§ 160A-424. (Repealed effective January 1, 2021) Periodic inspections for hazardous or unlawful conditions.

(a) The inspection department may make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. However, when the inspection department determines that a safety hazard exists in one of the dwelling units within a multifamily building, which in the opinion of the inspector poses an immediate threat to the occupant, the inspection department may inspect, in the absence of a specific complaint

and actual knowledge of the unsafe condition, additional dwelling units in the multifamily building to determine if that same safety hazard exists. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term "reasonable cause" means any of the following: (i) the property has a history of more than four verified violations of the housing ordinances or codes within a rolling 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings or between owner-occupied and tenant-occupied buildings. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A city may require periodic inspections as part of a targeted effort to respond to blighted or potentially blighted conditions within a geographic area that has been designated by the city council. However, the total aggregate of targeted areas in the city at any one time shall not be greater than one square mile or five percent (5%) of the area within the city, whichever is greater. A targeted area designated by the city shall reflect the city's stated neighborhood revitalization strategy and shall consist of property that meets the definition of a "blighted area" or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and G.S. 160A-503(2a), respectively, except that for purposes of this subsection the planning commission is not required to make a determination as to the property. The city shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or

structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

(c) In no event may a city do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the city to lease or rent residential real property or to register rental property with the city, except for those individual rental units that have either more than four verified violations in a rolling 12-month period or two or more verified violations in a rolling 30-day period, or upon the property being identified within the top ten percent (10%) of properties with crime or disorder problems as set forth in a local ordinance; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; (iii) levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties, unless expressly authorized by general law or applicable only to an individual rental unit or property described in subdivision (i) of this subsection and the fee does not exceed five hundred dollars ($500.00) in any 12-month period in which the unit or property is found to have verified violations; (iv) provide that any violation of a rental registration ordinance is punishable as a criminal offense; or (v) require any owner or manager of rental property to submit to an inspection before receiving any utility service provided by the city. For purposes of this section, the term "verified violation" means all of the following:

(1) The aggregate of all violations of housing ordinances or codes found in an individual rental unit of residential real property during a 72-hour period.

(2) Any violations that have not been corrected by the owner or manager within 21 days of receipt of written notice from the city of the violations. Should the same violation occur more than two times in a 12-month period, the owner or manager may not have the option of correcting the violation. If the housing ordinance or code provides that any form of prohibited tenant behavior constitutes a violation by the owner or manager of the rental property, it shall be deemed a correction of the tenant-related violation if the owner or manager, within 30 days of receipt of written notice of the tenant-related violation, brings a summary ejectment action to have the tenant evicted.

(d) Repealed by Session Laws 2016-122, s. 2, effective January 1, 2017.

(e) If a property is identified by the city as being in the top ten percent (10%) of properties with crime or disorder problems, the city shall notify the landlord of any crimes, disorders, or other violations that will be counted against the property to allow the landlord an opportunity to attempt to correct the problems. In addition, the city and the city's police department or, if the city has no police department, the county sheriff's office shall assist the landlord in addressing any criminal activity, which may include testifying in court in a summary ejectment action or other matter to aid in evicting a tenant who has been charged with a crime. If the city, the city's police department, or where applicable the county sheriff's office does not cooperate in evicting a tenant, the tenant's behavior or activity at

issue shall not be counted as a crime or disorder problem as set forth in the local ordinance, and the property may not be included in the top ten percent (10%) of properties as a result of that tenant's behavior or activity.

(f) If the city takes action against an individual rental unit under this section, the owner of the individual rental unit may appeal the decision to the housing appeals board or the zoning board of adjustment, if operating, or the planning board, if created under G.S. 160A-361, or if neither is created, the governing board. The board shall fix a reasonable time for hearing appeals, shall give due notice to the owner of the individual rental unit, and shall render a decision within a reasonable time. The owner may appear in person or by agent or attorney. The board may reverse or affirm the action, wholly or partly, or may modify the action appealed from, and may make any decision and order that in the opinion of the board ought to be made in the matter. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2011-281, s. 2; 2014-103, s. 13(b); 2016-122, s. 2; 2019-111, s. 2.3.)

§ 160A-425. (Repealed effective January 1, 2021) Defects in buildings to be corrected.

When a local inspector finds any defects in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property he owns. (1905, c. 506, s. 28; Rev., s. 3009; 1915, c. 192, s. 14; C.S., s. 2771; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 67; 2019-111, s. 2.3.)

§ 160A-425.1: Repealed by Session Laws 2009-263, s. 1, effective October 1, 2009.

§ 160A-426. (Repealed effective January 1, 2021) Unsafe buildings condemned in localities.

(a) Residential Building and Nonresidential Building or Structure. – Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(b) Nonresidential Building or Structure. – In addition to the authority granted in subsection (a) of this section, an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.

(d) A municipality may expand subsections (b) and (c) of this section to apply to residential buildings by adopting an ordinance. Before adopting such an ordinance, a municipality shall hold a public hearing and shall provide notice of the hearing at least 10 days in advance of the hearing. (1905, c. 50-6, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1; 2001-386, s. 1; 2006-252, s. 2.19; 2009-263, s. 2; 2019-111, s. 2.3.)

§ 160A-427. (Repealed effective January 1, 2021) Removing notice from condemned building.

If any person shall remove any notice that has been affixed to any building or structure by a local inspector of any municipality and that states the dangerous character of the building or structure, he shall be guilty of a Class 1 misdemeanor. (1905, c. 506, s. 15; Rev., s. 3799; C.S., s. 2775; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 539, s. 1093; 1994, Ex. Sess., c. 24, s. 14(c); 2019-111, s. 2.3.)

§ 160A-428. (Repealed effective January 1, 2021) Action in event of failure to take corrective action.

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service:

(1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
   a. Constitutes a fire or safety hazard.
   b. Is dangerous to life, health, or other property.
   c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
   d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 2; 2009-263, s. 4; 2019-111, s. 2.3.)

§ 160A-429. (Repealed effective January 1, 2021) Order to take corrective action.

If, upon a hearing held pursuant to the notice prescribed in G.S. 160A-428, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe; provided, that where the inspector finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 68; 1977, c. 912, s. 13; 2019-111, s. 2.3.)

§ 160A-430. (Repealed effective January 1, 2021) Appeal; finality of order if not appealed.

Any owner who has received an order under G.S. 160A-429 may appeal from the order to the city council by giving notice of appeal in writing to the inspector and to the city clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector shall be final. The city council shall hear and render a decision in an appeal within a reasonable time. The city council may affirm, modify and affirm, or revoke the order. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 69; 2000-164, s. 4; 2019-111, s. 2.3.)

§ 160A-431. (Repealed effective January 1, 2021) Failure to comply with order.

If the owner of a building or structure fails to comply with an order issued pursuant to G.S. 160A-429 from which no appeal has been taken, or fails to comply with an order of the city council following an appeal, he shall be guilty of a Class 1 misdemeanor. (1905, c. 506, s. 15; Rev., s. 3802; 1915, c. 192, s. 19; C.S., s. 2774; 1929, c. 199, s. 2; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 539, s. 1094; 1994, Ex. Sess., c. 24, s. 14(c); 2019-111, s. 2.3.)

§ 160A-432. (Repealed effective January 1, 2021) Enforcement.

(a) [Action Authorized.] – Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(a1) Repealed by Session Laws 2009-263, s. 1, effective October 1, 2009.

(b) Removal of Building. – In the case of a building or structure declared unsafe under G.S. 160A-426 or an ordinance adopted pursuant to G.S. 160A-426, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(b1) Additional Lien. – The amounts incurred by the city in connection with the removal or demolition shall also be a lien against any other real property owned by the owner of the building or structure and located within the city limits or within one mile of the city limits, except for the owner's primary residence. The provisions of subsection (b) of this section apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(c) [Nonexclusive Remedy.] – Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 3; 2001-386, s. 2; 2001-448, s. 2; 2002-118, s. 2; 2003-23, s. 1; 2003-42, s. 1; 2004-6, s. 1; 2007-216, s. 2; 2008-59, s. 2; 2009-9, s. 2; 2009-263, ss. 1, 3; 2019-111, s. 2.3.)

§ 160A-433. (Repealed effective January 1, 2021) Records and reports.

The inspection department shall keep complete and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance granted, and all other work and activities of the department. These records shall be kept in the manner and for the periods prescribed by the North Carolina Department of Natural and Cultural Resources. Periodic reports shall be submitted to the city council and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require. (1905, c. 506, ss. 30, 31; Rev., ss. 3004, 3005; 1915, c. 192, s. 12; C.S., ss. 2766, 2767; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1983, c. 377, s. 7; 2015-241, s. 14.30(s); 2019-111, s. 2.3.)

§ 160A-434. (Repealed effective January 1, 2021) Appeals in general.

Unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or his designee or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within a period of 10 days after the order, decision, or determination.

Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1989, c. 681, s. 7A; 2019-111, s. 2.3.)

§ 160A-435. (Repealed effective January 1, 2021) Establishment of fire limits.

The city council of every incorporated city shall pass one or more ordinances establishing and defining fire limits, which shall include the principal business portions of the city and which shall be known as primary fire limits. In addition, the council may, in its discretion, establish and define one or more separate areas within the city as secondary fire limits. (1905, c. 506, s. 7; Rev., s. 2985; 1917, c. 136, subch. 8, s. 2; C.S., ss. 2746, 2802; 1961, c. 240; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-436. (Repealed effective January 1, 2021) Restrictions within primary fire limits.

Within the primary fire limits of any city, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved (either into the limits or from one place to another within the limits), except upon the permit of the local inspection department approved by the city council and by the Commissioner of Insurance or his designee. The city council may make additional regulations for the prevention, extinguishment, or mitigation of fires within the primary fire limits. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C.S., s. 2750; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1989, c. 681, s. 8; 2019-111, s. 2.3.)

§ 160A-437. (Repealed effective January 1, 2021) Restriction within secondary fire limits.

Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved except in accordance with any rules and regulations established by ordinance of the areas. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C.S., s. 2750; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-438. (Repealed effective January 1, 2021) Failure to establish primary fire limits.

If the council of any city shall fail or refuse to establish and define the primary fire limits of the city as required by law, after having such failure or refusal called to their attention in writing by the State Commissioner of Insurance, the Commissioner shall have the power to establish the limits upon making a determination that they are necessary and in the public interest. (1905, c. 506, s. 7; Rev., s. 3608; C.S., s. 2747; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-439. (Repealed effective January 1, 2021) Ordinance authorized as to repair, closing, and demolition of nonresidential buildings or structures; order of public officer.

(a) Authority. – The governing body of the city may adopt and enforce ordinances relating to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety established by the governing body. The minimum standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. The ordinance shall provide for designation or appointment of a public officer to exercise the powers prescribed by the ordinance, in accordance with the procedures specified in this section. Such ordinance shall only be applicable within the corporate limits of the city.

(b) Investigation. – Whenever it appears to the public officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by the governing body, the public officer shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

(c) Complaint and Hearing. – If the preliminary investigation discloses evidence of a violation of the minimum standards, the public officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the public officer (or his or her designated agent) at a place within the county scheduled not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(d) Order. – If, after notice and hearing, the public officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by the governing body, the public officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations herein.

(e) Limitations on Orders. –

(1) An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the governing body or to vacate and close the nonresidential building or structure for any use.

(2) An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed fifty percent (50%) of its then

current value. Notwithstanding any other provision of law, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the governing body determines, after a public hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the governing body.

(3) An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

(f) Action by Governing Body Upon Failure to Comply With Order. –

(1) If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the governing body may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The public officer may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.

(2) If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the governing body may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be

adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the governing body. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be removed or demolished.

(g) Action by Governing Body Upon Abandonment of Intent to Repair. – If the governing body has adopted an ordinance or the public officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the governing body may make findings that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the municipality in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the governing body may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

(1) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to fifty percent (50%) of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or

(2) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds fifty percent (50%) of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the governing body may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the public officer shall effectuate the purpose of the ordinance.

(h) Service of Complaints and Orders. – Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall be served upon persons either personally or by registered or certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is refused, but the regular mail is not returned

by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(i) Liens. –

(1) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes.

(2) If the real property upon which the cost was incurred is located in an incorporated city, the amount of the costs is also a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

(3) If the nonresidential building or structure is removed or demolished by the public officer, he or she shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(j) Ejectment. – If any occupant fails to comply with an order to vacate a nonresidential building or structure, the public officer may file a civil action in the name of the city to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the public officer produces a certified copy of an

ordinance adopted by the governing body pursuant to subsection (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the governing body has ordered the public officer to proceed to exercise his duties under subsection (f) of this section to vacate and close or remove and demolish the nonresidential building or structure.

(k) Civil Penalty. – The governing body may impose civil penalties against any person or entity that fails to comply with an order entered pursuant to this section. However, the imposition of civil penalties shall not limit the use of any other lawful remedies available to the governing body for the enforcement of any ordinances adopted pursuant to this section.

(*l*) Powers Supplemental. – The powers conferred by this section are supplemental to the powers conferred by any other law. An ordinance adopted by the governing body may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this section, including the following powers in addition to others herein granted:

(1) To investigate nonresidential buildings and structures in the city to determine whether they have been properly maintained in compliance with the minimum standards so that the safety or health of the occupants or members of the general public are not jeopardized.

(2) To administer oaths, affirmations, examine witnesses, and receive evidence.

(3) To enter upon premises pursuant to subsection (b) of this section for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession.

(4) To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances adopted by the governing body.

(5) To delegate any of his or her functions and powers under the ordinance to other officers and agents.

(m) Appeals. – The governing body may provide that appeals may be taken from any decision or order of the public officer to the city's housing appeals board or zoning board of adjustment. Any person aggrieved by a decision or order of the public officer shall have the remedies provided in G.S. 160A-446.

(n) Funding. – The governing body is authorized to make appropriations from its revenues necessary to carry out the purposes of this section and may accept and apply

grants or donations to assist in carrying out the provisions of the ordinances adopted by the governing body.

(o) No Effect on Just Compensation for Taking by Eminent Domain. – Nothing in this section shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

(p) Definitions. –

(1) "Parties in interest" means all individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

(2) "Vacant industrial warehouse" means any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

(3) "Vacant manufacturing facility" means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use. (2007-414, s. 1; 2019-111, s. 2.3.)

§ 160A-439.1. (Repealed effective January 1, 2021) Vacant building receivership.

(a) Petition to Appoint a Receiver. – The governing body of a municipality or its delegated commission may petition the superior court for the appointment of a receiver to rehabilitate, demolish, or sell a vacant building, structure, or dwelling upon the occurrence of any of the following, each of which is deemed a nuisance per se:

(1) The owner fails to comply with an order issued pursuant to G.S. 160A-429, related to building or structural conditions that constitute a fire or safety hazard or render the building or structure dangerous to life, health, or other property, from which no appeal has been taken.

(2) The owner fails to comply with an order of the city council following an appeal of an inspector's order issued pursuant to G.S. 160A-429.

(3) The governing body of the municipality adopts any ordinance pursuant to subdivision (f)(1) of G.S. 160A-439, related to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety, and orders a public officer to continue enforcement actions prescribed by the ordinance with respect to the named nonresidential building or structure. The public officer may submit a petition on behalf of the governing body to the superior court for the appointment of a receiver, and if granted by the superior court, the petition shall be considered an appropriate means of complying with the ordinance. In the event the superior court does not grant the petition, the public officer and the governing body may take action pursuant to the ordinance in any manner authorized in G.S. 160A-439.

(4) The owner fails to comply with an order to repair, alter, or improve, remove, or demolish a dwelling issued under G.S. 160A-443, related to dwellings that are unfit for human habitation.

(5) Any owner or partial owner of a vacant building, structure, or dwelling, with or without the consent of other owners of the property, submits a request to the governing body in the form of a sworn affidavit requesting the governing body to petition the superior court for appointment of a receiver for the property pursuant to this section.

(b) Petition for Appointment of Receiver. – The petition for the appointment of a receiver shall include all of the following: (i) a copy of the original violation notice or order issued by the city or, in the case of an owner request to the governing body for a petition for appointment of a receiver, a verified pleading that avers that at least one owner consents to the petition; (ii) a verified pleading that avers that the required rehabilitation or demolition has not been completed; and (iii) the names of the respondents, which shall include the owner of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160A-442(5). If the petition fails to name a respondent as required by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection (f) of this section, shall not have priority over the lien of that respondent.

(c) Notice of Proceeding. – Within 10 days after filing the petition, the city shall give notice of the pendency and nature of the proceeding by regular and certified mail to the last known address of all owners of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160A-442(5). Within 30 days of the date on which the notice was mailed, an owner of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160A-442(5), may apply to intervene in the proceeding and to be appointed as receiver. If the city fails to give notice to any owner of the property, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160A-442(5), as required by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection (f) of this section, shall not have priority over the lien of that owner, as recorded with the register of deeds, any mortgagee with a recorded interest in the property, and all other parties in interest, as defined in G.S. 160A-442(5).

(d) Appointment of Receiver. – The court shall appoint a qualified receiver if the provisions of subsections (b) and (c) of this section have been satisfied. If the court does not appoint a person to rehabilitate or demolish the property pursuant to subsection (e) of this section, or if the court dismisses such an appointee, the court shall appoint a qualified receiver for the purpose of rehabilitating and managing the property, demolishing the property, or selling the property to a buyer. To be considered qualified, a receiver must demonstrate to the court (i) the financial ability to complete the purchase or rehabilitation

of the property; (ii) the knowledge of, or experience in, the rehabilitation of vacant real property; (iii) the ability to obtain any necessary insurance; and (iv) the absence of any building code violations issued by the city on other real property owned by the person or any member, principal, officer, major stockholder, parent, subsidiary, predecessor, or others affiliated with the person or the person's business. No member of the petitioning city's governing body or a public officer of the petitioning city is qualified to be appointed as a receiver in that action. If, at any time, the court determines that the receiver is no longer qualified, the court may appoint another qualified receiver.

(e) Rehabilitation Not by Receiver. – The court may, instead of appointing a qualified receiver to rehabilitate or sell a vacant building, structure, or dwelling, appoint an owner, mortgagee, or other parties in interest in the property, as defined in G.S. 160A-442, to rehabilitate or demolish the property if that person (i) demonstrates the ability to complete the rehabilitation or demolition within a reasonable time, (ii) agrees to comply with a specified schedule for rehabilitation or demolition, and (iii) posts a bond in an amount determined by the court as security for the performance of the required work in compliance with the specified schedule. After the appointment, the court shall require the person to report to the court on the progress of the rehabilitation or demolition, according to a schedule determined by the court. If, at any time, it appears to the city or its delegated commission that the owner, mortgagee, or other person appointed under this subsection is not proceeding with due diligence or in compliance with the court-ordered schedule, the city or its delegated commission may apply to the court for immediate revocation of that person's appointment and for the appointment of a qualified receiver. If the court revokes the appointment and appoints a qualified receiver, the bond posted by the owner, mortgagee, or other person shall be applied to the receiver's expenses in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling.

(f) Receiver Authority Exclusive. – Upon the appointment of a receiver under subsection (d) of this section and after the receiver records a notice of receivership in the county in which the property is located that identifies the property, all other parties are divested of any authority to collect rents or other income from or to rehabilitate, demolish, or sell the building, structure, or dwelling subject to the receivership. Any party other than the appointed receiver who actively attempts to collect rents or other income from or to rehabilitate, demolish, or sell the property may be held in contempt of court and shall be subject to the penalties authorized by law for that offense. Any costs or fees incurred by a receiver appointed under this section and set by the court shall constitute a lien against the property, and the receiver's lien shall have priority over all other liens and encumbrances, except taxes or other government assessments.

(g) Receiver's Authority to Rehabilitate or Demolish. – In addition to all necessary and customary powers, a receiver appointed to rehabilitate or demolish a vacant building, structure, or dwelling shall have the right of possession with authority to do all of the following:

(1) Contract for necessary labor and supplies for rehabilitation or demolition.

(2) Borrow money for rehabilitation or demolition from an approved lending institution or through a governmental agency or program, using the receiver's lien against the property as security.

(3) Manage the property prior to rehabilitation or demolition and pay operational expenses of the property, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the property.

(4) Collect all rents and income from the property, which shall be used to pay for current operating expenses and repayment of outstanding rehabilitation or demolition expenses.

(5) Manage the property after rehabilitation, with all the powers of a landlord, for a period of up to two years and apply the rent received to current operating expenses and repayment of outstanding rehabilitation or demolition expenses.

(6) Foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

(h) Receiver's Authority to Sell. – In addition to all necessary and customary powers, a receiver appointed to sell a vacant building, structure, or dwelling shall have the authority to do all of the following: (i) sell the property to the highest bidder at public sale, following the same presale notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes, and (ii) sell the property privately for fair market value if no party to the receivership objects to the amount and procedure. In the notice of public sale authorized under this subsection, it shall be sufficient to describe the property by a street address and reference to the book and page or other location where the property deed is registered. Prior to any sale under this subsection, the applicants to bid in the public sale or the proposed buyer in the private sale shall demonstrate the ability and experience needed to rehabilitate the property within a reasonable time. After deducting the expenses of the sale, the amount of outstanding taxes and other government assessments, and the amount of the receiver's lien, the receiver shall apply any remaining proceeds of the sale first to the city's costs and expenses, including reasonable attorneys' fees, and then to the liens against the property in order of priority. Any remaining proceeds shall be remitted to the property owner.

(i) Receiver Forecloses on Lien. – A receiver may foreclose on the lien authorized by subsection (f) of this section by selling the property subject to the lien at a public sale, following public notice and notice to interested parties in the manner as a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes. After deducting the expenses of the sale and the amount of any outstanding taxes and other government assessments, the receiver shall apply the proceeds of the sale to the liens against the property, in order of priority. In lieu of foreclosure, and only if the receiver has rehabilitated the property, an owner may pay the receiver's costs, fees, including reasonable attorneys' fees, and expenses or may transfer his or her ownership in the property to either the receiver or an agreed upon third party for an amount agreed to by all parties to the receivership as being the property's fair market value.

(j) Deed After Sale. – Following the court's ratification of the sale of the property under this section, the receiver shall sign a deed conveying title to the property to the buyer,

free and clear of all encumbrances, other than restrictions that run with the land. Upon the sale of the property, the receiver shall at the same time file with the court a final accounting and a motion to dismiss the action.

(k) Receiver's Tenure. – The tenure of a receiver appointed to rehabilitate, demolish, or sell a vacant building, structure, or dwelling shall extend no longer than two years after the rehabilitation, demolition, or sale of the property. Any time after the rehabilitation, demolition, or sale of the property, any party to the receivership may file a motion to dismiss the receiver upon the payment of the receiver's outstanding costs, fees, and expenses. Upon the expiration of the receiver's tenure, the receiver shall file a final accounting with the court that appointed the receiver.

(*l*) Administrative Fee Charged. – The city may charge the owner of the building, structure, or dwelling subject to the receivership an administrative fee that is equal to five percent (5%) of the profits from the sale of the building, structure, or dwelling or one hundred dollars ($100.00), whichever is less. (2018-65, s. 1(a); 2019-111, s. 2.3.)

§ 160A-440. Reserved for future codification purposes.

Part 6. Minimum Housing Standards.

§ 160A-441. (Repealed effective January 1, 2021) Exercise of police power authorized.

It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance enacted by the governing body of a county pursuant to this Part shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto.

In addition to the exercise of police power authorized herein, any city may by ordinance provide for the repair, closing or demolition of any abandoned structure which the city council finds to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities. Such ordinance, if adopted, may provide for the repair, closing or demolition of such structure pursuant to the same provisions and procedures as are prescribed herein for the repair, closing or demolition of dwellings found to be unfit for human habitation. (1939, c. 287, s. 1; 1969, c. 913, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1975, c. 664, s. 15; 2019-111, s. 2.3.)

§ 160A-442. (Repealed effective January 1, 2021) Definitions.

The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

(1) "City" means any incorporated city or any county.

(2) "Dwelling" means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose. Temporary family health care structures, as defined in G.S. 160A-383.5, shall be considered dwellings for purposes of this Part, provided that any ordinance provision requiring minimum square footage shall not apply to such structures.

(3) "Governing body" means the council, board of commissioners, or other legislative body, charged with governing a city or county.

(3a) "Manufactured home" or "mobile home" means a structure as defined in G.S. 143-145(7).

(4) "Owner" means the holder of the title in fee simple and every mortgagee of record.

(5) "Parties in interest" means all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(6) "Public authority" means any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or State relating to health, fire, building regulations, or other activities concerning dwellings in the city.

(7) "Public officer" means the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Part. (1939, c. 287, s. 2; 1941, c. 140; 1953, c. 675, s. 29; 1961, c. 398, s. 1; 1969, c. 913, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1983, c. 401, ss. 1, 2; 2014-94, s. 5; 2019-111, s. 2.3.)

§ 160A-443. (Repealed effective January 1, 2021) Ordinance authorized as to repair, closing, and demolition; order of public officer.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under subdivision (4) of this section; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor. The duties of the public officer set forth in this subdivision shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in this subdivision shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5a) If the governing body shall have adopted an ordinance as provided in subdivision (4) of this section, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed,

as provided in subdivision (3)a., and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).

[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]

(5b) If the governing body shall have adopted an ordinance as provided in subdivision (4) of this section, or the public officer shall have:

a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision applies to the Cities of Eden, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Franklin, Lee, and Nash Counties, and the Towns of Bethel, Farmville, Newport, and Waynesville only.

(6) Liens. –

a. That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be

collected as the lien for special assessment provided in Article 10 of this Chapter.

b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

c. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under

subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition. (1939, c. 287, s. 3; 1969, c. 868, ss. 1, 2; c. 1065, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 70; 1983, c. 698; 1987, c. 542; 1989, c. 562; 1991, c. 208, s. 1; c. 315, s. 1; c. 581, s. 1; 1993, c. 539, s. 1095; c. 553, ss. 58, 59; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 347, s. 1; c. 509, s. 112; c. 733, ss. 1, 2; 1997-101, ss. 1, 2; 1997-414, s. 1; 1997-449, s. 1; 1998-26, s. 1; 1998-87, s. 1; 2000-186, s. 1; 2001-283, s. 1; 2001-448, s. 3; 2002-118, s. 3; 2005-200, s. 3; 2009-279, s. 7; 2019-30, s. 1; 2019-111, s. 2.3.)

§ 160A-443.1. (Repealed effective January 1, 2021) Heat source required.

(a) A city shall, by ordinance, require that by January 1, 2000, every dwelling unit leased as rental property within the city shall have, at a minimum, a central or electric heating system or sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.

(b) If a dwelling unit contains a heating system or heating appliances that meet the requirements of subsection (a) of this section, the owner of the dwelling unit shall not be required to install a new heating system or heating appliances, but the owner shall be required to maintain the existing heating system or heating appliances in a good and safe working condition. Otherwise, the owner of the dwelling unit shall install a heating system or heating appliances that meet the requirements of subsection (a) of this section and shall maintain the heating system or heating appliances in a good and safe working condition.

(c) Portable kerosene heaters are not acceptable as a permanent source of heat as required by subsection (a) of this section but may be used as a supplementary source in single family dwellings and duplex units. An owner who has complied with subsection (a)

shall not be held in violation of this section where an occupant of a dwelling unit uses a kerosene heater as a primary source of heat.

(d) This section applies only to cities with a population of 200,000 or over, according to the most recent decennial federal census.

(e) Nothing in this section shall be construed as:

(1) Diminishing the rights of or remedies available to any tenant under a lease agreement, statute, or at common law; or

(2) Prohibiting a city from adopting an ordinance with more stringent heating requirements than provided for by this section. (1999-14, s. 1; 2019-111, s. 2.3.)

§ 160A-444. (Repealed effective January 1, 2021) Standards.

An ordinance adopted by a city under this Part shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city. Defective conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. The ordinances may provide additional standards to guide the public officers, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 2019-111, s. 2.3.)

§ 160A-445. (Repealed effective January 1, 2021) Service of complaints and orders.

(a) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(a1) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(b) Repealed by Session Laws 1997-201, s. 1. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 14; 1979, 2nd Sess., c. 1247, s. 38; 1991, c. 526, s. 1; 1997-201, s. 1; 2019-111, s. 2.3.)

§ 160A-446. (Repealed effective January 1, 2021) Remedies.

(a) The governing body may provide for the creation and organization of a housing appeals board to which appeals may be taken from any decision or order of the public officer, or may provide for such appeals to be heard and determined by its zoning board of adjustment.

(b) The housing appeals board, if created, shall consist of five members to serve for three-year staggered terms. It shall have the power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt other rules and regulations for the proper discharge of its duties. It shall keep an accurate record of all its proceedings.

(c) An appeal from any decision or order of the public officer may be taken by any person aggrieved thereby or by any officer, board or commission of the city. Any appeal from the public officer shall be taken within 10 days from the rendering of the decision or service of the order by filing with the public officer and with the board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the public officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the public officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the public officer certifies to the board, after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the public officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this section.

(d) The appeals board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the public officer, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the public officer. The board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(e) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(f) Any person aggrieved by an order issued by the public officer or a decision rendered by the board may petition the superior court for an injunction restraining the public officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

(g) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Part or of any ordinance or code adopted under authority of this Part or any valid order or decision of the public officer or board made pursuant to any ordinance or code adopted under authority of this Part, the public officer or board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling. (1939, c. 287, s. 6; c. 386; 1969, c. 868, s. 5; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-447. (Repealed effective January 1, 2021) Compensation to owners of condemned property.

Nothing in this Part shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State. (1939, c. 386; 1943, c. 196; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-448. (Repealed effective January 1, 2021) Additional powers of public officer.

An ordinance adopted by the governing body of the city may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this Part, including the following powers in addition to others herein granted:

(1) To investigate the dwelling conditions in the city in order to determine which dwellings therein are unfit for human habitations;

(2) To administer oaths, affirmations, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession;

(4) To appoint and fix the duties of officers, agents and employees necessary to carry out the purposes of the ordinances; and

(5) To delegate any of his functions and powers under the ordinance to other officers and other agents. (1939, c. 287, s. 7; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 2019-111, s. 2.3.)

§ 160A-449. (Repealed effective January 1, 2021) Administration of ordinance.

The governing body of any city adopting an ordinance under this Part shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the city for the purpose of determining the fitness of dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this Part. The city is authorized to make appropriations from its revenues necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of the ordinances. (1939, c. 287, s. 8; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

§ 160A-450. (Repealed effective January 1, 2021) Supplemental nature of Part.

Nothing in this Part shall be construed to abrogate or impair the powers of the courts or of any department of any city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this Part shall be in addition and supplemental to the powers conferred by any other law. (1939, c. 287, s. 9; 1971, c. 698, s. 1; 2019-111, s. 2.3.)

Part 7. Community Appearance Commissions.

§ 160A-451. (Repealed effective January 1, 2021) Membership and appointment of commission; joint commission.

Each municipality and county in the State may create a special commission, to be known as the official appearance commission for the city or county. The commission shall consist of not less than seven nor more than 15 members, to be appointed by the governing body of the municipality or county for such terms, not to exceed four years, as the governing body may by ordinance provide. All members shall be residents of the municipality's or county's area of planning and zoning jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times a majority of members who have had special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field. Members of the commission may be reimbursed for actual expenses incidental to the performance of their duties within the limits of any funds available to the commission, but shall serve without pay unless otherwise provided in the ordinance establishing the commission. Membership of the commission is declared to be an office that may be held concurrently with any other elective or appointive office pursuant to Article VI, Sec. 9, of the Constitution.

A county and one or more cities in the county may establish a joint appearance commission. If a joint commission is established, the county and the city or cities involved shall determine the residence requirements for members of the joint commission. (1971, c. 896, s. 6; c. 1058; 1973, c. 426, s. 63; 2019-111, s. 2.3.)

§ 160A-452. (Repealed effective January 1, 2021) Powers and duties of commission.

The commission, upon its appointment, shall make careful study of the visual problems and needs of the municipality or county within its area of zoning jurisdiction, and shall make any plans and carry out any programs that will, in accordance with the powers herein granted, enhance and improve the visual quality and aesthetic characteristics of the municipality or county. 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 municipality or county;

(2) To seek to coordinate the activities of individuals, agencies and organizations, public and private, whose plans, activities and programs bear upon the appearance of the municipality or county;

(3) To provide leadership and guidance in matters of area or community design and appearance to individuals, and to public and private organizations, and agencies;

(4) To make studies of the visual characteristics and problems of the municipality or county, 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 municipality or county. 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 municipality or county or any part thereof within its area of planning and zoning 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 body of the municipality or county and specified in the ordinance establishing the commission, in the implementation of its plans. To this end, the governing body 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 municipality or its area of planning and zoning jurisdiction of the city or county.

b. To review these plans and to make recommendations regarding their aesthetic suitability to the appropriate agency, or to the municipal or county 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 body of the city or county, and to the appropriate agency.

c. To formulate and recommend to the appropriate municipal planning or governing board the adoption or amendment of ordinances (including the zoning ordinance, subdivision regulations, and other local ordinances regulating the use of property) that will, in the opinion of the commission, serve to enhance the appearance of the municipality and its surrounding areas.

d. To direct the attention of city or county 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 to prepare, publish and distribute to the public such studies and reports as will, in the opinion of the commission, advance the cause of improved municipal or county appearance.

h. To conduct public meetings and hearings, giving reasonable notice to the public thereof. (1971, c. 896, s. 6; c. 1058; 2019-111, s. 2.3.)

§ 160A-453. (Repealed effective January 1, 2021) Staff services; advisory council.

The commission may recommend to the municipal or county 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. (1971, c. 896, s. 6; c. 1058; 2019-111, s. 2.3.)

§ 160A-454. (Repealed effective January 1, 2021) Annual report.

The commission shall, no later than April 15 of each year, submit to the municipal or county governing body 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. (1971, c. 896, s. 6; c. 1058; 2019-111, s. 2.3.)

§ 160A-455. (Repealed effective January 1, 2021) 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 city or county governing body. It may accept and disburse these funds for any purpose within the scope of its authority as herein specified. All sums appropriated by the city or county to further the work and purposes of the commission are deemed to be for a public purpose. (1971, c. 896, s. 6; c. 1058; 1975, c. 664, s. 16; 2019-111, s. 2.3.)

Part 8. Miscellaneous Powers.

§ 160A-456. (Repealed effective January 1, 2021) Community development programs and activities.

(a) Any city is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a city may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any city council may exercise directly those powers granted by law to municipal redevelopment commissions and those powers granted by law to municipal housing authorities, and may do so whether or not a redevelopment commission or housing authority is in existence in such city. Any city council desiring to do so may delegate to any redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any city council and any board of county commissioners may by agreement undertake or carry out for each other any specified community development activities. Any city council may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any city council any specified community development activities.

(c) Any city council undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any city council proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such city.

(d1) Any city may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any city that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A city may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion

of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any city that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes.

(e) Repealed by Session Laws 1985, c. 665, s. 5.

(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "economically distressed counties", as defined in G.S. 143B-437.01, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration. (1975, c. 435, s. 1; c. 689, s. 1; c. 879, s. 46; 1983, c. 908, s. 4; 1985, c. 665, s. 5; 1987, c. 464, s. 10; 1987 (Reg. Sess., 1988), c. 992, s. 2; 1995, c. 310, s. 3; 1995 (Reg. Sess., 1996), c. 13, s. 3.9; c. 575, s. 3; 2006-259, s. 27(b); 2019-111, s. 2.3.)

§ 160A-457. (Repealed effective January 1, 2021) Acquisition and disposition of property for redevelopment.

In addition to the powers granted by G.S. 160A-456, any city is authorized, either as a part of a community development program or independently thereof, and without the necessity of compliance with the Urban Redevelopment Law, to exercise the following powers:

(1) To acquire, by voluntary purchase from the owner or owners, real property which is either:

a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

b. Appropriate for rehabilitation or conservation activities;

c. Appropriate for housing construction or the economic development of the community; or

d. Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open space, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(2) To clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired; and

(3) To retain property so acquired for public purposes, or to dispose, through sale, lease, or otherwise, of any property so acquired to any person, firm, corporation, or governmental unit; provided, the disposition of such property shall be undertaken in accordance with the procedures of Article 12 of this Chapter, or the procedures of G.S. 160A-514, or any applicable local act or charter provision modifying such procedures; or subsection (4) of this section.

(4) To sell, exchange, or otherwise transfer real property or any interest therein in a community development project area to any redeveloper at private sale for residential, recreational, commercial, industrial or other uses or for public use in accordance with the community development plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this Article; provided that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after approval of the municipal governing body and after a public hearing; a notice of the public hearing shall be given once a week for two successive weeks in a newspaper having general circulation in the municipality, and the notice shall be published the first time not less than 10 days nor more than 25 days preceding the public hearing; and the notice shall disclose the terms of the sale, exchange or transfer. At the public hearing the appraised value of the property to be sold, exchanged or transferred shall be disclosed; and the consideration for the conveyance shall not be less than the appraised value. (1977, c. 660, s. 1; 1983, c. 797, ss. 1, 2; 2019-111, s. 2.3.)

§ 160A-457.1. (Repealed effective January 1, 2021) Urban Development Action Grants.

In addition to the powers granted by G.S. 160A-456 and G.S. 160A-457, any city is authorized, either as a part of a community development program or independently thereof, to enter into contracts or agreements with any person, association, or corporation to undertake and carry out specified activities in furtherance of the purposes of Urban Development Action Grants authorized by the Housing and Community Development Act of 1977 (P.L. 95-128) or any amendment thereto which is a continuation of such grant programs by whatever designation, including the authority to enter into and carry out contracts or agreements to extend loans, loan subsidies, or grants to persons, associations,

or corporations and to dispose of real or personal property by private sale in furtherance of such contracts or agreements.

Any enabling legislation contained in local acts which refers to "Urban Development Action Grants" or the Housing and Community Development Act of 1977 (P.L. 95-128) shall be construed also to refer to any continuation of such grant programs by whatever designation. (1981, c. 865, ss. 1, 2; 2019-111, s. 2.3.)

§ 160A-457.2. (Repealed effective January 1, 2021) Urban homesteading programs.

A city may establish a program of urban homesteading, in which residential property of little or no value is conveyed to persons who agree to rehabilitate the property and use it, for a minimum number of years, as their principal place of residence. Residential property is considered of little or no value if the cost of bringing the property into compliance with the city's housing code exceeds sixty percent (60%) of the property's appraised value on the county tax records. In undertaking such a program a city may:

(1) Acquire by purchase, gift or otherwise, but not eminent domain, residential property specifically for the purpose of reconveyance in the urban homesteading program or may transfer to the program residential property acquired for other purposes, including property purchased at a tax foreclosure sale.

(2) Under procedures and standards established by the city, convey residential property by private sale under G.S. 160A-267 and for nominal monetary consideration to persons who qualify as grantees.

(3) Convey property subject to conditions that:

a. Require the grantee to use the property as his or her principal place of residence for a minimum number of years,

b. Require the grantee to rehabilitate the property so that it meets or exceeds minimum code standards,

c. Require the grantee to maintain insurance on the property,

d. Set out any other specific conditions (including, but not limited to, design standards) or actions that the city may require, and

e. Provide for the termination of the grantee's interest in the property and its reversion to the city upon the grantee's failure to meet any condition so established.

(4) Subordinate the city's interest in the property to any security interest granted by the grantee to a lender of funds to purchase or rehabilitate the property. (1987, c. 464, s. 8; 1997-456. s. 27; 2019-111, s. 2.3.)

§ 160A-458. (Repealed effective January 1, 2021) Erosion and sedimentation control.

Any city may enact and enforce erosion and sedimentation control ordinances as authorized by Article 4 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 4. (1979, 2nd Sess., c. 1247, s. 39; 2019-111, s. 2.3.)

§ 160A-458.1. (Repealed effective January 1, 2021) Floodway regulations.

Any city may enact and enforce floodway regulation ordinances as authorized by Part 6 of Article 21 of Chapter 143 of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Part 6. (1979, 2nd Sess., c. 1247, s. 39; 2019-111, s. 2.3.)

§ 160A-458.2. (Repealed effective January 1, 2021) Mountain ridge protection.

Cities may enact and enforce mountain ridge protection ordinances pursuant to Article 14 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 14 unless the city has removed itself from the coverage of Article 14 through the procedure provided by law. (1983, c. 676, s. 3; 2019-111, s. 2.3.)

§ 160A-458.3. (Repealed effective January 1, 2021) Downtown development projects.

(a) In this section, "downtown development project" means a capital project in the city's central business district, as that district is defined by the city council, comprising one or more buildings and including both public and private facilities. By way of illustration but not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center and a privately owned hotel or office building.

(b) If the city council finds that it is likely to have a significant effect on the revitalization of the central business district, the city may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of a downtown development project or of specific facilities within such a project. The city may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such a project. Such a contract may, among other provisions, specify the following:

(1) The property interests of both the city and the developer or developers in the project, provided that the property interests of the city shall be limited to facilities for a public purpose;

(2) The responsibilities of the city and the developer or developers for construction of the project;

(3) The responsibilities of the city and the developer or developers with respect to financing the project.

Such a contract may be entered into before the acquisition of any real property necessary to the project.

(c) A downtown development project may be constructed on property acquired by the developer or developers, on property directly acquired by the city, or on property acquired by the city while exercising the powers, duties, and responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or G.S. 160A-456.

(d) In connection with a downtown development project, the city may convey interests in property owned by it, including air rights over public facilities, as follows:

(1) If the property was acquired while the city was exercising the powers, duties, and responsibilities of a redevelopment commission, the city may

convey property interests pursuant to the "Urban Redevelopment Law" or any local modification thereof.

(2) If the property was acquired by the city directly, the city may convey property interests pursuant to G.S. 160A-457, and Article 12 of Chapter 160A of the General Statutes does not apply to such dispositions.

(3) In lieu of conveying the fee interest in air rights, the city may convey a leasehold interest for a period not to exceed 99 years, using the procedures of subparagraphs (1) or (2) of this subsection, as applicable.

(e) The contract between the city and the developer or developers may provide that the developer or developers shall be responsible for construction of the entire downtown development project. If so, the contract shall include such provisions as the city council deems sufficient to assure that the public facility or facilities included in the project meet the needs of the city and are constructed at a reasonable price. A project constructed pursuant to this paragraph is not subject to Article 8 of Chapter 143 of the General Statutes, provided that city funds constitute no more than fifty percent (50%) of the total costs of the downtown development project. Federal funds available for loan to private developers in connection with a downtown development project shall not be considered city funds for purposes of this subsection.

(f) Operation. – The city may contract for the operation of any public facility or facilities included in a downtown redevelopment project by a person, partnership, firm or corporation, public or private. Such a contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the citizens of the city.

(g) Grant funds. – To assist in the financing of its share of a downtown development project, the city may apply for, accept and expend grant funds from the federal or State governments. (1987, c. 619, s. 1; 2019-111, s. 2.3.)

§ 160A-458.4. Repealed by Session Laws 2019-35, s. 3, effective June 21, 2019.

§ 160A-458.5. (Repealed effective January 1, 2021) Restriction of certain forestry activities prohibited.

(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 city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(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 city to:

(1) Regulate activity associated with development. A city 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 city 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 city 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 city 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 Article.

(5) Regulate and protect streets under Article 15 of this Chapter. (2005-447, s. 2; 2019-111, s. 2.3.)

§ 160A-459. (Repealed effective January 1, 2021) Stormwater control.

(a) A city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A city may adopt a stormwater management ordinance 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 city stormwater control ordinance unless the federal, State, or local government agency

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

(c) A city 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 city that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, to establish the stormwater control program necessary for the city to comply with the permit. A city may adopt an ordinance that bans illicit discharges within its corporate limits and its planning jurisdiction. A city may adopt an ordinance, applicable within its corporate limits and its planning 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 city requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of a National Pollutant Discharge Elimination System (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. (2006-246, s. 17(b); 2019-111, s. 2.3.)

§ 160A-459.1. (Repealed effective January 1, 2021) Program to finance energy improvements.

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. The General Assembly also finds that a city has an integral role in furthering this purpose by promoting and encouraging renewable energy and energy efficiency within the city's territorial jurisdiction. In furtherance of this purpose, a city may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) Financing Assistance. – A city may establish a revolving loan fund and a loan loss reserve fund for the purpose of financing or assisting in the financing of the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A city may establish other local government energy efficiency and distributed generation

renewable energy source finance programs funded through federal grants. A city may use State and federal grants and loans and its general revenue for this financing. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 20 years.

(c) Definition. – As used in this Article, "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8. (2009-522, s. 1; 2010-167, s. 4(c); 2019-111, s. 2.3.)

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.

(2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, special district created under Article 43 of Chapter 105 of the General Statutes, or other local political subdivision, authority, or agency of local government. (1971, c. 698, s. 1; 1975, c. 821, s. 4; 1979, c. 774, s. 1; 1981, c. 641; 1995, c. 458, s. 3; 2009-527, s. 2(f).)

§ 160A-461. Interlocal cooperation authorized.

Any unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) may enter into contracts or agreements with each other in order to execute any undertaking. The contracts and agreements shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit spread upon its minutes. (1971, c. 698, s. 1.)

§ 160A-462. Joint agencies.

(a) Units agreeing to an undertaking may establish a joint agency charged with any or all of the responsibility for the undertaking. The units may confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking, except that legal title to all real property necessary to the undertaking shall be held by the participating units individually, or jointly as tenants in common, in such manner and proportion as they may determine.

(b) The participating units may appropriate funds to the joint agency on the basis of an annual budget recommended by the agency and submitted to the governing board of each unit for approval. (1971, c. 698, s. 1.)

§ 160A-463. Personnel.

(a) The units may agree that any joint agency established under G.S. 160A-462 shall appoint the officers, agents, and employees necessary to execute the undertaking, or that the units jointly shall appoint these personnel, or that one of the units shall appoint the personnel with their services contracted for by the other units or by the joint agency. If the units determine that one unit shall appoint the personnel, the agreement shall provide that the jurisdiction, authority, rights, privileges, and immunities (including coverage under the workers' compensation laws) which the officers, agents, and employees of the appointing unit enjoy within the territory of that unit shall also be enjoyed by them outside its territory when they are acting pursuant to the agreement and within the scope of their authority or the course of their employment.

(b) When the subject of an undertaking is a sovereign function of government, the exercise of which has been delegated to an officer of each participating unit, the agreement may provide that one officer shall exercise the function for all the participating units, with all of the powers, duties, and obligations that an officer exercising the function in a single unit would have. (1971, c. 698, s. 1; 1991, c. 636, s. 3.)

§ 160A-464. Provisions of the agreement.

Any contract or agreement establishing an undertaking shall specify:

(1) The purpose or purposes of the contract or agreement;
(2) The duration of the agreement;
(3) If a joint agency is established, its composition, organization, and nature, together with the powers conferred on it;
(4) The manner of appointing the personnel necessary to the execution of the undertaking;
(5) The method of financing the undertaking, including the apportionment of costs and revenues;
(6) The formula for ownership of real property involved in the undertaking, and procedures for the disposition of such property when the contract or agreement expires or is terminated;
(7) Methods for amending the contract or agreement;
(8) Methods for terminating the contract or agreement;
(9) Any other necessary or proper matter. (1971, c. 698, s. 1.)

§ 160A-465. Repealed by Session Laws 1979, c. 774, s. 2.

§ 160A-466. Revenue and expenditures for joint undertakings.

When two or more units of local government are engaged in a joint undertaking, they may enter into agreements regarding financing, expenditures, and revenues related to the joint undertaking. Funds collected by any participating unit of government may be transferred to and expended by any other unit of government in a manner consistent with the agreement. An agreement regarding expenses and revenues may be of reasonable duration not to exceed 99 years. (2003-417, s. 1.)

§§ 160A-467 through 160A-469. Reserved for future codification purposes.

Part 2. Regional Councils of Governments.

§ 160A-470. Creation of regional councils; definition of "unit of local government".

(a) Any two or more units of local government may create a regional council of governments by adopting identical concurrent resolutions to that effect in accordance with the provisions and procedures of this Part. To the extent permitted by the laws of its state, a local government in a state adjoining North Carolina may participate in regional councils of governments organized under this Part to the same extent as if it were located in this State. The concurrent resolutions creating a regional council of governments, and any amendments thereto, will be referred to in this Part as the "charter" of the regional council.

(b) For the purposes of this Part, "unit of local government" means a county, city, or consolidated city-county. (1971, c. 698, s. 1; 1973, c. 426, s. 71.)

§ 160A-471. Membership.

Each unit of local government initially adopting a concurrent resolution under G.S. 160A-470 shall become a member of the regional council. Thereafter, any local government may join the regional council by ratifying its charter and by being admitted by a majority vote of the existing members. All of the rights and privileges of membership in a regional council of governments shall be exercised on behalf of its member governments by their delegates to the council. (1971, c. 698, s. 1; 1973, c. 426, s. 72.)

§ 160A-472. Contents of charter.

The charter of a regional council of governments shall:

(1) Specify the name of the council;
(2) Establish the powers, duties, and functions that it may exercise and perform;
(3) Establish the number of delegates to represent the member governments, fix their terms of office, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;
(4) Set out the method of determining the financial support that will be given to the council by each member government;
(5) Establish a method for amending the charter, and for dissolving the council and liquidating its assets and liabilities.

In addition, the charter may, but need not, contain rules and regulations for the conduct of council business and any other matter pertaining to the organization, powers, and functioning of the council that the member governments deem appropriate. (1971, c. 698, s. 1.)

§ 160A-473. Organization of council.

Upon its creation, a regional council shall meet at a time and place agreed upon by its member governments and shall organize by electing a chairman and any other officers that the charter may specify or the delegates may deem advisable. The council shall then adopt bylaws for the conduct of its business. All meetings of the council shall be open to the public. (1971, c. 698, s. 1.)

§ 160A-474. Withdrawal from council.

Any member government may withdraw from a regional council at the end of any fiscal year by giving at least 60 days' written notice to each of the other members. Withdrawal of a member government shall not dissolve the council if at least two members remain. (1971, c. 698, s. 1.)

§ 160A-475. Specific powers of council.

The charter may confer on the regional council any of the following powers:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the council), and any private or civic agency.

(2) To employ personnel.

(3) To contract with consultants.

(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services.

(5) To study regional governmental problems, including matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, and regional development.

(6) To promote cooperative arrangements and coordinated action among its member governments.

(7) To make recommendations for review and action to its member governments and other public agencies which perform functions within the region in which its member governments are located.

(7a) For the purpose of meeting the regional council's office space and program needs, to acquire real property by purchase, gift, or otherwise, and to improve that property. The regional council may pledge real property as security for indebtedness used to finance acquisition of that property or for improvements to that real property, subject to approval by the Local Government Commission as required under G.S. 159-153. A regional council may not exercise the power of eminent domain.

(7b) To carry out the powers, duties, and responsibilities granted pursuant to Chapter 157 of the General Statutes except the power of eminent domain. This subdivision does not apply to cities with a population of greater than 250,000 according to the latest federal decennial census.

(8) **(See Editor's Note)** Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of each of its member governments which are affected thereby, provided, that no regional council of governments shall have the authority to construct or purchase buildings, or acquire title to real property, except for the purposes permitted under subdivision (7a) of this section or in order to exercise the authority granted by Chapter 260 of the Session Laws of 1979.

(9) **(See Editor's Note)** Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of

each of its member governments which are affected thereby, provided, that no regional council of governments shall have the authority to construct or purchase buildings, or acquire title to real property, except for the purposes permitted under subdivision (7a) of this section or in order to exercise the authority granted by Chapter 260 of the Session Laws of 1979, or the powers, duties, and responsibilities granted to the regional council pursuant to Chapter 157 of the General Statutes. Nothing in this subdivision permits a regional council to exercise the power of eminent domain. This subdivision does not apply to cities with a population of greater than 250,000 according to the latest federal decennial census. (1971, c. 698, s. 1; 1975, c. 517, ss. 1, 2; 1979, c. 902; 2005-290, s. 1; 2006-211, s. 1; 2017-178, ss. 2, 3.)

§ 160A-476. Fiscal affairs.

Each unit of local government having membership in a regional council may appropriate funds to the council from any legally available revenues. Services of personnel, use of equipment and office space, and other services may be made available to the council by its member governments as a part of their financial support. (1971, c. 698, s. 1; 1973, c. 426, s. 73.)

§ 160A-477. Reports.

Each regional council shall prepare and distribute to its member governments and to the public an annual report of its activities including a financial statement. (1971, c. 698, s. 1.)

§ 160A-478. Powers granted are supplementary.

The powers granted to cities and counties by this Article are supplementary to any powers heretofore or hereafter granted by any other general law, local act, or city charter for the same or similar purposes. (1971, c. 698, s. 1.)

Part 3. Regional Sports Authorities.

§ 160A-479. Creation of authority; definition.

(a) Any two or more units of local government may create a regional sports authority by adopting identical concurrent resolutions to that effect in accordance with the provisions of this Part. The concurrent resolutions creating a regional sports authority, and any amendments thereto will be referred to in this Part as the "charter" of the regional sports authority. For the purposes of this Part, "unit of local government" means a county, city or consolidated city-county.

(b) Any regional sports authority created pursuant to this Part shall be a body corporate and politic. (1989, c. 780, s. 1.)

§ 160A-479.1. Purpose of the authority.

The purpose of a regional sports authority shall be to research, design, construct, provide, finance, operate, improve, and maintain facilities for public participation and enjoyment of sports, fitness, health and recreational activities of as many different types and kinds as possible. The primary purpose of any and all such facilities shall be the conduct of sports events but use of these facilities need not be limited to such. (1989, c. 780, s. 1.)

§ 160A-479.2. Jurisdiction of the authority.

(a) The territorial jurisdiction of any authority created pursuant to this Part shall be coterminous with the boundaries of the respective units of local government creating and participating in the authority.

(b) The jurisdiction of any authority created pursuant to this Part shall include any and all currently existing public sports facilities operating within its territorial jurisdiction to the extent that any person or governmental entity owning or controlling such facilities has reached mutual and written agreement with an authority for the operation and maintenance of such facilities by the authority.

(c) The jurisdiction of an authority shall also include any and all new public sports facilities within the regional authority's territorial jurisdiction developed specifically for operation and maintenance by an authority with the agreement of an authority. (1989, c. 780, s. 1.)

§ 160A-479.3. Membership.

Each unit of local government initially adopting a concurrent resolution under G.S. 160A-479 shall become a member of the regional authority. Thereafter, any local government may join the regional authority by ratifying its charter and by being admitted by a majority vote of the existing members. All of the rights and privileges of membership in a regional sports authority shall be exercised on behalf of its member governments by their delegates to the authority. (1989, c. 780, s. 1.)

§ 160A-479.4. Contents of charter.

The charter of a regional sports authority shall:

(1) Specify the name of the authority;
(2) Establish the powers, duties, and functions that it may exercise and perform;
(3) Establish the number of delegates to represent the member governments, fix their terms of office, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;
(4) Set out the method of determining the financial support that will be given to the authority by each member government;
(5) Establish a method for amending the charter, and for dissolving the authority and liquidating its assets and liabilities.

In addition, the charter may, but need not, contain rules and regulations for the conduct of authority business and any other matter pertaining to the organization, powers, and functioning of the authority that the member governments deem appropriate. (1989, c. 780, s. 1.)

§ 160A-479.5. Organization of authority.

Upon its creation, a regional sports authority shall meet at a time and place agreed upon by its member governments and shall organize by electing a chairman and any other officers that the charter may specify or the delegates may deem advisable. The authority shall then adopt bylaws for the conduct of its business. All meetings of the authority shall be open to the public. (1989, c. 780, s. 1.)

§ 160A-479.6. Withdrawal from authority.

Any member government may withdraw from a regional sports authority at the end of any fiscal year by giving at least 60 days' written notice to each of the other members. A withdrawal

does not affect the validity of any revenue bonds or notes, and any revenue from sports facilities in the area of the member government that was pledged in payment of bonds or notes issued before the date of notice of withdrawal remains pledged for that purpose until the bonds and notes and interest on the bonds and notes have been paid. Withdrawal of a member government shall not dissolve the authority if at least two members remain. (1989, c. 780, s. 1.)

§ 160A-479.7. Powers of authority.

(a) The charter may confer on the regional sports authority any or all of the following powers:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the authority), and any private or civic agency;

(2) To employ personnel;

(3) To contract with consultants;

(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services;

(5) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties, not inconsistent with this Part;

(6) To adopt an official seal and alter the same at pleasure;

(7) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;

(8) To sue and be sued in its own name, and to plead and be impleaded;

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(12) To pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by an authority from any and all sources;

(13) To issue revenue bonds of the authority to finance regional sports and recreational facilities, including support facilities, to refund any revenue bonds or notes issued by the authority, whether or not in advance of their maturity or earliest redemption date, or to provide funds for other corporate purposes of the authority;

(14) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(15) To develop and make data, plans, information, surveys, and studies of public sports and recreation facilities within the territorial jurisdiction of an authority, to prepare and make recommendations in regard thereto;

(16) To study and plan for new and improved major regional sports and recreational facilities including but not limited to arenas, stadia, gymnasia, natatoria, pitches, fields, watercourses, and other areas for the conduct of sports and recreational activities. These facilities should be of such sizes and in such locations that they will be adequate to serve the population of the entire jurisdiction of the authority (and beyond) to the extent possible;

(17) To design any new such facilities so they include such equipment and design that efficiency, cost, accessibility, utility, and usability of such facilities will be maximized;

(18) To have sports facilities grouped into complexes or separated as an authority may see fit, and such facilities may include ancillary support facilities including but not limited to those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, food services, retail shops, theatres, video services, schools, and educational services.

(19) To operate the facilities in such a way as to make them as accessible as possible for rental and use by the public while balancing the need for as many of the facilities as possible (particularly any arenas and stadia) to operate annually without a deficit (exclusive of any debt service);

(20) To operate such facilities together with the State, any entity of the State, or local government as appropriate to maintain a high profile and promotional value for North Carolina and the region encompassed by an authority and to attract as many major regional, national, and international tournaments, events, championships training centers, training camps, and headquarters for the governance of various sports, associations, and events as reasonable and possible;

(21) To generate a significant and continuing positive economic impact on the region and State through the construction and operation of facilities and conduct of events and activities within the facilities;

(22) To set and collect such fees and charges for use of such facilities as is reasonable to offset operating costs of said facilities and yet enable said facilities to be affordable to and used by as much of the regional and State population as possible;

(23) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals in the same manner as any other person or operating unit of any other person;

(24) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required

in the judgment of an authority and to fix and pay their compensation from funds available to an authority therefor and to select and retain subject to approval of the Local Government Commission, the financial consultants, underwriters and bond attorneys to be associated with the issuance of any revenue bonds and to pay for services rendered by underwriters, financial consultants, or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(25) To do all acts and things necessary, convenient, or desirable to carry out the purposes, and to exercise the powers granted to an authority herein.

(b) The charter may not confer the following powers on the regional sports authority:

(1) To issue general obligation bonds or otherwise incur a debt that is secured by the full faith and/or credit of the authority, a member government of the authority, or the State.

(2) To levy a property tax or other tax.

(3) To acquire property by eminent domain. (1989, c. 780, s. 1; 2007-495, s. 19.)

§ 160A-479.8. Fiscal accountability.

A Regional Sports Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes of North Carolina. (1989, c. 780, s. 1.)

§ 160A-479.9. Funds.

(a) The establishment and operation of an authority as herein authorized are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of an authority.

(b) The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate or lease any of their interests in any property to an authority. (1989, c. 780, s. 1.)

§ 160A-479.10. Controlling provisions.

Insofar as the provisions of this Part are not consistent with the provisions of any other law, public or private, the provisions of this Part shall be controlling. (1989, c. 780, s. 1.)

§ 160A-479.11. Conflicts of interest of public officials.

Members, officers, and employees of any authority created under this Part shall be subject to the provisions of G.S. 14-234. (1989, c. 780, s. 1.)

§ 160A-479.12. Issuance of revenue bonds and notes.

The Local Government Revenue Bond Act, G.S. Chapter 159, Article 5, governs the issuance of revenue bonds by an authority. G.S. Chapter 159, Article 9, governs the issuance of notes in anticipation of the sale of revenue bonds. (1989, c. 780, s. 1.)

§ 160A-479.13. Acquisition of property.

In addition to the powers hereinbefore granted, an authority may, in its charter, be granted continuing power to acquire, by gift, grant, devise, exchange, purchase, lease with or without option to purchase, or any other lawful method, the fee or any lesser interest in real or personal property for use by an authority. (1989, c. 780, s. 1; 2011-284, s. 119.)

§ 160A-479.14. Tax exemption.

(a) The property of an authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation; in the event of any lease of authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee.

(b) Otherwise, however, for the purpose of taxation, when property of an authority is leased to private parties solely for the purpose of an authority, the acts and activities of an authority for the purpose of exemption of the lessee shall be considered as the acts and activities of the private parties.

(c) The interest on revenue bonds or notes issued by an authority shall be exempt from State taxes. (1989, c. 780, s. 1.)

§ 160A-479.15. Removal and relocation of utility structures.

(a) An authority may require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any land or facility where an authority has the right to own, construct, operate or maintain its facilities to remove or relocate such installation, structures, equipment, apparatus, appliances or facilities from their location.

(b) If the owner or operator thereof fails or refuses to remove or relocate them, an authority may proceed to do so.

(c) An authority may provide the necessary new locations or an authority may also acquire the necessary new locations by purchase or otherwise, but not by eminent domain.

(d) An authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances. (1989, c. 780, s. 1.)

§ 160A-479.16. Advances.

Any member government unit may make advances, from any moneys that may be available for such purpose, in connection with the creation of the authority and to provide for the preliminary expenses of such authority. Any such advances may be repaid to such participating units of local government from the proceeds of the revenue bonds issued by such authority, if capital in nature, or from other available funds of the authority. (1989, c. 780, s. 1.)

§ 160A-479.17. Annexation.

The annexation by a member government which is a city of areas lying outside of the territorial jurisdiction of the authority shall make such annexed area a part of the territorial jurisdiction of the authority, and such area shall be subject to all debts and all obligations thereof. (1989, c. 780, s. 1.)

§ 160A-480. Reserved for future codification purposes.

Part 4. Facility Authorities.

§ 160A-480.1. Short title.

This Part is the "Facility Authority Act" and may be cited by that name. (1995, c. 458, s. 1.)

§ 160A-480.2. Definitions.

The following definitions apply in this Part:

(1) Authority. – A Facility Authority.

(2) Credit facility. – An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Authority and for repayment of the institution.

(3) Member. – A person appointed to a facility authority.

(4) Par formula. – A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:

a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.

b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.

c. Any other provision that does not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.

(5) Regional facility. – A facility consisting of an arena, coliseum, or other buildings or both, or areas where sports, fitness, health, recreational, entertainment, or cultural activities can be conducted. The facility may be composed of buildings grouped into complexes or separated from each other and may include ancillary support facilities, such as those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, parking, and food services. The facility should be designed to attract to the State as many major regional, national, and international tournaments, events, championships, training centers, training camps, and headquarters for the governance of various sports, associations, and events as possible. The regional facility shall be constructed on land owned by the State. (1995, c. 458, s. 1.)

§ 160A-480.3. Creation of Authority; additional membership.

(a) Creation. – An authority may be created only by act of the General Assembly. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be a county authorized by the General Assembly to levy a room occupancy tax and a prepared food and beverage tax, and where both those taxes have been levied.

(b) Membership. – An authority shall have 10 or 21 members. Members shall be chosen for terms as follows:

(1) Five shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in

accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county;

(2) Five shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

a. Four members shall be appointed by the board of commissioners of that county, one of whom at the time of appointment is a resident of the municipality with the second largest population in the county, according to the most recent decennial federal census;

b. Four members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census;

c. Two members shall be appointed jointly by the mayors of all the cities in that county.

d. The Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee.

Beginning January 1, 1999, a majority of any executive committee, or other committee however termed having supervisory or management authority over the facility to be constructed by the authority, shall consist of authority members appointed under this subsection.

Neither the board of commissioners nor the city council may appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. The third member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2003. The third member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the city council shall

serve a term beginning January 1, 1999, and expiring July 1, 2003. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the Speaker of the House of Representatives, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the President Pro Tempore of the Senate, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. The second member appointed under sub-subdivision (3)c. of this section shall serve an initial term expiring July 1, 2003. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(c) Purpose. – The purpose of an authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility.

(d) Charter and Bylaws. – The act creating an authority and any amendments to it is the Authority's charter. The charter of an authority shall include the name of the Authority. An authority may adopt bylaws. Any bylaw that conflicts with the declared public policy of the State as expressed by law is void and unenforceable. The bylaws may do any one or more of the following:

(1) Limit the powers, duties, and functions that the Authority may exercise and perform.

(2) Prescribe the compensation and allowances not to exceed those provided by G.S. 93B-5, if any, to be paid to the members of the Authority.

(3) Contain rules for the conduct of Authority business and any other matter pertaining to the organization, powers, and functioning of the Authority that the members consider appropriate.

(e) Meetings. – An authority shall meet at a time and place agreed upon by its members. The initial meeting may be called by any four members. At its first meeting, the members shall elect a chairperson and any other officers that the charter may specify or the members may consider advisable. The Authority shall then adopt bylaws for the conduct of its business.

(f) Fiscal Accountability. – An authority is a public authority subject to the provisions of Article 3 of Chapter 159 of the General Statutes.

(g) Conflicts. – If any member, officer, or employee of an Authority shall be:

(1) Interested either directly or indirectly; or

(2) An officer or employee of or have an ownership interest in any firm or corporation, not including units of local government or the Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee, interested directly or indirectly,

in any contract with that Authority, the interest shall be disclosed to the Authority and shall be set forth in the minutes of the Authority. The member, officer, or employee having an interest shall

not participate on behalf of the Authority in the authorization of such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this subsection do not affect the validity of any bonds or notes issued under this Chapter.

It is not a violation of this subsection for the Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee, to participate in discussion of or to vote on any matter, including but not limited to the execution of any contract by the Authority, where the matter relates to the interest of a constituent institution of The University of North Carolina within the county.

(h) Any authority created under this Part shall be treated as a board for purposes of Chapter 138A of the General Statutes. (1995, c. 458, s. 1; 1997-68, s. 1; 2000-181, s. 2.5; 2001-311, ss. 1, 2; 2004-158, ss. 3.1, 3.2, 3.3; 2007-348, s. 43; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-480.4. Powers of an Authority.

An Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Part. These powers may include any one or more of the following:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State or any of its agencies or political subdivisions, the United States, any member unit, or any private entity.

(2) To study, design, plan, construct, own, and operate a regional facility.

(3) To employ consultants and employees as may be required in the judgment of the Authority, to fix and pay their compensation from funds available to the Authority. In employing consultants, the Authority shall promote participation by minority businesses.

(4) To contract with any public or private entity, and The University of North Carolina or any constituent institution of The University of North Carolina may enter into any such contract if the function is one The University of North Carolina or any constituent institution of The University of North Carolina could undertake separately.

(5) To adopt bylaws for the regulation of its affairs and the conduct of its business, and to adopt rules in connection with the performance of its functions and duties.

(6) To adopt an official seal.

(7) To acquire and maintain administrative offices.

(8) To sue and be sued in its own name, and to plead and be impleaded.

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money.

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any real or personal property or interest therein.

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any of these purposes with respect to, any real or personal property or interest therein.

(12) Subject to the provisions of this Part, to pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein,

including a leasehold interest, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by the Authority from any and all sources.

(13) Subject to the provisions of this Part, to borrow money to finance part or all of a regional facility, to issue revenue bonds or notes, to refund any revenue bonds or notes issued by the Authority, or to provide funds for other corporate purposes of the Authority.

(14) To use officers, employees, agents, and facilities of units of local government or constituent institutions of The University of North Carolina for purposes and upon the terms that are mutually agreeable between the Authority and the unit or institution.

(15) To develop and make data, plans, information, surveys, and studies of public facilities within the area where constituent institutions of The University of North Carolina are located, and to prepare and make recommendations in regard thereto.

(16) To set and collect fees and charges for the use of the regional facility.

(17) To pay for services rendered by underwriters, financial consultants, or bond attorneys in connection with the issuance of revenue bonds or notes of the Authority out of the proceeds of the bonds or notes. In employing consultants, underwriters, attorneys, and others, the Authority shall promote participation by minority businesses.

(18) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20. (1995, c. 458, s. 1.)

§ 160A-480.5. Dissolution of Authority.

The General Assembly may dissolve an authority if all bonds or notes issued by the Authority and all other obligations incurred by the Authority have been fully paid or satisfied. In such event any assets of the Authority shall become the property of the county authorized to levy a room occupancy and prepared food and beverage tax to be distributed to the Authority. (1995, c. 458, s. 1.)

§ 160A-480.6. Construction contracts.

Article 8 of Chapter 143 of the General Statutes applies to a construction contract of an Authority. An Authority may solicit bids on the basis of separate specifications for the branches or work described in G.S. 143-128(a) and on a single-prime contract basis and accept the lowest bid. (1995, c. 458, s. 1.)

§ 160A-480.7. Seating at regional facility arena.

The Authority shall ensure that at least fifty percent (50%) of the seats for an athletic event that is sponsored by a constituent institution of The University of North Carolina whose principal campus is in the territorial jurisdiction of the authority and is held at the arena of the regional facility are made available to students at that constituent institution and members of the general public. (1995, c. 458, s. 1.)

§ 160A-480.8. Bonds.

(a) Terms. – An Authority may provide for the issuance, at one time or from time to time, of bonds or notes to carry out its corporate purposes. The principal of, the interest on, and any premium payable upon the redemption of the bonds or notes shall be payable from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, from any available revenues or other funds provided for this purpose. The bonds or notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Authority or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Authority. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Authority. Notes and bonds shall mature at times determined by the Authority, not exceeding 40 years from the date of issue. The Authority shall determine the form and the manner of execution of the bonds or notes, and shall fix the denomination of the bonds or notes and the place of payment of principal and interest. In case an officer whose signature or a facsimile of whose signature appears on any bonds or notes ceases to be an officer before the delivery of the bond or note, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The Authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent.

Bonds or notes may be issued under this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau, or other agency of the State or of a political subdivision of the State, and without any other proceedings or conditions except as specifically required by this Part or the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds or notes which have been mutilated, destroyed, or lost.

(b) Use of Proceeds. – The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of a bond or note and with any trust agreement securing the bond or note. If the proceeds of a bond or note of any issue, by reason of increased construction costs or error in estimates or otherwise, is less than the cost, additional bonds or notes may in like manner be issued to provide the amount of the deficiency.

(c) Security. – Bonds or notes issued by an Authority may be secured in one or more of the following ways:

(1) By the revenues of the regional facility.

(2) By security interests in real or personal property or interest therein, including a leasehold interest, acquired with the proceeds of the bonds or notes or improved with the proceeds of the bonds or notes as described in subsection (e) of this section.

(3) With the approval of the county levying the tax, by receipts, if any, from a room occupancy and prepared food and beverage tax levied by a county and distributed to the Authority; provided, however, that any agreement or undertaking by a county to distribute receipts, if any, from the tax to the Authority may not obligate the county to exercise any power of taxation, or restrict the ability of the county to repeal the tax. However, no action by a county to discontinue, decrease, or repeal a room occupancy tax shall become

effective while previously issued bonds or notes secured by receipts from such a tax allocated to an authority by the county remain outstanding.

The security for the bonds or notes shall be specified in the resolution or trust instrument authorizing the bonds or notes.

(d) Revenues. – The Authority may pledge to the payment of its revenue bonds or notes the revenues from the regional facility, including revenues from improvements, betterments, or extensions to the facility. The Authority may establish, maintain, revise, charge, and collect such rates, fees, rentals, or other charges for the use, services, and facilities of or furnished by a regional facility and provide methods of collection of and penalties for nonpayment of these rates, fees, rentals, or other charges. Except as otherwise permitted, the rates, fees, rentals, and charges fixed and charged shall be in an amount that will produce sufficient revenues, with any other available funds, to meet the maintenance and operation expenses of the regional facility as well as any improvements and renewals and replacements to the facility, including reserves to pay the principal, interest, and redemption premium due, if any, on any bonds or notes secured by the facility, and to fulfill the terms of any agreements made by the Authority with the holders of bonds or notes secured by revenues of the facility.

(e) Security Interests. – Bonds or notes may be secured by security interests in any real or personal property or interest therein, including a leasehold interest, either acquired with the proceeds of bonds or notes, or upon which improvements are provided from the proceeds of bonds or notes. The security interest may cover all real and personal property acquired or improved or any portion of the property, except that if the property subject to the security interest is a leasehold interest, the security interest is not to the fee simple title. The Authority is authorized to enter into deeds of trust, mortgages, security agreements, and similar instruments as shall be necessary to carry out the powers in this subsection. Bonds or notes may also be secured by security interests in any real or personal property conveyed to the Authority.

In the event the Authority fails to perform its obligations with respect to the bonds or notes and foreclosure or similar sale of property subject to a security interest occurs, a deficiency judgment may not be rendered against the Authority except to the extent that the deficiency is payable from either revenues from the regional facility or from any revenues dedicated by act of the General Assembly to the Authority.

(f) Issuance. – The issuance of bonds or notes of the Authority is subject to the approval of the Local Government Commission. Upon the filing with the Local Government Commission of a resolution of the Authority requesting that its bonds or notes be sold, the Commission shall determine the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. In determining whether to approve a proposed bond or note issue of the Authority, the Local Government Commission shall consider the criteria for approval of revenue bonds under G.S. 159-86. The Local Government Commission shall approve the proposed issue if it determines the bond or note issue will meet such criteria and will effect the purposes of this Part. With the approval of the Authority, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interests of the Authority and to effect the purposes of this Part.

(g) Certification of Approval. – Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Part. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by

an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Part.

(h) State Pledge. – The State pledges to the holder of a bond or note issued under this Part that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Authority had when the bond or note was issued in a way that impairs the ability of the Authority to produce revenues sufficient with other available funds to do all of the following:

(1) Maintain and operate the facility for which the bond or note was issued.
(2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.
(3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Part that the State will not impair the rights and remedies of the holder concerning the bond or note.

(i) Investment Securities. – All bonds and notes and interest coupons, if any, issued under this Part are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

(j) Details of Bonds or Notes. – In fixing the details of bonds or notes, the Authority may provide that the bonds or notes may:

(1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.
(2) Be additionally supported by a credit facility.
(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.
(4) Be capital appreciation bonds.
(5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.
(6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Authority.

(k) Basis of Investment. – In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Authority may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Authority, as represented by the bonds, investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other basis, including the following:

(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.
(2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.
(3) Contracts to exchange cash flows or a series of payments.

(4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Authority may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Authority may enter a contract of this type with any person after giving due consideration, where applicable, of the person's creditworthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Authority may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Authority determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section. (1995, c. 458, s. 1; 1997-68, s. 2.)

§ 160A-480.9. Trust agreement or resolution.

In the discretion of the Authority, any bonds or notes issued under this Part may be secured by a trust instrument between the Authority and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The trust instrument or the resolution of the Authority authorizing the issuance of bonds or notes may pledge and assign all or any part of the revenues, funds, and other property provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds, and condemnation awards, and may convey or mortgage property to secure a bond issue as provided in this Part.

The revenues and other funds derived from the project, except any part thereof that may be necessary to provide reserves therefor, if any, shall be set aside at regular intervals as may be provided in the resolution or trust instrument in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on the bonds or notes as they become due and of the redemption price or the purchase price of bonds retired by call or purchase as therein provided. This pledge shall be valid and binding from the time the pledge is made. The revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution or trust instrument. The resolution or trust instrument may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the resolution or trust instrument.

(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds.

(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds.

(4) Rights to bring and maintain other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. All expenses incurred in carrying out the provisions of the resolution or trust instrument may be treated as a part of the cost of the project in connection with which bonds or notes are issued or as an expense of administration of the project.

The Authority may subordinate bonds or notes to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest securing bonds or notes.

Any owner of bonds or notes issued under the provisions of this Part or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Authority pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Part or by the trust agreement or resolution by the Authority or by any officer of the Authority. (1995, c. 458, s. 1.)

§ 160A-480.10. Trust funds.

Notwithstanding any other provision of law to the contrary, all money received pursuant to the authority of this Part, whether as proceeds from the sale of bonds or notes or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Part. The resolution authorizing the issuance of, or the trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested and reinvested pending their disbursement and shall provide that any officer with whom, or any bank or trust company with which, the moneys shall be deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purpose hereof, subject to any regulations this Part and the resolution or trust agreement may provide. Any of these moneys may be invested as provided in G.S. 159-30, as it may be amended from time to time. (1995, c. 458, s. 1.)

§ 160A-480.11. Faith and credit of State and units of local government not pledged.

Bonds or notes issued under this Part shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, property, and other funds pledged for their payment. The bonds or notes issued by an Authority shall contain a statement that the Authority is obligated to pay the bond or note or the interest on the bond or note only from the revenues, property, or other funds pledged for their payment and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged as security for the payment of the principal of or the interest or premium on the bonds or notes. (1995, c. 458, s. 1.)

§ 160A-480.12. Revenue refunding bonds.

The Authority may issue refunding bonds or notes for one or more of the following purposes:

(1) Refunding any outstanding bonds or notes issued under this Part, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption.
(2) Constructing improvements, additions, extensions or enlargements of the project, or projects in connection with which the bonds or notes to be refunded have been issued.
(3) Paying all or any part of the cost of any additional project or projects.

Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds issued under this section may be sold or exchanged for outstanding bonds or notes issued under this Part and, if sold, the proceeds of the refunding bonds may be applied, in addition to any authorized purposes, to the purchase, redemption, or payment of outstanding bonds or notes.

Pending the application of the proceeds of refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1995, c. 458, s. 1.)

§ 160A-480.13. Bonds eligible for investment.

Bonds and notes issued under this Part are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds or notes are hereby made securities that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision of the State is authorized by law. This section does not apply to any State pension or retirement fund or a pension or retirement fund of a political subdivision of the State. (1995, c. 458, s. 1.)

§ 160A-480.14. Taxation of revenue bonds.

Any bonds and notes issued by the Authority under the provisions of this Part shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes issued by an Authority under the provisions of this Part shall not be subject to taxation as to income. (1995, c. 458, s. 1; 2015-264, s. 16(k).)

§ 160A-480.15. Members and officers not liable.

No member or officer of an Authority shall be subject to any personal liability or accountability by reason of the execution of any bonds or notes or the issuance of any bonds or notes. (1995, c. 458, s. 1.)

§§ 160A-481 through 160A-484. Reserved for future codification purposes.

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance. If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the city council may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution, but in no event greater than funds available in the funded reserve for the payment of claims.

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance

pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State. (1951, c. 1015, ss. 1-5; 1971, c. 698, s. 1; 1975, c. 723; 1985 (Reg. Sess., 1986), c. 1027, s. 27; 2003-175, s. 1.)

§ 160A-485.1: Reserved for future codification purposes.

§ 160A-485.2: Reserved for future codification purposes.

§ 160A-485.3: Reserved for future codification purposes.

§ 160A-485.4: Reserved for future codification purposes.

§ 160A-485.5. Waiver of immunity for large cities through State Tort Claims Act.

(a) Any city with a population of 500,000 or more according to the most recent decennial federal census is authorized to waive its immunity from civil liability in tort by passage of a resolution expressing the intent of the city to waive its sovereign immunity pursuant to Article 31 of Chapter 143 of the General Statutes, as modified by subsection (b) of this section, and subject to the limitations set forth by subsection (c) of this section. Any resolution passed pursuant to this section shall apply to all claims arising on or after the passage of the resolution, until repealed.

(b) The following modifications of Article 31 of Chapter 143 of the General Statutes shall apply to the waiver of sovereign immunity described by subsection (a) of this section:

(1) Jurisdiction for tort claims against the city shall be vested in the Superior Court Division of the General Court of Justice of the county where the city is principally located, and, except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. The city shall be solely responsible for the expenses of its legal representation in connection with claims asserted against it, and for payment of the amount for which it is found liable under this section. Therefore, G.S. 143-291, 143-291.1, 143-291.2, 143-291.3, 143-292, 143-293, 143-295, 143-295.1, 143-296, 143-297, 143-298, 143-299.4, and 143-300 shall not apply to claims under this section.

(2) Appeals to the Court of Appeals from a decision of the Superior Court Division shall be treated in the same manner as an appeal from a decision of the Industrial Commission under G.S. 143-294.

(3) The limitation on claims set forth in G.S. 143-299; the burden of proof and defense set forth in G.S. 143-299.1; notwithstanding G.S. 143-299.1A(c), the defense set forth in G.S. 143-299.1A; and the limitation on payments set forth in G.S. 143-299.2 shall apply to claims filed with the Superior Court Division under this section.

(c) If a city waives its immunity pursuant to subsection (a) of this section, G.S. 160A-485 shall not apply to that city. The city may purchase liability insurance or adopt a resolution creating a self-funded reserve to insure liability for negligence of any officer, employee, involuntary servant or agent of the city while acting within the scope of his office, employment, service, agency or authority, under circumstances where the city, if a private person, would be liable to the claimant in accordance with the laws of North Carolina.

(d) No document or exhibit that relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, plaintiff's counsel, or anyone testifying on the plaintiff's behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives the plaintiff's right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury and may request a jury trial on these issues. (2009-519, s. 1.)

§ 160A-486. Estimates of population.

When a newly incorporated municipality is not included in the most recent federal census of population but otherwise qualifies for distribution of State-collected funds allocated wholly or partially on the basis of current population estimates, the municipality shall be entitled to participate in the distribution of these funds by reporting all information designated by the Office of State Budget and Management. An estimate of this city's population will be made by the Office of State Budget and Management in accordance with procedures designated by that office. The estimate will be certified to State departments and agencies charged with the responsibility of distributing funds to local governments along with the current population estimates for all other municipalities. (1953, c. 79; 1969, c. 873; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1137, s. 46; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 160A-487. City and county financial support for rescue squads.

Each city and county is authorized to appropriate funds to rescue squads or teams to enable them to purchase and maintain rescue equipment and to finance the operation of the rescue squad either within or outside the boundaries of the city or county. (1959, c. 989; 1971, c. 698, s. 1.)

§ 160A-488. Museums and arts programs.

(a) Any city or county is authorized to establish and support museums, art galleries, or arts centers, so long as the facility is open to the public.

(b) Any city or county is authorized to establish and support arts programs and facilities. As used in this section, "arts" refers to the performing arts, visual arts, and literary arts and includes dance, drama, music, painting, drawing, sculpture, printmaking, crafts, photography, film, video, architecture, design and literature, when part of a performing, visual or literary arts program.

(c) Any city or county may contract with any other governmental agency, or with any public or nonprofit private association, corporation or organization to establish and support museums, art galleries, arts centers, arts facilities, and arts programs and may appropriate funds to any such governmental agency, or to any such public or nonprofit private association, corporation or organization for the purpose of establishing and supporting such museums, galleries, centers, facilities and programs.

(d) As used in this section, "support" includes, but is not limited to: acquisition, construction, and renovation of buildings, including acquisition of land and other property therefor; purchase of paintings and other works of art; acquisition, lease, or purchase of materials and equipment; compensation of personnel; and all operating and maintenance expenses of the program or facility.

(e) In the event funds appropriated for the purposes of this section are turned over to any agency or organization other than the city or county for expenditure, no such expenditure shall be made until the city or county has approved it, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated.

(f) For the purposes set forth in this section, a city or county may appropriate funds not otherwise limited as to use by law. (1955, c. 1338; 1961, c. 309; 1965, c. 1019; 1971, c. 698, s. 1; 1975, c. 664, s. 17; 1979, 2nd Sess., c. 1201.)

§ 160A-489. Auditoriums, coliseums, and convention centers.

Any city is authorized to establish and support public auditoriums, coliseums, and convention centers. As used in this section, "support" includes but is not limited to: acquisition, construction, and renovation of buildings and acquisition of the necessary land and other property therefor; purchase of equipment; compensation of personnel; and all operating and maintenance expenses of the facility. For the purposes set forth in this section, a city may appropriate funds not otherwise limited as to use by law. (1971, c. 698, s. 1; 1975, c. 664, s. 18.)

§ 160A-490. Photographic reproduction of records.

(a) General Statutes 153A-436 shall apply to cities. When a county officer is designated by title in that Article, the designation shall be construed to mean the appropriate city officer, and the city council shall perform powers and duties conferred and imposed on the board of county commissioners.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable, computer-readable storage media may be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d). (1955, c. 451; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 41; 1999-131, s. 5; 1999-456, s. 47(e); 2011-326, s. 13(e).)

§ 160A-490.1. SBI and State Crime Laboratory access to view and analyze recordings.

The local law enforcement agency of any city that uses the services of the State Bureau of Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory. (2016-88, s. 2(b).)

§ 160A-491. Powers in connection with beach erosion.

[All cities shall have the power] to levy taxes and appropriate tax or nontax funds for the acquisition, construction, reconstruction, extension, maintenance, improvement, or enlargement of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements which are designed for the control of beach erosion or for protection from hurricane floods and for the preservation or restoration of facilities or natural features which afford protection to the beaches or other land areas of the municipalities or to the life and property thereon. (1971, c. 896, s. 5; c. 1159, s. 2.)

§ 160A-492. Human relations, community action and manpower development programs.

The governing body of any city, town, or county is hereby authorized to undertake, and to expend tax or nontax funds for, human relations, community action and manpower development programs. In undertaking and engaging in such programs, the governing body may enter into contracts with and accept loans and grants from the State or federal governments. The governing body may appoint such human relations, community action and manpower development committees or boards and citizens' committees, as it may deem necessary in carrying out such programs and activities, and may authorize the employment of personnel by such committees or boards, and may establish their duties, responsibilities, and powers. The cities and counties may jointly undertake any program or activity which they are authorized to undertake by this section. The expenses of undertaking and engaging in the human relations, community action and manpower development programs and activities authorized by this section are necessary expenses for which funds derived from taxation may be expended without the necessity of prior approval of the voters.

For the purposes of this section, a "human relations program" is one devoted to (i) the study of problems in the area of human relations, (ii) the promotion of equality of opportunity for all citizens, (iii) the promotion of understanding, respect and goodwill among all citizens, (iv) the provision of channels of communication among the races, (v) dispute resolution, (vi) encouraging the employment of qualified people without regard to race, or (vii) encouraging youth to become better trained and qualified for employment. (1971, c. 896, s. 11; c. 1207, ss. 1, 2; 1973, c. 641; 1989 (Reg. Sess., 1990), c. 1062, s. 1.)

§ 160A-493. Animal shelters.

A city may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. The animal shelters shall meet the same standards as animal shelters regulated by the Department of Agriculture pursuant to its authority under Chapter 19A of the General Statutes. (1973, c. 426, s. 73.1; 2004-199, s. 39(b).)

§ 160A-494. Drug abuse programs.

Any city may provide for the prevention and treatment of narcotic, barbituric and other types of drug abuse and addiction through education, medication, medical care, hospitalization, and outpatient housing, and may appropriate the necessary funds therefor. (1973, c. 608.)

§ 160A-495. Appropriations for establishment, etc., of local government center in Raleigh.

Counties, cities and towns are hereby authorized to appropriate money for payment to their respective instrumentalities, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities for the purpose of financing the cost, in whole or in part, of purchasing, constructing, equipping, maintaining and operating a local government center in the City of Raleigh to serve as permanent headquarters for said organizations. (1973, c. 1131.)

§ 160A-496. Incorporation of local acts into charter.

(a) A city may from time to time require the city attorney to present to the council any local acts relating to the property, affairs, and government of the city and not part of the city's charter which the city attorney recommends be incorporated into the charter. In his recommendations, the city attorney may include suggestions for renumbering or rearranging the provisions of the charter and other local acts, for providing catchlines, and for any other modifications in arrangement or form that do not change the provisions themselves of the charter or local acts and that may be necessary to effect an orderly incorporation of local acts into the charter.

(b) After considering the recommendations of the attorney, the council may by ordinance direct the incorporation of any such local acts into the charter. The city clerk shall file a certified true copy of the ordinance with the Secretary of State and with the Legislative Library.

(c) For purposes of this section, "charter" means that local act of the General Assembly or action of the Municipal Board of Control incorporating a city or a later local act that includes provisions expressly denominated the city's "charter," plus any other local acts inserted therein pursuant to this section or a comparable provision of a local act. (1975, c. 156; 1985 (Reg. Sess., 1986), c. 935, s. 3; 1989, c. 191, s. 3.)

§ 160A-497. Senior citizens programs.

Any city or county may undertake programs for the assistance and care of its senior citizens including but not limited to programs for in-home services, food service, counseling, recreation and transportation, and may appropriate funds for such programs. Any city council or county may contract with any other governmental agency, or with any public or private association, corporation or organization in undertaking senior citizens programs, and may appropriate funds to any such governmental agency, or to any such public or private association, corporation or organization for the purpose of carrying out such programs. In the event funds appropriated for the purposes of this section are turned over to any agency or organization other than the city or county for expenditure, no such expenditure shall be made until the city or county has approved it, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated. For purposes of this section, the words "senior citizens" shall mean citizens of a city or county who are at least 60 years of age. (1977, c. 187, s. 1; c. 647, ss. 1, 2; 1979, 2nd Sess., c. 1094, ss. 4, 5.)

§ 160A-498. Railroad corridor preservation.

A city or county may acquire property, by purchase or gift, to preserve a railroad corridor established by the Department of Transportation. A city or county that acquires property to preserve a railroad corridor may lease the property or use the property for interim compatible uses until the property is used for a railroad. (1989, c. 600, s. 9.)

§ 160A-499. Reimbursement agreements.

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

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

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

(d) Reimbursement agreements authorized by this section shall not be subject to Article 8 of Chapter 143 of the General Statutes, except as provided by this subsection. A developer or property owner who is party to a reimbursement agreement authorized under this section shall solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the city. (2005-426, s. 8(a).)

§ 160A-499.2. Fair housing ordinances in certain municipalities.

(a) A municipality shall have the power to adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions. The ordinances may regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a criminal offense; may subject the offender to civil penalties; and may provide that the municipality may enforce the ordinances by application to the Superior Court Division of the General Court of Justice for appropriate legal and equitable remedies, including mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and punitive damages, and the court shall have jurisdiction to grant the remedies.

(b) A municipality also shall have the power to amend any ordinance adopted pursuant to the provisions contained in subsection (a) of this section to ensure that the ordinance remains substantially equivalent to the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.). Any ordinance enacted pursuant to this section prohibiting discrimination on the basis of familial status shall not apply to housing for older persons, as defined in the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.).

(c) Any ordinance enacted pursuant to this section may provide for exemption from its coverage:

(1) The rental of a housing accommodation in a building containing accommodations for not more than four families living independently of each other if the lessor or a member of his family resides in one of those accommodations.

(2) The rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides there.

(3) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.

(4) With respect to discrimination based on religion to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, the sale, rental, or occupancy of the housing accommodation being limited or preference being given to persons of the same religion, unless membership in the religion is restricted because of race, color, national origin, or sex.

(5) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of the ordinance.

(d) A municipality may create or designate a committee to assume the duty and responsibility of enforcing ordinances adopted pursuant to this section. The committee may be granted any authority deemed necessary by the city council for the proper enforcement of any fair housing ordinance, including the power to:

(1) Promulgate rules for the receipt, initiation, investigation, and conciliation of complaints of violations of the ordinance.

(2) Require answers to interrogatories, the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; compel the attendance of witnesses at hearings; administer oaths; and examine witnesses under oath or affirmation.

(3) Apply to the Superior Court Division of the General Court of Justice, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring the person to respond or comply.

(4) Upon finding reasonable cause to believe that a violation of the ordinance has occurred, to petition the Superior Court Division of the General Court of Justice for appropriate civil relief on behalf of the aggrieved person or persons.

(e) A municipality may provide that neither complaints filed with any committee pursuant to the ordinance nor the results of the committee's investigations, discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination, or copying under the provisions of what is now Chapter 132 of the General Statutes.

(f) A municipality may provide that the statutory provisions relating to meetings of governmental bodies, presently embodied in Article 33C of Chapter 143 of the General Statutes, shall not apply to the activity of any committee authorized to enforce the ordinance to the extent that the committee is receiving a complaint or conducting an investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the ordinance.

(g) This section applies only to municipalities that have a permanent population of 90,000 or more according to the most recent decennial census and that are the location of a recurring special accommodation event requiring temporary accommodations for at least 50,000 people. For purposes of this section, the term "recurring special accommodation event" means a trade show or

other event of less than 11 days' duration that has been held in the municipality at least once a year for at least 10 years. (2007-475, ss. 1, 2.)

§ 160A-499.3. Limitation on the use of public funds.

A municipality shall not use public funds to endorse or oppose a referendum, election or a particular candidate for elective office. (2010-114, s. 1.5(b).)

§ 160A-499.4. Notice prior to construction.

(a) A city shall notify the property owners and adjacent property owners prior to commencement of any construction project by the city.

(b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:

(1) If the construction is of an emergency nature, the notice may be given by any means, including verbally, that the city has for contacting the property owner within a reasonable time prior to, or after, commencement of the construction.

(2) The property owner requests action of the city that requires construction activity.

(3) The property owner consents to less than 15 days' notice.

(4) Notice of the construction project is given in any open meeting of the city prior to the commencement of the construction project.

(c) For purposes of this section, "construction" shall mean the building, erection, or establishment of new buildings, facilities, and infrastructure and shall not include routine maintenance and repair. (2015-246, s. 12(b); 2015-286, s. 1.8(d).)

Article 22.

Urban Redevelopment Law.

§ 160A-500. Short title.

This Article shall be known and may be cited as the "Urban Redevelopment Law." (1951, c. 1095, s. 1; 1973, c. 426, s. 75.)

§ 160A-501. Findings and declaration of policy.

It is hereby determined and declared as a matter of legislative finding:

(1) That there exist in urban communities in this State blighted areas as defined herein.

(2) That such areas are economic or social liabilities, inimical and injurious to the public health, safety, morals and welfare of the residents of the State, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.

(3) That the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety,

for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of communities.

(4) That the foregoing conditions are beyond remedy or control entirely by regulatory processes in the exercise of the police power and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted.

(5) That the acquisition, preparation, sale, sound replanning, and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

Therefore, it is hereby declared to be the policy of the State of North Carolina to promote the health, safety, and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as redevelopment commissions, which shall exist and operate for the public purposes of acquiring and replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain. (1951, c. 1095, s. 2; 1973, c. 426, s. 75.)

§ 160A-502. Additional findings and declaration of policy.

It is further determined and declared as a matter of legislative finding:

(1) That the cities of North Carolina constitute important assests for the State and its citizens; that the preservation of the cities and of urban life against physical, social, and other hazards is vital to the safety, health, and welfare of the citizens of the State, and sound urban development in the future is essential to the continued economic development of North Carolina, and that the creation, existence, and growth of substandard areas present substantial hazards to the cities of the State, to urban life, and to sound future urban development.

(2) That blight exists in commercial and industrial areas as well as in residential areas, in the form of dilapidated, deteriorated, poorly ventilated, obsolete, overcrowded, unsanitary, or unsafe buildings, inadequate and unsafe streets, inadequate lots, and other conditions detrimental to the sound growth of the community; that the presence of such conditions tends to depress the value of neighboring properties, to impair the tax base of the community, and to inhibit private efforts to rehabilitate or improve other structures in the area; and that the acquisition, preparation, sale, sound replanning and redevelopment of such areas in accordance with sound and approved plans will promote the public health, safety, convenience and welfare.

(3) That not only is it in the interest of the public health, safety, convenience and welfare to eliminate existing substandard areas of all types, but it is also in the public interest and less costly to the community to prevent the creation of new blighted areas or the expansion of existing blighted areas; that vigorous enforcement of municipal and State building standards, sound planning of new community facilities, public acquisition of dilapidated, obsolescent buildings,

and other municipal action can aid in preventing the creation of new blighted areas or the expansion of existing blighted areas; and that rehabilitation, conservation, and reconditioning of areas in accordance with sound and approved plans, where, in the absence of such action, there is a clear and present danger that the area will become blighted, will protect and promote the public health, safety, convenience and welfare.

Therefore it is hereby declared to be the policy of the State of North Carolina to protect and promote the health, safety, and welfare of the inhabitants of its urban areas by authorizing redevelopment commissions to undertake nonresidential redevelopment in accord with sound and approved plans and to undertake the rehabilitation, conservation, and reconditioning of areas where, in the absence of such action, there is a clear and present danger that the area will become blighted. (1961, c. 837, s. 1; 1973, c. 426, s. 75.)

§ 160A-503. Definitions.

The following terms where used in this Article, shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Area of operation" – The area within the territorial boundaries of the city or county for which a particular commission is created.

(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, it may only be exercised to take a blighted parcel as defined in subdivision (2a) of this section, and the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(2a) "Blighted parcel" shall mean a parcel on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant

mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no parcel shall be considered a blighted parcel nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that the parcel is blighted.

(3) "Bonds" – Any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to this Article.

(4) "City" – Any city or town. "The city" shall mean the particular city for which a particular commission is created.

(5) "Commission" or "redevelopment commission" – A public body and a body corporate and politic created and organized in accordance with the provisions of this Article.

(6) "Field of operation" – The area within the territorial boundaries of the city for which a particular commission is created.

(7) "Governing body" – In the case of a city or town, the city council or other legislative body. The board of county commissioners.

(8) "Government" – Includes the State and federal governments or any subdivision, agency or instrumentality corporate or otherwise of either of them.

(9) "Municipality" – Any incorporated city or town, or any county.

(10) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:

a. Dilapidation, deterioration, age or obsolescence of buildings and other structures,

b. Inadequate provisions for ventilation, light, air, sanitation or open spaces,

c. Defective or inadequate street layout,

d. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,

e. Tax or special assessment delinquency exceeding the fair value of the property,

f. Unsanitary or unsafe conditions,

g. The existence of conditions which endanger life or property by fire and other causes, or

h. Any combination of such factors

1. Substantially impairs the sound growth of the community,

2. Has seriously adverse effects on surrounding development, and

3. Is detrimental to the public health, safety, morals or welfare;

provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the property owner or owners or persons having an interest in property shall be entitled to

be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(11) "Obligee of the commission" or "obligee" – Any bondholder, trustee or trustees for any bondholders, any lessor demising property to a commission used in connection with a redevelopment project, or any assignees of such lessor's interest, or any part thereof, and the federal government, when it is a party to any contract with a commission.

(12) "Planning commission" – Any planning commission established by ordinance for a municipality of this State. "The planning commission" shall mean the particular planning commission of the city or town in which a particular commission operates.

(13) "Real property" – Lands, lands under water, structures and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(14) "Redeveloper" – Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of an area under the provisions of this Article.

(15) "Redevelopment" – The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this Article with respect to the area for which such program is undertaken.

(16) "Redevelopment area" – Any area which a planning commission may find to be

a. A blighted area because of the conditions enumerated in subdivision (2) of this section;

b. A nonresidential redevelopment area because of conditions enumerated in subdivision (10) of this section;

c. A rehabilitation, conservation, and reconditioning area within the meaning of subdivision (21) of this section;

d. Any combination thereof, so as to require redevelopment under the provisions of this Article.

(17) "Redevelopment contract" – A contract between a commission and a redeveloper for the redevelopment of an area under the provisions of this Article.

(18) "Redevelopment plan" – A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this Article.

(19) "Redevelopment project" shall mean any work or undertaking:

a. To acquire blighted or nonresidential redevelopment areas or portions thereof, or individual tracts in rehabilitation, conservation, and reconditioning areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

b. To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

c. To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan;

d. To carry out plans for a program of voluntary or compulsory repair, rehabilitation, or reconditioning of buildings or other improvements in such areas; including the making of loans therefor; and

e. To engage in programs of assistance and financing, including the making of loans, for rehabilitation, repair, construction, acquisition, or reconditioning of residential units and commercial and industrial facilities in a redevelopment area.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project.

(20) "Redevelopment proposal" – A proposal, including supporting data and the form of a redevelopment contract for the redevelopment of all or any part of a redevelopment area.

(21) "Rehabilitation, conservation, and reconditioning area" shall mean any area which the planning commission shall find, by reason of factors listed in subdivision (2) or subdivision (10), to be subject to a clear and present danger that, in the absence of municipal action to rehabilitate, conserve, and recondition the area, it will become in the reasonably foreseeable future a blighted area or a nonresidential redevelopment area as defined herein. In such an area, no individual tract, building, or improvement shall be subject to the power of eminent domain, within the meaning of this Article, unless it is of the character described in subdivision (2) or subdivision (10) and substantially contributes to the conditions endangering the area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as part of the costs and paid by the petitioners. (1951, c. 1095, s. 3; 1957, c. 502, ss. 1-3; 1961, c. 837, ss. 2, 3, 4, 6; 1967, c. 1249; 1969, c. 1208, s. 1; 1973, c. 426, s. 75; 1981, c. 907, ss. 1, 2; 1985, c. 665, s. 6; 2006-224, ss. 2.1, 2.2; 2006-259, s. 47.)

§ 160A-504. Formation of commissions.

(a) Each municipality, as defined herein, is hereby authorized to create separate and distinct bodies corporate and politic to be known as the redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance or resolution creating a commission to function within the territorial limits of said municipality.

Notice of the intent to consider the passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting.

(b) The governing body of a municipality shall not adopt a resolution pursuant to subsection (a) above unless it finds:

(1) That blighted areas (as herein defined) exist in such municipality, and

(2) That the redevelopment of such areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

(c) The governing body shall cause a certified copy of such ordinance or resolution to be filed in the office of the Secretary of State; upon receipt of the said certificate the Secretary of State shall issue a certificate of incorporation.

(d) In any suit, action or proceeding involving or relating to the validity or enforcement of any contract or act of a commission, a copy of the certificate of incorporation duly certified by the Secretary of State shall be admissible in evidence and shall be conclusive proof of the legal establishment of the commission. (1951, c. 1095, s. 4; 1973, c. 426, s. 75.)

§ 160A-505. Alternative organization.

(a) **(See note)** In lieu of creating a redevelopment commission as authorized herein, the governing body of any municipality may, if it deems wise, either designate a housing authority created under the provisions of Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission as prescribed herein, or undertake to exercise such powers, duties, and responsibilities itself. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the findings specified in G.S. 160A-504(a) and (b). In the event a governing body designates itself to perform the powers, duties, and responsibilities of a redevelopment commission, then where any act or proceeding is required to be done, recommended, or approved both by a redevelopment commission and by the municipal governing body, then the performance, recommendation, or approval thereof once by the municipal governing body shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event a municipal governing body designates itself to exercise the powers, duties, and responsibilities of a redevelopment commission, it may assign the administration of redevelopment policies, programs and plans to any existing or new department of the municipality.

(a) **(For effective date, see note)** In lieu of creating a redevelopment commission as authorized herein, the governing body of any municipality may, if it deems wise, either designate a housing authority created under the provisions of Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission as prescribed herein, or undertake to exercise such powers, duties, and responsibilities itself. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the findings specified in G.S. 160A-504(a) and (b). In the event a governing body designates itself to perform the powers, duties, and responsibilities of a redevelopment commission under this subsection, or exercises those powers, duties, and responsibilities pursuant to G.S. 153A-376 or G.S. 160A-456, then where any act or proceeding is required to be done, recommended, or approved both by a redevelopment commission and by the municipal governing body, then the performance, recommendation, or approval thereof once by the municipal governing body shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event a municipal governing body designates itself to exercise the powers, duties, and responsibilities of a

redevelopment commission, it may assign the administration of redevelopment policies, programs and plans to any existing or new department of the municipality.

(b) The governing body of any municipality which has prior to July 1, 1969, created, or which may hereafter create, a redevelopment commission may, in its discretion, by resolution abolish such redevelopment commission, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the redevelopment commission of the municipality is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the municipality. Any municipality which abolishes a redevelopment commission pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the governing body:

(1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the redevelopment commission shall vest in, belong to, and be the property of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission shall remain, vest in, and inure to the benefit of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the redevelopment commission shall be owed to and collected by the municipality;

(5) Any actions, suits, and proceedings pending against, or having been instituted by the redevelopment commission shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission and shall pay or cause to be paid any judgment rendered against the redevelopment commission in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;

(6) All obligations of the redevelopment commission, including outstanding indebtedness, shall be assumed by the municipality, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the municipality;

(7) All ordinances, rules, regulations and policies of the redevelopment commission shall continue in full force and effect until repealed or amended by the governing body of the municipality.

(c) Where the governing body of any municipality has in its discretion, by resolution, abolished a redevelopment commission pursuant to subsection (b) above, the governing body of such municipality may, at any time subsequent to the passage of a resolution abolishing a redevelopment commission, or concurrently therewith, by the passage of a resolution adopted in accordance with the procedures and pursuant to the findings specified in G.S. 160A-504(a) and (b), designate an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission. Where the

governing body of any municipality designates, pursuant to this subsection, an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission, on the day set in the resolution of the governing body passed pursuant to subsection (b) of this section, or pursuant to subsection (c) of this section:

(1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the redevelopment commission or to the municipality as hereinabove provided in subsections (a) or (b), shall vest in, belong to, and be the property of the existing housing authority of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission or in favor of the municipality as hereinabove provided in subsections (a) or (b), shall remain, vest in, and inure to the benefit of the existing housing authority of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges or fees owing to the redevelopment commission, or owing to the municipality as hereinabove provided in subsections (a) or (b), shall be owed to and collected by the existing housing authority of the municipality;

(5) Any actions, suits, and proceedings pending against or having been instituted by the redevelopment commission, or the municipality, or to which the municipality has become a party, as hereinabove provided in subsections (a) or (b), shall not be abated by such abolition but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the existing housing authority of the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission, or the municipality, and shall pay or cause to be paid any judgments rendered in such actions, suits, or proceedings, and no new processes need be served in such action, suit, or proceeding;

(6) All obligations of the redevelopment commission, or the municipality as hereinabove provided in subsections (a) or (b), including outstanding indebtedness, shall be assumed by the existing housing authority of the municipality; and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the existing housing authority of the municipality.

(7) All ordinances, rules, regulations, and policies of the redevelopment commission, or of the municipality as hereinabove provided in subsections (a) or (b), shall continue in full force and effect until repealed and amended by the existing housing authority of the municipality.

(d) A housing authority designated by the governing body of any municipality to exercise the powers, duties and responsibilities of a redevelopment commission shall, when exercising the same, do so in accordance with Article 22 of Chapter 160A of the General Statutes. Otherwise the housing authority shall continue to exercise the powers, duties and responsibilities of a housing authority in accordance with Chapter 157 of the General Statutes. (1969, c. 1217, s. 1; 1971, c. 116, ss. 1, 2; 1973, c. 426, s. 75; 1981 (Reg. Sess., 1982), c. 1276, s. 13; 2003-403, s. 16.)

§ 160A-505.1. Commission budgeting and accounting systems as a part of municipality budgeting and accounting systems.

The governing body of a municipality may by resolution provide that the budgeting and accounting systems of the municipality's redevelopment commission or, if the municipality's housing authority is exercising the powers, duties, and responsibilities of a redevelopment commission, the budgeting and accounting systems of the housing authority, shall be an integral part of the budgeting and accounting systems of the municipality. If such a resolution is adopted:

(1) For purposes of the Local Government Budget and Fiscal Control Act, the commission or authority shall not be considered a "public authority," as that phrase is defined in G.S. 159-7(b), but rather shall be considered a department or agency of the municipality. The operations of the commission or authority shall be budgeted and accounted for as if the operations were those of a public enterprise of the municipality.

(2) The budget of the commission or authority shall be prepared and submitted in the same manner and according to the same procedures as are the budgets of other departments and agencies of the municipality; and the budget ordinance of the municipality shall provide for the operations of the commission or authority.

(3) The budget officer and finance officer of the municipality shall administer and control that portion of the municipality's budget ordinance relating to the operations of the commission or authority. (1971, c. 780, s. 37.2; 1973, c. 474, s. 30.)

§ 160A-506. Creation of a county redevelopment commission.

If the board of county commissioners of a county by resolution declares that blighted areas do exist in said county, and the redevelopment of such areas is necessary in the interest of public health, safety, morals, or welfare of the residents of such county, the county commissioners of said county are hereby authorized to create a separate and distinct body corporate and politic to be known as the redevelopment commission of said county by passing a resolution to create such a commission to function in the territorial limits of said county. Provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by said municipality.

All of the provisions of Article 22, Chapter 160A of the General Statutes, shall be applicable to county redevelopment commissions, including the formation, appointment, tenure, compensation, organization, interest and powers as specified therein. (1969, c. 1208, s. 2; 1973, c. 426, s. 75.)

§ 160A-507. Creation of a regional redevelopment commission.

If the board of county commissioners of two or more contiguous counties by resolution declare that blighted areas do exist in said counties and the redevelopment of such areas is necessary in the interest of public health, morals, or welfare of the residents of such counties, the county commissioners of said counties are hereby authorized to create a separate and distinct body corporate and politic to be known as the regional redevelopment commission by the passage of a

resolution by each county to create such a commission to function in the territorial limits of the counties; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by the municipality.

The board of county commissioners of each county included in the regional redevelopment commission shall appoint one person as a commissioner and such a person may be appointed at or after the time of the adoption of the resolution creating the redevelopment commission. The board of county commissioners shall have the authority to appoint successors or to remove persons for misconduct who are appointed by them. Each commissioner to the redevelopment commission shall serve for a five-year term except that initial appointments may be for less time in order to establish a fair donation system of appointments. In the event that a regional redevelopment commission shall have an even number of counties, the Governor of North Carolina shall appoint a member to the commission from the area to be served. The appointed members as commissioners shall constitute the regional redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in Article 22 of Chapter 160A of the General Statutes, shall apply to the creation and operation of a regional redevelopment commission, and where reference is made to municipality, it shall be interpreted to apply to the area served by the regional redevelopment commission. (1969, c. 1208, s. 3; 1973, c. 426, s. 75.)

§ 160A-507.1. Creation of a joint county-city redevelopment commission.

A county and one or more cities within the county are hereby authorized to create a separate and distinct body corporate and politic to be known as the joint redevelopment commission by the passage of a resolution by the board of county commissioners and the governing body of one or more cities within the county creating such a commission to function within the territorial limits of such participating units of government; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the affected governing boards for such purposes, and further provided that a joint redevelopment commission created hereunder shall have authority to operate in an area where there presently exists a redevelopment commission upon the approval of the municipality or county concerned. The governing body of each participating local government shall appoint one or more commissioners as such governing bodies shall determine; such persons may be appointed at or after the time of adoption of the resolution creating the joint redevelopment commission. The appointing authority shall have the authority to appoint successors or to remove persons for misfeasance, malfeasance or nonfeasance who are appointed by them. Each commissioner shall serve for a term designated by the governing bodies of not less than one nor more than five years. The appointed members as commissioners shall constitute the joint redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in Article 22 of Chapter 160A of the General Statutes shall apply to the creation and operation of a joint redevelopment commission and where reference is made to municipality, it shall be interpreted to apply to the units of government creating a joint redevelopment commission. (1975, c. 407.)

§ 160A-508. Appointment and qualifications of members of commission.

Upon certification of a resolution declaring the need for a commission to operate in a city or town, the mayor and governing board thereof, respectively, shall appoint, as members of the commission, not less than five nor more than nine citizens who shall be residents of the city or town in which the commission is to operate. The governing body may at any time by resolution or ordinance increase or decrease the membership of a commission, within the limitations herein prescribed. (1951, c. 1095, s. 5; 1971, c. 362, ss. 6, 7; 1973, c. 426, s. 75.)

§ 160A-509. Tenure and compensation of members of commission.

The mayor and governing body shall designate overlapping terms of not less than one nor more than five years for the members who are first appointed. Thereafter, the term of office shall be five years. A member shall hold office until his successor has been appointed and qualified. Vacancies for the unexpired terms shall be promptly filled by the mayor and governing body. A member shall receive such compensation, if any, as the municipal governing board may provide for this service, and shall be entitled within the budget appropriation to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. (1951, c. 1095, s. 6; 1967, c. 932, s. 4; 1971, c. 362, s. 8; 1973, c. 426, s. 75.)

§ 160A-510. Organization of commission.

The members of a commission shall select from among themselves a chairman, a vice-chairman, and such other officers as the commission may determine. A commission may employ a secretary, its own counsel, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. A majority of the members shall constitute a quorum for its meeting. Members shall not be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against such commission. A commission may delegate to one or more of its members, agents or employees such of its powers as it shall deem necessary to carry out the purposes of this Article, subject always to the supervision and control of the commission. For inefficiency or neglect of duty or misconduct in office, a commissioner of a commission may be removed by the governing body, but a commissioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. (1951, c. 1095, s. 7; 1971, c. 362, s. 9; 1973, c. 426, s. 75.)

§ 160A-511. Interest of members or employees.

No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project, except that a member or employee of a commission may acquire property in a residential redevelopment area from a person or entity other than the commission after the residential redevelopment plan for that area is adopted if:

(1) The primary purpose of acquisition is to occupy the property as his principal residence;

(2) The redevelopment plan does not provide for acquisition of such property by the commission; and

(3) Prior to acquiring title to the property, the member or employee shall have disclosed in writing to the commission and to the local governing body his intent to acquire the property and to occupy the property as his principal residence.

Except as authorized herein, the acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. If any member or employee of a commission shall have already owned or controlled within the preceding two years any interest, direct or indirect, in any property later included or planned to be included in any redevelopment project, under the jurisdiction of the commission, or has any such interest in any contract for material or services to be furnished or used in connection with any redevelopment project, he shall disclose the same in writing to the commission and to the local governing body. Any disclosure required herein shall be entered in writing upon the minute books of the commission. Failure to make disclosure shall constitute misconduct in office. (1951, c. 1095, s. 8; 1973, c. 426, s. 75; 1977, 2nd Sess., c. 1139.)

§ 160A-512. Powers of commission.

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

(1) To procure from the planning commission the designation of areas in need of redevelopment and its recommendation for such redevelopment;

(2) To cooperate with any government or municipality as herein defined;

(3) To act as agent of the State or federal government or any of its instrumentalities or agencies for the public purposes set out in this Article;

(4) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the municipality and to undertake and carry out "redevelopment projects" within its area of operation;

(5) Subject to the provisions of G.S. 160A-514(b) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this Article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(6) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project, except that eminent domain may only be used to take a blighted parcel; to hold, improve, clear or prepare for redevelopment any such property, and subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the Commission (although disposition of the property is still subject to G.S. 160A-514), with "redevelopers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

(7) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursements, in such investments as may be lawful for guardians, executors, administrators or other fiduciaries under the laws of this State; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled;

(8) To borrow money and to apply for and accept advances, loans evidenced by bonds, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private for the purposes of this

Article, to give such security as may be required and to enter into and carry out contracts in connection therewith; and, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this Article;

(9) Acting through one or more commissioners or other persons designated by the commission, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(10) Within its area of operation, to make or have made all surveys, studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this Article and in connection therewith to enter into or upon any land, building, or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building, or improvement except for injuries resulting from negligence, wantonness or malice; and to contract or cooperate with any and all persons or agencies public or private, in the making and carrying out of such surveys, appraisals, studies and plans.

A redevelopment commission is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements and (ii) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The redevelopment commission is further authorized to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and urban blight.

(11) To make such expenditures as may be necessary to carry out the purposes of this Article; and to make expenditures from funds obtained from the federal government;

(12) To sue and be sued;

(13) To adopt a seal;

(14) To have perpetual succession;

(15) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any

contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary, or, treasurer or assistant treasurer of the commission shall be held to have been properly executed for and on its behalf;

(16) To make and from time to time amend and repeal bylaws, rules, regulations and resolutions;

(17) To make available to the government or municipality or any appropriate agency, board or commission, the recommendations of the commission affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety or welfare;

(18) To perform redevelopment project undertakings and activities in one or more contiguous or noncontiguous redevelopment areas which are planned and carried out on the basis of annual increments. (1951, c. 1095, s. 9; 1961, c. 837, ss. 5, 7; 1969, c. 254, s. 1; 1973, c. 426, s. 75; 1981 (Reg. Sess., 1982), c. 1276, s. 14; 2003-403, s. 17; 2006-224, s. 2.3; 2006-259, s. 47; 2011-284, s. 120.)

§ 160A-513. Preparation and adoption of redevelopment plans.

(a) A commission shall prepare a redevelopment plan for any area certified by the planning commission to be a redevelopment area. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan, if any (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the area.

(c) A commission shall not acquire real property for a development project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as hereinafter prescribed; provided, however, that the commission may acquire, through negotiation, specific pieces of property in the redevelopment area prior to the approval of such plan when the governing body finds that advance acquisition of such properties is in the public interest and specifically approves such action.

(d) The redevelopment commission's redevelopment plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;

(2) A land use plan of the area showing proposed uses following redevelopment;

(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;

(4) A preliminary site plan of the area;

(5) A statement of the proposed changes, if any, in zoning ordinances or maps;

(6) A statement of any proposed changes in street layouts or street levels;

(7) A statement of the estimated cost and method of financing redevelopment under the plan; provided, that where redevelopment activities are performed on the basis of annual increments, such statement to be sufficient shall set forth a schedule of the activities proposed to be undertaken during the incremental period, together with a statement of the estimated cost and method of financing such scheduled activities only;

(8) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this Article;

(9) A statement of a feasible method proposed for the relocation of the families displaced.

(e) The commission shall hold a public hearing prior to its final determination of the redevelopment plan. Notice of such hearing shall be given once a week for two successive calendar weeks in a newspaper published in the municipality, or if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than 15 days prior to the date fixed for said hearing.

(f) The commission shall submit the redevelopment plan to the planning commission for review. The planning commission, shall, within 45 days, certify to the redevelopment commission its recommendation on the redevelopment plan, either of approval, rejection or modification, and in the latter event, specify the changes recommended.

(g) Upon receipt of the planning commission's recommendation, or at the expiration of 45 days, if no recommendation is made by the planning commission, the commission shall submit to the governing body the redevelopment plan with the recommendation, if any, of the planning commission thereon. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs, which will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangements, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions or blight.

(h) The governing body, upon receipt of the redevelopment plan and the recommendation (if any) of the planning commission, shall hold a public hearing upon said plan. Notice of such hearing shall be given once a week for two successive weeks in a newspaper published in the municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than 15 days prior to the date fixed for said hearing. The notice shall describe the redevelopment area by boundaries, in a manner designed to be understandable by the general public. The redevelopment plan, including such maps, plans, contracts, or other documents as form a part of it, together with the recommendation (if any) of the planning commission and supporting data, shall be available for public inspection at a location specified in the notice for at least 10 days prior to the hearing.

At the hearing the governing body shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known, and consider recommendations in writing with reference to the redevelopment plan.

(i) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(j) Subject to the proviso in subsection (c) of this section, upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the plan, in accordance with the provisions of this Article.

(k) A redevelopment plan may be modified at any time by the commission; provided that, if modified after the sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body as provided above. (1951, c. 1095, s. 10; 1961, c. 837, s. 8; 1965, c. 808; 1969, c. 254, s. 2; 1973, c. 426, s. 75.)

§ 160A-514. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project.

(a) A commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid.

(b) In entering and carrying out any contract for construction, demolition, moving of structures, or repair work or the purchase of apparatus, supplies, materials, or equipment, a commission shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes. In construing such provisions, the commission shall be considered to be the governing board of a "subdivision of the State," and a contract for demolition or moving of structures, shall be treated in the same manner as a contract for construction or repair. Compliance with such provisions shall not be required, however, where the commission enters into contracts with the municipality which created it for the municipality to furnish any such services, work, apparatus, supplies, materials, or equipment; the making of these contracts without advertisement or bids is hereby specifically authorized. Advertisement or bids shall not be required for any contract for construction, demolition, moving of structures, or repair work, or for the purchase of apparatus, supplies, materials, or equipment, where such contract involves the expenditure of public money in an amount less than five hundred dollars ($500.00).

(c) A commission may sell, exchange, or otherwise transfer the fee or any lesser interest in real property in a redevelopment project area to any redeveloper for any public or private use that accords with the redevelopment plan, subject to such covenants, conditions and restrictions as the commission may deem to be in the public interest and in furtherance of the purposes of this Article. In the sale, exchange, or transfer of property, the commission shall exercise the authority and procedure set out in G.S. 160A-268, 160A-269, 160A-270, 160A-271, or 160A-279 for the disposition of property by a city council. Provided, however, that all sales, exchanges, or other transfers of real property from July 9, 1985, to December 31, 1987, in accordance with the provisions of this section prior to its revision on July 9, 1985, shall be and are valid in all respects.

(d) A commission may sell personal property having a value of less than five hundred dollars ($500.00) at private sale without advertisement and bids.

(e) In carrying out a redevelopment project, the commission may:

(1) With or without consideration and at private sale convey to the municipality in which the project is located such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways.

(2) With or without consideration, convey at private sale, grant, or dedicate easements and rights-of-way for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan.

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body such real property as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(4) In addition to other authority contained in this section, after a public hearing advertised in accordance with the provisions of G.S. 160A-513(e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made.

(f) After receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

(1) Plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure and general character of the proposed redevelopment;

(2) A statement of the use intended for each part of the proposed redevelopment;

(3) A guaranty of completion of the proposed redevelopment within specified time limits;

(4) The amount, if known, of the consideration to be paid;

(5) Adequate safeguards for proper maintenance of all parts of the proposed redevelopment;

(6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this Article.

Any deed to a redeveloper in furtherance of a redevelopment contract shall be executed in the name of the commission, by its proper officers, and shall contain in addition to all other provisions, such conditions, restrictions and provisions as the commission may deem desirable to run with the land in order to effectuate the purposes of this Article.

(g) The commission may temporarily rent or lease, operate and maintain real property in a redevelopment project area, pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. (1951, c. 1095, s. 11; 1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2; 1965, c. 679, s. 2; 1967, c. 24, s. 18; c. 932, s. 1; 1973, c. 426, s. 75; 1985, c. 665, ss. 1, 2; 1987, c. 364; 1989, c. 413; 2003-66, ss. 1, 2.)

§ 160A-515. Eminent domain.

The commission may exercise the right of eminent domain in accordance with the provisions of Chapter 40A, but only where the property to be taken is a blighted parcel. (1951, c. 1095, s. 12; 1965, c. 679, s. 3; c. 1132; 1967, c. 932, ss. 2, 3; 1973, c. 426, s. 75; 1981, c. 919, s. 30; 2006-224, s. 2.4; 2006-259, s. 47.)

§ 160A-515.1. Project development financing.

(a) Authorization. – A city may finance a redevelopment project and any related public improvements with the proceeds of project development financing debt instruments, issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the city. Before it receives the approval of the Local Government Commission for issuance of project development financing debt instruments, the city's governing body must define a development financing district and adopt a development financing plan for the district. The city may act jointly with a county to finance a project, define a development financing district, and adopt a development financing plan for the district.

(b) Development Financing District. – A development financing district shall comprise all or portions of one or more redevelopment areas defined pursuant to this Article. The total land area within development financing districts in a city, including development financing districts created pursuant to G.S. 158-7.3, may not exceed five percent (5%) of the total land area of the city. For purposes of this section, land in a district created by a county that subsequently becomes part of a city does not count against the city's five-percent (5%) limit unless the city and the county have entered into an agreement pursuant to G.S. 159-107(e).

(c) Development Financing Plan. – The development financing plan must be compatible with the redevelopment plan or plans for the redevelopment area or areas included within the district. The development financing plan must include all of the following:

(1) A description of the boundaries of the development financing district.
(2) A description of the proposed development of the district, both public and private.
(3) The costs of the proposed public activities.
(4) The sources and amounts of funds to pay for the proposed public activities.
(5) The base valuation of the development financing district.
(6) The projected incremental valuation of the development financing district.

(7) The estimated duration of the development financing district.

(8) A description of how the proposed development of the district, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services.

(9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.

(10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in the plan will comply with the wage requirements in subsection (d) of this section.

(d) Wage Requirements. – A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection shall be binding and conclusive. For purposes of this section, the term "manufacturing facility" means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(e) County Review. – Before adopting a plan for a development financing district, the city council shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the

city council, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the city council may proceed to adopt the plan.

(f) Environmental Review. – Before adopting a plan for development financing districts, the city council shall submit the plan to the Secretary of Environmental Quality to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(g) Plan Adoption. – Before adopting a plan for a development financing district, the city council shall hold a public hearing on the plan. The council shall, no less than 30 days before the day of hearing, cause notice of the hearing to be mailed by first-class mail to all property owners and mailing addresses within the proposed development financing district. The council shall also, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once in a newspaper of general circulation in the city. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the city clerk. At the public hearing, the council shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county commissioners or the Secretary of Environmental Quality has disapproved the plan pursuant to subsection (e) or (f) of this section, the council may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the city's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(h) Plan Modification. – Subject to the limitations of this subsection, a city council may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the city council shall follow the procedures and meet the requirements of subsections (d) through (g) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the city may agree with the holders of any

project development financing debt instruments to restrict its power to reduce district boundaries.

(i) Plan Implementation. – In implementing a development financing plan, a city may act directly, through a redevelopment commission, through one or more contracts with private agencies, or by any combination of these. A private agency that enters into a contract with a city for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. (2003-403, s. 18; 2005-238, s. 12; 2006-211, s. 4; 2015-241, s. 14.30(v).)

§ 160A-516. Issuance of bonds.

(a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the commission (and the bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable on the bonds, nor in any event shall the bonds or obligations be payable out of any funds or properties other than those of the commission acquired for the purpose of this Article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities. The bonds are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds may be issued by a commission under this Article notwithstanding any debt or other limitation prescribed in any statute. This Article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission

under this Article and this authorization and issuance shall not be subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) Bonds shall be sold by the redevelopment commission at either public or private sale upon such terms and in such manner, consistent with the provisions hereof, as the redevelopment commission may determine. Prior to the public sale of bonds hereunder, the redevelopment commission shall first cause a notice of the sale of the bonds to be published at least once at least 10 days before the date fixed for the receipt of bids for the bonds (i) in a newspaper having the largest or next largest circulation in the redevelopment commission's area of operation and (ii) in a publication that carries advertisements for the sale of State and municipal bonds published in the City of New York in the State of New York; provided, however, that in its discretion the redevelopment commission may cause any such notice of sale in the New York publication to be published as part of a consolidated notice of sale offering for sale the obligations of other public agencies in addition to the redevelopment commission's bonds, and provided, further, that any bonds may be sold by the redevelopment commission at private sale upon such terms and conditions as are mutually agreed upon between the commission and the purchaser. No bonds issued pursuant to this Article shall be sold at less than par and accrued interest. The provisions of the Local Government Finance Act shall not be applicable with respect to bonds sold or issued under this Article.

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this Article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Article.

(g) Bonds (including, without limitation, interim and long-term notes) may be issued or sold under this Article at private sale upon such terms and conditions as may be negotiated and mutually agreed upon by the commission and the purchaser (who may be

the government or other public or private lender or purchaser). (1951, c. 1095, s. 13; 1961, c. 837, s. 10; 1971, c. 87, s. 3; 1973, c. 426, s. 75; 1981, c. 907, ss. 3, 4; 1995, c. 46, s. 20; 2015-264, s. 16(l).)

§ 160A-517. Powers in connection with issuance of bonds.

(a) In connection with the issuance of bonds or the incurring of obligations and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any redevelopment project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds, to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof;

(5) To covenant (subject to the limitations contained in this Article) as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(7) To covenant as to the use, maintenance and replacement of any of or all of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys, and to warrant its title to such property;

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) To vest in any obligees of the commissions the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any

obligee or obligees holding a specified amount in bonds the right, in the event of a default to take possession of and use, operate and manage any redevelopment project or any part thereof, title to which is in the commission, or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof, and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers herein granted; to make such covenants (other than and in addition to the covenants herein expressly authorized) and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said commission, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

(b) The commission shall have power by its resolution, trust indenture, mortgage lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any redevelopment project or any part thereof title to which is in the commission, to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any redevelopment project of said commission or any part thereof, title to which is in the commission and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of, carry out, operate and maintain such project or any part therefrom and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct; and

(3) To require said commission and the commissioners, officers, agents and employees thereof to account as if it and they were the trustees of an express trust. (1951, c. 1095, s. 14; 1973, c. 426, s. 75.)

§ 160A-518. Right of obligee.

An obligee of the commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this Article; and

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission. (1951, c. 1095, s. 15; 1973, c. 426, s. 75.)

§ 160A-519. Cooperation by public bodies.

(a) For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a commission;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the redevelopment;

(5) Cause administrative and other services to be furnished to the commission of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan.

(b) Any sale, conveyance, or agreement provided for in this section may be made by a public body without public notice, advertisement or public bidding. (1951, c. 1095, s. 16; 1973, c. 426, s. 75.)

§ 160A-520. Grant of funds by community.

Any municipality located within the area of operation of a commission may appropriate funds to a commission for the purpose of aiding such commission in carrying out any of its powers and functions under this Article. To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds. (1951, c. 1095, s. 17; 1973, c. 426, s. 75.)

§ 160A-521. Records and reports.

(a) The books and records of a commission shall at all times be open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, shall be filed with the city clerk and shall be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required shall be made. Copies of such reports shall be filed with the mayor and governing body of the municipality. (1951, c. 1095, s. 18; 1973, c. 426, s. 75.)

§ 160A-522. Title of purchaser.

Any instrument executed by a commission and purporting to convey any right, title or interest in any property under this Article shall be conclusive evidence of compliance with the provisions of this Article insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. (1951, c. 1095, s. 19; 1973, c. 426, s. 75.)

§ 160A-523. Preparation of general plan by local governing body.

The governing body of any municipality or county, which is not otherwise authorized to create a planning commission with power to prepare a general plan for the development of the community, is hereby authorized and empowered to prepare such a general plan prior to the initiation and carrying out of a redevelopment project under this Article. (1951, c. 1095, s. 20; 1973, c. 426, s. 75.)

§ 160A-524. Inconsistent provisions.

Insofar as the provisions of this Article are inconsistent with the provisions of any other law, the provisions of this Article shall be controlling. (1951, c. 1095, s. 22; 1955, c. 1349; 1957, c. 502, s. 4; 1973, c. 426, s. 75.)

§ 160A-525. Certain actions and proceedings validated.

All proceedings, resolutions, ordinances, motions, notices, findings, determinations, and other actions of redevelopment commissions, incorporated cities and towns, governing bodies, and planning boards and commissions, had and taken prior to January 1, 1965, pursuant to or purporting to comply with the Urban Redevelopment Law (G.S. 160A-500 to 160A-526) and incident to the creation and organization of redevelopment commissions and appointment of members thereof, designation of redevelopment and project areas, findings and determinations respecting conditions in redevelopment and project areas, preparation, development, review, processing and approval of urban redevelopment projects and plans, including redevelopment plans, calling and holding of public hearings, and the time and manner of giving and publishing notices thereof, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such actions are declared to be valid and lawfully authorized; provided, however, that no such action shall be legalized, ratified, approved, validated or confirmed, under this section if they appertain to any redevelopment or project area, the acquisition or taking of any property in any such area, any urban redevelopment project or any redevelopment plan respecting which any decree or judgment has been rendered by the Supreme Court of North Carolina prior to May 25, 1965. (1963, c. 194; 1965, c. 680; 1973, c. 426, s. 75.)

§ 160A-526. Contracts and agreements validated.

All contracts or agreements of redevelopment commissions heretofore entered into with the federal government or its agencies, and with municipalities or others relating to financial assistance for redevelopment projects in which it was required that loans or advances shall bear an interest rate in excess of six per centum (6%) per annum, or in which a municipality or others had agreed to pay funds equal to the interest in excess of six per centum (6%) per annum are hereby validated, ratified, confirmed, approved and declared legal with respect to the payment of interest in excess of six per centum (6%), and all things done or performed in reference thereto. The redevelopment commissions are hereby authorized to assume the full obligation of the municipalities under the contracts or agreements with reference to interest in excess of six per centum (6%), and to

reimburse any municipality which has made any interest payment under such contracts or agreements. (1971, c. 87, s. 4; 1973, c. 426, s. 75.)

§§ 160A-527 through 160A-534. Reserved for future codification purposes.

Article 23.

Municipal Service Districts.

§ 160A-535. Title; effective date.

This Article may be cited as "The Municipal Service District Act of 1973," and is enacted pursuant to Article V, Sec. 2(4) of the Constitution of North Carolina, effective July 1, 1973. (1973, c. 655, s. 1.)

§ 160A-536. Purposes for which districts may be established.

(a) Purposes. – The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

(1) Beach erosion control and flood and hurricane protection works.

(1a) **(For applicability see note)** Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter.

(2) Downtown revitalization projects.

(2a) Urban area revitalization projects.

(2b) Transit-oriented development projects.

(3) Drainage projects.

(3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.

(3b) **(For applicability see note)** Lighting at interstate highway interchange ramps.

(4) Off-street parking facilities.

(5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water

resources development projects provided for by General Statutes Chapter 143, Article 21.

(6) Conversion of private residential streets to public streets as provided in subsection (e) of this section.

(b) Downtown Revitalization Defined. – As used in this section "downtown revitalization projects" are improvements, services, functions, promotions, and developmental activities intended to further the public health, safety, welfare, convenience, and economic well-being of the central city or downtown area. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district do not prejudice a city's authority to undertake urban renewal projects in the same area. Examples of downtown revitalization projects include by way of illustration but not limitation all of the following:

(1) Improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements.

(2) Construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street.

(3) Construction of public buildings, restrooms, docks, visitor centers, and tourism facilities.

(4) Improvements to relieve traffic congestion in the central city and improve pedestrian and vehicular access to it.

(5) Improvements to reduce the incidence of crime in the central city.

(6) Providing city services or functions in addition to or to a greater extent than those provided or maintained for the entire city.

(7) Sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area.

(c) Urban Area Revitalization Defined. – As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.

(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.

(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any

nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.

(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

(c1) Transit-Oriented Development Defined. – As used in this section, the term "transit-oriented development" includes the provision within a public transit area of any service or facility listed in this subsection. A public transit area is an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line. A mass transit line is a rail line along which a public transportation service operates or a busway or guideway dedicated to public transportation service. A busway is not a mass transit line if a majority of its length is also generally open to passenger cars and other private vehicles more than two days a week.

The following services and facilities are included in the definition of "transit-oriented development" if they are provided within a transit area:

(1) Any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section.

(2) Passenger stops and stations on a mass transit line.

(3) Parking facilities and structures associated with passenger stops and stations on a mass transit line.

(4) Any other service or facility, whether public or public-private, that the city may by law provide or participate in within the city, including retail, residential, and commercial facilities.

(d) Contracts. – A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this subsection shall comply with all of the following criteria:

(1) The contract shall specify the purposes for which city moneys are to be used for that service district.

(2) The contract shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period. For contracts entered into on or after June 1, 2016, the appropriate accounting shall include the name, location, purpose, and amount paid to any person or persons with whom the private agency contracted to perform or complete any purpose for which the city moneys were used for that service district.

(d1) Additional Requirements for Certain Contracts. – In addition to the requirements of subsection (d) of this section, if the city enters into a contract with a private agency for a service district under subdivision (a)(1a), (2), or (2a) of this section, the city shall comply with all of the following:

(1) The city shall solicit input from the residents and property owners as to the needs of the service district prior to entering into the contract.

(2) Prior to entering into, or the renewal of, any contract under this section, the city shall use a bid process to determine which private agency is best suited to achieve the needs of the service district. The city shall determine criteria for selection of the private agency and shall select a private agency in accordance with those criteria. If the city determines that a multiyear contract with a private agency is in the best interest of the city and the service district, the city may enter into a multiyear contract not to exceed five years in length.

(3) The city shall hold a public hearing prior to entering into the contract, which shall be noticed by publication in a newspaper of general circulation, for at least two successive weeks prior to the public hearing, in the service district.

(4) The city shall require the private agency to report annually to the city, by presentation in a city council meeting and in written report, regarding the needs of the service district, completed projects, and pending projects. Prior to the annual report, the private agency shall seek input of the property owners and residents of the service district regarding needs for the upcoming year.

(5) The contract shall specify the scope of services to be provided by the private agency. Any changes to the scope of services shall be approved by the city council.

(e) Converting Private Residential Streets to Public Streets. – A city may establish a municipal service district for the purpose of converting private residential streets to public streets if the conditions of this subsection are met. The property tax levied in a municipal service district created for this purpose may be used only to pay the costs related to the transfer of ownership of the streets, evaluation of the condition of the private streets, and the design and construction costs related to improving the private streets to meet public street standards as approved by the governing board. Notwithstanding G.S. 160A-542, the property tax rate in a district created for this purpose may not be in excess of thirty percent (30%) of the ad valorem tax rate in effect in the city in the fiscal year prior to the establishment of the district. After the private streets have been upgraded to meet public street standards and all costs have been recovered from the tax in the district, no further tax may be levied in the district, and the city council must abolish the municipal service district as provided by G.S. 160A-541.

Notwithstanding G.S. 160A-299, if a city abandons the streets and associated rights-of-way acquired pursuant to this subsection, the street-related common elements must be returned to the owners' association from which the city acquired them in a manner that makes the owners' association's holdings in common elements as they were prior to the establishment of the municipal service district.

For a city to create a municipal service district for the purpose of converting private residential streets to public streets, all of the following conditions must be met:

(1) The private residential road must be nongated.

(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds.

(3) The city must agree to accept the converted streets for perpetual public maintenance.

(4) The city must meet one of the following requirements:

a. Located primarily in a county that has a population of 750,000 or more according to the most recent decennial federal census, and also located in an adjacent county with a population of 250,000 or more according to the most recent decennial federal census.

b. Located primarily in a county with a population of 250,000 or more according to the most recent decennial federal census, and also located in an adjacent county with a population of 750,000 or more according to the most recent decennial federal census. (1973, c. 655, s. 1; 1977, c. 775, ss. 1, 2; 1979, c. 595, s. 2; 1985, c. 580; 1987, c. 621, s. 1; 1999-224, s. 1; 1999-388, s. 1; 2004-151, s. 1; 2004-203, s. 5(m); 2009-385, s. 1; 2011-72, ss. 1, 2; 2011-322, s. 1; 2012-79, s. 1.11; 2015-241, s. 15.16B(a); 2016-8, s. 1; 2017-102, s. 31.1.)

§ 160A-537. Definition of service districts.

(a) Standards. – The city council of any city may by ordinance define a service district upon finding that a proposed district is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.

(a1) Petition to Define District. – The city council may also by ordinance define a service district if a petition submitted by a majority of the owners of real property in a defined area of the city establishes that the area is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city. The petition shall contain the names, addresses, and signatures of the real property owners within the proposed district, describe the proposed district boundaries, and state in detail the services, facilities, or functions listed in G.S. 160A-536 which would serve as the basis for establishing the proposed district. The city council may establish a policy to hear all petitions submitted under this subsection at regular intervals, but no less than once per year.

(b) Report. – Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;

(2) A statement showing that the proposed district meets the standards set out in subsection (a); and

(3) A plan for providing in the district one or more of the services listed in G.S. 160A-536.

The report shall be available for public inspection in the office of the city clerk for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. – The city council shall hold a public hearing before adopting any ordinance defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(c1) Exclusion From District. – An owner of a tract or parcel of land located within the proposed district may, at the public hearing or no later than five days after the date of the public hearing required by subsection (c) of this section, submit a written request to the city council for the exclusion of the tract or parcel from the proposed district. The owner shall specify the tract or parcel, state with particularity the reasons why the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, and provide any other additional information the owner deems relevant. If the city council finds that the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, the city council may exclude the tract or parcel from the proposed district.

(d) Effective Date. – Except as otherwise provided in this subsection, the ordinance defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council. If the governing body in the ordinance states that general obligation bonds or special obligation bonds are anticipated to be authorized for the project, it may make the ordinance effective immediately upon its adoption or as otherwise provided in the ordinance. However, no ad valorem tax may be levied for a partial fiscal year.

(e) Repealed by Session Laws 2016-8, s. 2, effective June 1, 2016.

(f) Passage of Ordinance. – No ordinance defining a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be

defined except by ordinance. (1973, c. 655, s. 1; 1981, c. 53, s. 1; c. 733, s. 1; 2006-162, s. 25; 2012-156, s. 4; 2016-8, s. 2.)

§ 160A-538. Extension of service districts.

(a) Standards. – The city council may by ordinance annex territory to any service district upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;

(2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. – The city council may also by ordinance extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the council for annexation to the service district.

(c) Report. – Before the public hearing required by subsection (d), the council shall cause to be prepared a report containing:

(1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;

(2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a) or (b); and

(3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the city clerk for at least two weeks before the date of the public hearing.

(d) Hearing and Notice. – The council shall hold a public hearing before adopting any ordinance extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (c) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(e) Effective Date. – The ordinance extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the council.

(e1) Passage of Ordinance. – No ordinance annexing territory to a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no territory shall be annexed to a service district except by ordinance.

(f) Historic District Boundaries Extension. – A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article

19 of this Chapter may only have its boundaries extended to include territory which has been added to the historic district. (1973, c. 655, s. 1; 1981, c. 53, s. 2; 1987, c. 621, s. 2; 2016-8, s. 3.)

§ 160A-538.1. Reduction of service districts.

(a) Reduction by City Council. – Upon finding that there is no longer a need to include within a particular service district any certain tract or parcel of land, the city council may by ordinance redefine a service district by removing therefrom any tract or parcel of land which it has determined need no longer be included in said district. The city council shall hold a public hearing before adopting an ordinance removing any tract or parcel of land from a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing.

(a1) Request for Reduction by Owner. – A property owner may submit a written request to the city council to remove the owner's tract or parcel of land from a service district. The owner shall specify the tract or parcel, state with particularity the reasons why the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, and provide any other additional information the owner deems relevant. Upon receipt of the request, the city council shall hold a public hearing as required by subsection (a) of this section. If the city council finds that the tract or parcel is not in need of the services, facilities, or functions of the district to a demonstrably greater extent than the remainder of the city, the city council may, by ordinance, redefine the service district by removing therefrom the tract or parcel.

(b) Effective Date. – The removal of any tract or parcel of land from any service district shall take effect at the end of a fiscal year following passage of the ordinance, as determined by the city council.

(b1) Passage of Ordinance. – No ordinance reducing a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be reduced except by ordinance.

(c) Historic District Boundaries Reduction. – A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries reduced to exclude territory which has been removed from the historic district. (1977, c. 775, s. 3; 1987, c. 621, s. 3; 2016-8, s. 4.)

§ 160A-539. Consolidation of service districts.

(a) The city council may by ordinance consolidate two or more service districts upon finding that:

(1) The districts are contiguous or are in a continuous boundary; and

(2) The services provided in each of the districts are substantially the same; or

(3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report. – Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

(1) A map of the districts to be consolidated;

(2) A statement showing the proposed consolidation meets the standards of subsection (a); and

(3) If necessary, a plan for increasing the services for one or more of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the city clerk for at least two weeks before the public hearing.

(c) Hearing and Notice. – The city council shall hold a public hearing before adopting any ordinance consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. – The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the ordinance of consolidation, as determined by the council.

(e) Passage of Ordinance. – No ordinance consolidating two or more service districts as provided for in subsection (a) of this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service districts shall be consolidated except by ordinance. (1973, c. 655, s. 1; 1981, c. 53, s. 2; 2016-8, s. 5.)

§ 160A-540. Required provision or maintenance of services.

(a) New District. – When a city defines a new service district, it shall provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. – When a city annexes territory for a service district, it shall provide, maintain, or let contracts for the services provided or maintained throughout the district to the residents of the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

(c) Consolidated District. – When a city consolidates two or more service districts, one of which has had provided or maintained a lower level of services, it shall increase the services within that district (or let contracts therefor) to a level comparable to those provided or maintained

elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 655, s. 1.)

§ 160A-541. Abolition of service districts.

Upon finding that there is no longer a need for a particular service district, the city council may by ordinance abolish that district. The council shall hold a public hearing before adopting an ordinance abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the ordinance, as determined by the council. (1973, c. 655, s. 1; 2016-8, s. 6.)

§ 160A-542. Taxes authorized; rate limitation.

(a) A city may levy property taxes within defined service districts in addition to those levied throughout the city, in order to finance, provide or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire city. In addition, a city may allocate to a service district any other revenues whose use is not otherwise restricted by law.

(b) Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the city as of the preceding January 1.

(c) Property taxes may not be levied within any district established pursuant to this Article in excess of a rate on each one hundred dollar ($100.00) value of property subject to taxation which, when added to the rate levied city wide for purposes subject to the rate limitation, would exceed the rate limitation established in G.S. 160A-209(d), unless that portion of the rate in excess of this limitation is submitted to and approved by a majority of the qualified voters residing within the district. Any referendum held pursuant to this subsection shall be held and conducted as provided in G.S. 160A-209.

(d) In setting the tax rate, the city council shall consider the current needs, as well as the long-range plans and goals for the service district. The city council shall set the tax rate so that there is no accumulation of excess funds beyond that necessary to meet current needs, fund long-range plans and goals, and maintain a reasonable fund balance. Moneys collected shall be used only for meeting the needs of the service district, as those needs are determined by the city council.

(e) This Article does not impair the authority of a city to levy special assessments pursuant to Article 10 of this Chapter for works authorized by G.S. 160A-491, and may be used in addition to that authority. (1973, c. 655, s. 1; 2015-241, s. 15.16B(b).)

§ 160A-543. Bonds authorized.

A city may incur debt under general law to finance services, facilities or functions provided within a service district. If a proposed general obligation bond issue is required by law to be submitted to and approved by the voters of the city, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than city wide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the

entire city and by a majority of the total of those voting in all of the affected or to be affected service districts. (1973, c. 655, s. 1; 2004-151, s. 4.)

§ 160A-544. Exclusion of personal property of public service corporations.

There shall be excluded from any service district and the provisions of this Article shall not apply to the personal property of any public service corporation as defined in G.S. 160A-243(c); provided that this section shall not apply to any service district in existence on January 1, 1977. (1977, c. 775, s. 4.)

§§ 160A-545 through 160A-549. Reserved for future codification purposes.

Article 24.

Parking Authorities.

§ 160A-550. Short title.

This Article may be cited as the "Parking Authority Law." (1951, c. 779, s. 1; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-551. Definitions.

As used or referred to in this Article, unless a different meaning clearly appears from the context:

(1) The term "authority" shall mean a public body and a body corporate and politic organized in accordance with this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth;

(2) The term "bonds" shall mean bonds authorized by this Article;

(3) The term "city" shall mean the city that is, or is about to be, included in the territorial boundaries of an authority when created hereunder;

(4) The term "city clerk" shall mean the clerk of the city or the officer thereof charged with the duties customarily imposed on the clerk;

(5) The term "city council" shall mean the legislative body, council, board of commissioners, or other body charged with governing the city;

(6) The term "commissioner" shall mean one of the members of an authority, appointed in accordance with the provisions of this Article;

(7) The term "parking project" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles, open to public use for a fee, and shall without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles, including on-street parking meters if so provided by the governing authority;

(8) The term "real property" shall mean lands, structures, franchises, and interest in lands, and any and all things usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including

terms of years, and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate. (1951, c. 779, s. 2; 1965, c. 998, s. 1; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-552. Creation of authority.

The city council of any city may, upon its own initiative, and shall, upon petition of 25 or more residents of the city, hold a public hearing on the question whether or not it is necessary for the city to organize an authority under the provisions of this Article. Notice of the time, place and purpose of such hearing shall be given by publication in a newspaper of general circulation in the city, at least once, at least 10 days before such hearing. At such hearing, an opportunity to be heard shall be granted to all residents and taxpayers of the city and all other interested persons. If, after such hearing, the city council shall by resolution determine that it is necessary for the city to organize an authority under the provisions of this Article, the city council shall appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present or cause to be presented to the Secretary of State of North Carolina a written application signed by them, which shall set forth

(1) A statement that the city council has, pursuant to this Article, and after a public hearing held as herein required, determined that it is necessary for the city to organize an authority under the provisions of this Article, and has appointed the signers of such application as commissioners of such an authority;
(2) A statement that the commissioners desire the authority to become a public body and a body corporate and politic under this Article;
(3) The name, address and term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location and the principal office of the proposed corporation.

The application shall be accompanied by a copy, certified by the city clerk, of the resolution or resolutions of the city council making such determination and appointments. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by law to take and certify oaths, who shall certify upon the application that he personally knows said commissioners and knows them to be the persons appointed as stated in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or any other corporation of this State or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and body corporate and politic under the name proposed in the application; and the Secretary of State shall make and issue a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall be coterminous with those of such city.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall

be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1951, c. 779, s. 3; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-553. Appointment, removal, etc., of commissioners; quorum; chairman; vice-chairman, agents and employees.

An authority shall consist of five commissioners appointed by the city council, and the city council shall designate the first chairman. No commissioner shall be a city official.

The commissioners who are first appointed shall be designated by the city council to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed by the city council and has qualified. Vacancies shall be filled by the city council for the unexpired term. Three commissioners shall constitute a quorum. A commissioner shall receive no compensation for his services, but he shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may, with the consent of the city council call upon the city attorney or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. The city council may remove any member of the authority for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than 10 days' notice. (1951, c. 779, s. 4; 1979, 2nd Sess., c. 1247, ss. 42, 44.)

§ 160A-554. Duty of authority and commissioners.

The authority and its commissioners shall be under a statutory duty to comply or cause compliance strictly with all provisions of this Article and, in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1951, c. 779, s. 5; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-555. Interested commissioners or employees.

No commissioner or employee of an authority shall acquire any interest direct or indirect in any parking project or in any property included or planned to be included in any parking project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any parking project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any parking project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1951, c. 779, s. 6; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-556. Purpose and powers of the authority.

An authority incorporated under this Article shall constitute a public body and a body corporate and politic, exercising public powers as an agency or instrumentality of the city with which it is coterminous. The purpose of the authority shall be to relieve traffic congestion of the streets and public places in the city by means of parking facilities, and to that end to acquire, construct, improve, operate and maintain one or more parking projects in the city. To carry out said purpose, the authority shall have power:

(1) To sue and be sued;
(2) To have a seal and alter the same at pleasure;
(3) To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property;
(4) To acquire by purchase or condemnation, and use real property necessary or convenient. All real property acquired by the authority by condemnation shall be acquired in the manner provided by law for the condemnation of land by the city;
(5) To make bylaws for the management and regulation of its affairs, and subject to agreements with bondholders, for the regulation of parking projects;
(6) To make contracts and leases, and to execute all instruments necessary or convenient;
(7) To construct such buildings, structures and facilities as may be necessary or convenient;
(8) To construct, reconstruct, improve, maintain and operate parking projects;
(9) To accept grants, loans or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or the city, and to expend the proceeds for any purposes of the authority;
(10) To fix and collect rentals, fees and other charges for the use of parking projects or any of them subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;
(11) To do all things necessary or convenient to carry out the purpose of the authority and the powers expressly given to it by this Article;
(12) To issue revenue bonds under the Local Government Revenue Bond Act. (1951, c. 779, s. 7; 1965, c. 998, s. 2; 1971, c. 780, s. 18; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-557. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.

(a) The city may convey, with or without consideration, to the authority real and personal property owned by the city for use by the authority as a parking project or projects or a part thereof. In case of real property so conveyed, the instrument of conveyance shall contain a provision for reversion of the property to the city upon the termination of the corporate existence of the authority or upon the termination of the use of the property for the corporate purpose of the authority. Such conveyance of property by the city to the authority may be made without regard to the provisions of other laws regulating sales of property by the city or requiring previous advertisement of sales of property by the city.

(b) The city may acquire by purchase or condemnation real property in the name of the city for the authority or for the widening of existing roads, streets, parkways, avenues or highways

or for new roads, streets, parkways, avenues or highways to any of the parking projects, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by the city. The city may close such streets, roads, parkways, avenues, or highways as may be necessary or convenient.

(c) Contracts may be entered into between the city and the authority providing for the property to be conveyed by the city to the authority, the additional property to be acquired by the city and so conveyed, the streets, roads, parkways, avenues and highways to be closed by the city, and the amounts, terms and conditions of payment to be made by the authority. Such contracts may contain covenants by the city as to the road, street, parkway, avenue and highway improvements to be made by the city, including provisions for the installation of parking meters in designated streets of the city and for the removal of such parking meters in the event that such parking meters are not found to be necessary or convenient. Any such contract may pledge all or any part of the revenues of on-street parking meters to the authority for a period of not to exceed the period during which bonds of the authority shall be outstanding; provided, that the total amount of such revenues which may be paid pursuant to such a pledge shall not exceed the total of the principal of and interest on such bonds which become due and payable during such period. Such contracts may also contain provisions limiting or prohibiting the construction and operation by the city or any agency thereof in designated areas of public parking facilities and parking meters whether or not a fee or charge is made therefor. Any such contracts between the city and the authority may be pledged by the authority to secure its bonds and may not be modified thereafter except as provided by the terms of the contracts or by the terms of the pledge. The city council may authorize such contracts on behalf of the city and no other authorization on the part of the city for such contracts shall be necessary.

(d) The authority may itself acquire real property for a parking project at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by the city.

(e) In case the authority shall acquire any real property which it shall determine is no longer required for a parking project, then, if such real property was acquired at the cost and expense of the city, the authority shall have power to convey it without consideration to the city, or, if such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease or otherwise dispose of said real property and shall retain and have the power to use the proceeds of sale, rentals or other moneys derived from the disposition thereof for its purposes. (1951, c. 779, s. 8; 1965, c. 998, s. 3; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-558. Contracts.

The authority shall let contracts in the manner provided by law for contracts of the city. (1951, c. 779, s. 9; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-559. Moneys of the authority.

All moneys of the authority shall be paid to the treasurer of the city as agent of the authority, who shall designate depositories and who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out on checks of the treasurer on written requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions. All deposits of such moneys shall be secured in the manner provided by law for securing deposits of moneys of the city. The city accountant of the city and his legally authorized

representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall cause an annual audit of its accounts to be made by a certified public accountant or firm of certified public accountants, and shall cause a copy of the report of each such audit to be filed with the city clerk, who shall present the same to the city council. The authority shall have power, notwithstanding the provisions of this section to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits. (1951, c. 779, s. 10; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-560. Bonds legal investments for public officers and fiduciaries.

The bonds are hereby made securities in which all public officers and bodies of this State and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business and all other persons whatsoever, except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds including capital in their control or belonging to them; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds, including capital, trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this State and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this State is now or may hereafter be authorized. (1951, c. 779, s. 15; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-561. Exemptions from taxation.

It is hereby found, determined and declared that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State of North Carolina, for the improvement of their health, welfare and prosperity, and for the promotion of their traffic, and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this Article, and the State of North Carolina covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the project or any tolls, revenues or other income received by the authority and that the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. (1951, c. 779, s. 16; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-562. Tax contract by the State.

The State of North Carolina covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this Article, in consideration of the acceptance of and payment for the bonds, that the bonds of the authority issued pursuant to this Article and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds, shall at all times be free from taxation except for transfer and estate taxes. (1951, c. 779, s. 17; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-563. Actions against the authority.

In every action against the authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least 30 days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for 30 days after such presentment. (1951, c. 779, s. 19; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-564. Termination of authority.

The city council shall have the authority to terminate the existence of the authority at any time. In the event of such termination, all property and assets of the authority shall automatically become the property of the city and the city shall succeed to all rights, obligations and liabilities of the authority. (1951, c. 779, s. 20; 1979, 2nd Sess., c. 1247, ss. 43, 44.)

§ 160A-565. Inconsistent provisions in other acts superseded.

Insofar as the provisions of this Article are inconsistent with the provisions of any other act, general or special, the provisions of this Article shall be controlling. This Article shall not repeal or modify any other act providing a different method of financing parking projects in cities, the powers conferred hereby being intended to be in addition to and not in substitution for the powers conferred by other acts. (1951, c. 779, s. 22; 1979, 2nd Sess., c. 1247, s. 44.)

§§ 160A-566 through 160A-574. Reserved for future codification purposes.

Article 25.

Public Transportation Authorities.

§ 160A-575. Title.

This Article shall be known and may be cited as the "North Carolina Public Transportation Authorities Act." (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-576. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Authority" means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "Governing body" means the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the municipality are vested.

(3) "Municipality" means any county, city, or town of this State, and any other political subdivision, public corporation, authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(4) "Municipality's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the municipality's administrative duties is vested.

(5) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including but not limited to a street railway, elevated railway or guideway, subway, motor vehicle or motor bus, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within the territorial jurisdiction of the authority, including charter service.

(6) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking or other facilities, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-577. Creation; membership.

A municipality may, by resolution or ordinance, create a transportation authority, hereinafter sometimes referred to as the "authority." It shall be a body corporate and politic. It shall consist of up to 11 members as determined by the governing body of the municipality.

Members of the authority shall reside within the territorial jurisdiction of the authority as hereinafter set out. They shall be appointed by the governing body of the municipality. The terms of the members shall be fixed by the governing body. Appointments to fill vacancies occurring during the regular terms shall be made by the governing body. The appointments of all members shall run until their successors are appointed and qualified.

The members of the authority shall elect a chairman and vice-chairman from the membership of the authority. They shall also elect a secretary who may, or may not, be a member of the authority.

A majority of the members shall constitute a quorum for the transaction of business and an affirmative vote of the majority of the members present at a meeting of the authority shall be required to constitute action of the authority. Members of the authority shall receive such compensation, if any, as may be fixed by the governing body of the municipality. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-578. Purpose of the authority.

The purpose of the authority shall be to provide for a safe, adequate and convenient public transportation system for the municipality creating the authority and for its immediate environs, through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-579. General powers of the authority.

The general powers of the authority shall include any or all of the following:

(1) To sue and be sued;
(2) To have a seal;
(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;
(4) To employ persons deemed necessary to carry out the management functions and duties assigned to them by the authority and to fix their compensation, within the limit of available funds;
(5) With the approval of the municipality's chief administrative official, to use officers, employees, agents and facilities of the municipality for such purposes and upon such terms as may be mutually agreeable;
(6) To retain and employ counsel, auditors, engineers and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;
(7) To acquire, maintain and operate such lands, buildings, structures, facilities, and equipment as may be necessary or convenient for the operations of the authority and for the operation of a public transportation system;
(8) To make or enter into contracts, agreements, deeds, leases, conveyances or other instruments, including contracts and agreements with the United States and the State of North Carolina;
(9) To surrender to the municipality any property no longer required by the authority;
(10) To make plans, surveys and studies of public transportation facilities within the territorial jurisdiction of the authority and to prepare and make recommendations in regard thereto;
(11) To enter into and perform contracts with public transportation companies with respect to the operation of public passenger transportation;
(12) To issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements and in all respects to regulate the operation of buses, taxicabs and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the authority as fully as the municipality is now or hereafter empowered to do within the territorial jurisdiction of the municipality;
(13) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to the extent authorized by resolution or ordinance of the municipality to obtain grants, loans and assistance from the United States, the State, any public body, or any private source whatsoever;
(14) To enter into and perform contracts and agreements with other public transportation authorities pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes; in addition, to enter into and perform contracts with other units of local government when specifically authorized by the governing body, pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes;

(15) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the authority. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-580. Authority of Utilities Commission not affected.

Except as otherwise provided herein, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-581. Territorial jurisdiction.

The jurisdiction of the authority shall extend to all local public passenger transportation operating within the municipality. Said jurisdiction shall also extend up to 30 miles outside of the corporate limits of the municipality where the municipality is a town or city, and up to five miles outside of the boundaries of the municipality where the municipality is a county or up to five miles outside of the combined boundaries of a group of counties. The authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the I.C.C., nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. A public transportation authority shall not extend service into a political subdivision without the consent of the governing body of that political subdivision. A majority vote of the governing body shall constitute consent. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-582. Fiscal accountability.

The authority shall be fiscally accountable to the municipality, and the municipality's governing body shall have authority to examine all records and accounts of the authority at any time. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-583. Funds.

The establishment and operation of a transportation authority as herein authorized are governmental functions and constitute a public purpose, and the municipality is hereby authorized to appropriate funds to support the establishment and operation of the transit authority. The municipality may also dedicate, sell, convey, donate or lease any of its interest in any property to the authority. Further, the authority is hereby authorized to establish such license and regulatory fees and charges as it may deem appropriate, subject to the approval of the governing body of the municipality. If the governing body finds that the funds otherwise available are insufficient, it may call a special election without a petition and submit to the qualified voters of the municipality the question of whether or not a special tax shall be levied and/or bonds issued, specifying the maximum amount thereof, for the purpose of acquiring lands, buildings, equipment and facilities and for the operations of the transit authority. Any special election shall be conducted in accordance with G.S. 163-287. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45; 2013-381, s. 10.29; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 160A-584. Effect on existing franchises and operations.

In the event a transportation authority is established under the authority of this Article, any existing franchises granted by the municipality shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the municipality regulating bus operations and taxicabs shall continue in full force and effect until superseded by regulations of the transportation authority. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-585. Termination.

The governing body of the municipality shall have the authority to terminate the existence of the authority at any time. In the event of such termination, all property and assets of the authority shall automatically become the property of the municipality and the municipality shall succeed to all rights, obligations and liabilities of the authority. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-586. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-587. Consolidation of public transportation authority and parking authority.

The municipality may, by resolution or ordinance, vest in a single body corporate and politic both the powers of a public transportation authority in accordance with the provisions of this Article and the powers of a parking authority in accordance with the provisions of Article 38 of Chapter 160 of the General Statutes. Notwithstanding the membership provisions of G.S. 160A-553, the members of a consolidated body created pursuant to this section shall be selected according to the provisions of G.S. 160A-577. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-588. Joint provision of services.

Two or more municipalities may cooperate in the exercise of any power granted by this Article according to the procedures and provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes. Additional municipalities may join an existing transportation authority upon making satisfactory arrangements pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§§ 160A-589 through 160A-599. Reserved for future codification purposes.

Article 26.

Regional Public Transportation Authority.

§ 160A-600. Title.

This Article shall be known and may be cited as the "Regional Public Transportation Authority Act." (1989, c. 740, s. 1.)

§ 160A-601. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Authority" means a Regional Public Transportation Authority as defined by subdivision (6) of this section.

(2) "Board of Trustees" means the governing board of the Authority, in which the general legislative powers of the Authority are vested.

(3) "Population" means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.

(4) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including but not limited to a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. "Public transportation system" however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) "Regional Public Transportation Authority," means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) "Unit of local government" means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) "Unit of local government's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested. (1989, c. 740, s. 1.)

§ 160A-602. Definition of territorial jurisdiction of Authority.

An authority may be created for any area of the State that, at the time of creation of the authority, meets the following criteria:

(1) The area consists of three counties:

(2) At least one of those counties contains at least part of a County Research and Production Service District established pursuant to Part 2 of Article 16 of Chapter 153A of the General Statutes; and

(3) The other two counties each:

a. Contain at least one unit of local government that is designated by the Governor of the State of North Carolina as a recipient pursuant to Section 9 of the Urban Mass Transportation Act of 1964, as amended; and

b. Are adjacent to at least one county that contains at least part of a County Research and Production Service District established pursuant to Part 2

of Article 16 of Chapter 153A of the General Statutes. (1989, c. 740, s. 1.)

§ 160A-603. Creation of Authority.

(a) The Boards of Commissioners of all three counties within an area for which an authority may be created as defined in G.S. 160A-602 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereof. No county shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;

(2) A statement that such authority is organized under this Article; and

(3) The names of the three organizing counties.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended. (1989, c. 740, s. 1.)

§ 160A-604. Territorial jurisdiction of the Authority.

(a) The territorial jurisdiction of any authority created pursuant to this Article shall be coterminous with the boundaries of the three counties that organized it.

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the Interstate Commerce Commission, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. (1989, c. 740, s. 1.)

§ 160A-605. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of 13 members, appointed as follows:

(1) The county with the greatest population shall be allocated five members to be appointed as follows:

a. Two by the board of commissioners of that county;

b. Two by the city council of the city containing the largest population within that county; and

c. One by the city council of the city containing the second largest population within that county;

(2) The county with the next greatest population shall be allocated three members to be appointed as follows:

a. One by the board of commissioners of that county;

b. One by the city council of the city containing the largest population within that county; and

c. One jointly by that board of commissioners and city council, by procedures agreed on between them;

(3) The county with the least population shall be allocated two members to be appointed as follows:

a. One by the board of commissioners of that county; and

b. One by the city council of the city containing the largest population within that county; and

(4) Three members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(b) Voting members of the Board of Trustees shall serve for terms of four years, provided that one-half of the initial appointments shall be for two-year terms, to be determined by lot at the first meeting of the Board of Trustees. Initial terms of office shall commence upon approval by the Secretary of State of the articles of incorporation. The members appointed by the Secretary of Transportation shall serve at his pleasure.

(c) An appointing authority may appoint one of its members to the Board of Trustees. Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-604.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority. (1989, c. 740, s. 1.)

§ 160A-606. Voting; removal.

(a) Six members of the Board of Trustees shall constitute a quorum for the transaction of business. Except as provided by G.S. 160A-605(a)(4), each member shall have one vote.

(b) Each member of the Board of Trustees may be removed with or without cause by the appointer(s). If the appointment was made jointly by two boards, the removal must be concurred in by both.

(c) Appointments to fill vacancies shall be made for the remainder of the unexpired term by the respective appointer(s) charged with the responsibility for making such appointments pursuant to G.S. 160A-605. All members shall serve until their successors are appointed and qualified, unless removed from office. (1989, c. 740, s. 1.)

§ 160A-607. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees. (1989, c. 740, s. 1.)

§ 160A-607.1. Special tax board.

(a) The special tax board of an authority shall be composed of two representatives from each of the counties organizing the authority appointed annually by the board of commissioners of each of those counties' members at the first regular meeting thereof in January, except that the initial members shall serve a term beginning on the date that the initial terms of the board of trustees of that authority begin under G.S. 160A-605(b), and ending on the last day of December of that year. Each member of the special tax board must be a member of the board of commissioners of the county by which he was appointed. Membership on the special tax board may be held in addition to the offices authorized by G.S. 128-1 or G.S. 128-1.1. Said representatives shall hold office from their appointment until their successors are appointed and qualified, except that when any member of the special tax board ceases for any reason to be a member of the board of commissioners of the county by which he was appointed, he shall simultaneously cease to be a member of said special tax board. Upon the occurrence of any vacancy on said special tax board, the vacancy shall be filled within 30 days after notice thereof by the board of commissioners of the county having a vacancy in its representation. Each member of the special tax board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such oath shall be filed in the minutes of the respective participating units of local government.

(b) The special tax board shall meet regularly at such places and on such dates as are determined by the special tax board. The initial meeting shall be called jointly by the chairmen of the boards of commissioners of the counties organizing the authority. Special meetings may be called by the chairman of the special tax board on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the special tax board shall constitute a quorum. No vacancy in the membership of the special tax board shall impair the right of a quorum to exercise all the rights and perform all the duties of the special tax board. No action, other than an action to recess or adjourn, shall be taken except upon a majority vote of the entire authorized membership of said special tax board. Each member, including the chairman, shall be entitled to vote on any question.

(c) The special tax board shall elect annually in January from among its members a chairman, vice-chairman, secretary and treasurer, except that initial officers shall be elected at the first meeting of the special tax board. (1989, c. 740, s. 1.)

§ 160A-608. Purpose of the Authority.

The purpose of the Authority shall be to finance, provide, operate, and maintain for a safe, clean, reliable, adequate, convenient, energy efficient, economically and environmentally sound public transportation system for the service area of the Authority through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it, in order to enhance mobility in the region and encourage sound growth patterns.

Such a service, facility, or function shall be financed, provided, operated, or maintained in the service area of the Authority either in addition to or to a greater or lesser extent than services, facilities, or functions are financed, provided, operated, or maintained for the entirety of the respective units of local government. (1989, c. 740, s. 1.)

§ 160A-609. Service area of the Authority.

The service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall not exceed the territorial jurisdiction of the authority and any area it may provide service to under G.S. 160A-610. (1989, c. 740, s. 1.)

§ 160A-610. General powers of the Authority.

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued;

(2) To have a seal;

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

(7a) To enhance mobility within the region and promote sound growth patterns through joint transit development projects as generally described by Federal Transit Administration (FTA) policy at 62 Fed. Reg. 12266 (1997) and implementing guidelines in FTA Circular 9300.1A, Appendix B, as the policy and guidance may be amended; and, with respect to the planning, construction, and operation of joint transit development projects, upon the governing board's

adoption of policies and procedures to ensure fair and open competition, to select developers or development teams in substantially the same manner as permitted by G.S. 143-129(h); and to enter into development agreements with public, private, or nonprofit entities to undertake the planning, construction, and operation of joint transit development projects.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties, including but not necessarily limited to parking facilities;

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;

(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;

(10) To surrender to the State of North Carolina any property no longer required by the Authority;

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority, to prepare and make recommendations in regard thereto;

(12) To enter in a reasonable manner lands, waters or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;

(13) To develop and carry out demonstration projects;

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares or transfer of passengers;

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements and in all respects to regulate the operation of buses, taxicabs and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities and to own or lease

property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section;

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities or units of local government pursuant to the provisions of G.S. 160A-460 through 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the Authority;

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees and charges for use of its public transportation system;

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;

(23) To collect or contract for the collection of taxes which it is authorized by law to levy;

(24) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and

(25) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties.

(26) To contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment for public transit purposes with any person or entity that, within the previous 60 months, after having completed a public

formal bid process substantially similar to that required by Article 8 of Chapter 143 of the General Statutes or through the competitive proposal method provided in G.S. 143-129(h), has contracted to furnish the apparatus, supplies, materials, or equipment to any unit or agency approved in G.S. 143-129(g) if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Any purchase made under this section shall be approved by the Board of Trustees as provided in G.S. 143-129(g). (1989, c. 740, s. 1; 1998-70, s. 2; 2000-67, s. 25.6; 2003-197, s. 2.)

§ 160A-611. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction. (1989, c. 740, s. 1.)

§ 160A-612. Fiscal accountability.

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1989, c. 740, s. 1.)

§ 160A-613. Funds.

(a) The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate or lease any of their interests in any property to the Authority. An authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an authority any funds appropriated for public transportation, or any funds whose use is not restricted by law.

(b) Repealed by Session Laws 2010-95, s. 41, effective July 17, 2010.

(c) Notwithstanding any provision of G.S. 159-18, the Board of Trustees may accumulate moneys from any source authorized by this Article or by Article 50 of Chapter 105 of the General Statutes in a capital reserve fund for any authorized purpose of the Authority. Notwithstanding any provision of G.S. 159-19 or G.S. 159-22, the Board of Trustees may, by amendment to the resolution establishing a capital reserve fund, withdraw moneys accumulated in a fund for noncapital purposes if the capital outlay purpose for which the fund was created is no longer viable, as determined by a majority of the Board of Trustees. Except as otherwise provided in this subsection, the provisions of Part 2 of Article 3 of Chapter 159 of the General Statutes shall control the establishment of capital reserve funds by the Authority. (1989, c. 740, s. 1; 1991, c. 666, s. 1; 2001-424, s. 27.28; 2010-95, s. 41.)

§ 160A-613.1. Competition.

No equipment of the authority may be used for charter, tour, or sight-seeing service. (1989, c. 740, s. 1.)

§ 160A-614. Effect on existing franchises and operations.

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of prior mutual agreement between the Authority and the respective unit of local government. (1989, c. 740, s. 1.)

§ 160A-615. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority. (1989, c. 740, s. 1.)

§ 160A-616. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1989, c. 740, s. 1.)

§ 160A-617. Bonds and notes authorized.

In addition to the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of the Local Government Bond Act and the Local Government Revenue Bond Act for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date. Any bond order must be approved by resolution adopted by the special tax board of the Authority and in the case of a bond order under the Local Government Bond Act also by the board of county commissioners of each county organizing the authority. To pay any bond or note issued under the Local Government Bond Act, the Authority may not pledge the levy of any ad valorem tax, but only a tax or taxes it is authorized to levy. (1989, c. 740, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 41; 1991, c. 666, s. 5.)

§ 160A-618. Equipment trust certificates.

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts and title to such

equipment may or may not vest in the Authority until the equipment trust certificates are paid. (1989, c. 740, s. 1.)

§ 160A-619. Power of eminent domain.

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, exchange, purchase, lease with or without option to purchase, or any other lawful method, including but not limited to the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes. (1989, c. 740, s. 1; 2011-284, s. 121.)

§ 160A-620. Tax exemption.

The property of the Authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes. (1989, c. 740, s. 1.)

§ 160A-621. Removal and relocation of utility structures.

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(b1) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-619 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(b2) Any affected public utility, railroad or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-619, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(b3) The method and procedures of a particular adjustment to the facilities of a public utility, railroad or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(c) The Authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the

service capacity of the new installations, structures, equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances. (1989, c. 740, s. 1.)

§ 160A-622. Reserved for future codification purposes.

§ 160A-623. Regional Transportation Authority registration tax.

In accordance with Article 51 of Chapter 105 of the General Statutes, an Authority organized under this Article may levy an annual license tax upon any motor vehicle with a tax situs within its territorial jurisdiction as defined by G.S. 160A-602. A tax levied under this section before the enactment of Article 51 of Chapter 105 of the General Statutes is considered a tax levied under Article 51 of Chapter 105 of the General Statutes. (1991, c. 666, s. 2; 1993, c. 382, s. 1; c. 485, s. 28; 1993 (Reg. Sess., 1994), c. 761, s. 34; 1997-417, s. 5.)

§ 160A-624. Recommendation of additional revenue sources.

The Authority may make recommendations to the General Assembly concerning additional revenue sources, including, but not limited to:

(1) Annual vehicle registration fees;
(2) Ad valorem taxes;
(3) Local land transfer taxes;
(4) Drivers license fees;
(5) Sales taxes on automobile parts and accessories; and
(6) Motor fuels taxes.

Any additional revenue sources for an Authority must be approved by the General Assembly. (1991, c. 666, s. 4.)

§ 160A-625. Reports to the General Assembly.

The Authority shall annually submit to the General Assembly, on or before February 1, its annual operating report, including a report of its administrative expenditures, and its audited financial report. In odd-numbered years, the report shall be submitted to the Senate and House Transportation Committees. In even-numbered years, the report shall be submitted to the Joint Legislative Transportation Oversight Committee. (1993, c. 382, s. 2.)

§ 160A-626. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The Authority, a railroad, or an operating rights railroad; or
b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.2, or agent of: the Authority, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a

State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the Authority.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the Authority and all services performed by a railroad pursuant to a contract with the Authority in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right of way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the Authority or a railroad, or otherwise occupied by the Authority or a railroad, pursuant to charter grant, fee simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the Authority concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. – The Authority may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. –

(1) If the Authority enters into any contract authorized by subsection (b) of this section, the contract shall require the Authority to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the Authority, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the Authority does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of

trains by or on behalf of the Authority, the Authority shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. – The aggregate liability of the Authority, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. – This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes. (2002-78, s. 1; 2012-79, s. 1.14(g).)

§ 160A-627. Civil liability.

Except as provided in G.S. 160A-626, the Authority shall be deemed a city for purposes of civil liability pursuant to G.S. 160A-485. Governmental immunity of the Authority is waived to a minimum of twenty million dollars ($20,000,000) per single accident or incident. The Authority shall maintain a minimum of twenty million dollars ($20,000,000) per single accident or incident of liability insurance. Participation in a local government risk pool pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the purpose of this section. (2005-160, s. 1.)

§ 160A-628. Reserved for future codification purposes.

§ 160A-629. Reserved for future codification purposes.

Article 27.

Regional Transportation Authority.

§ 160A-630. Title.

This Article shall be known and may be cited as the "Regional Transportation Authority Act." (1997-393, s. 1.)

§ 160A-631. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Authority" means a Regional Transportation Authority as defined by subdivision (6) of this section.

(2) "Board of Trustees" means the governing board of the Authority, in which the general legislative powers of the Authority are vested.

(3) "Population" means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.

(4) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including, but not limited to, a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking, or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. "Public transportation system" however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) "Regional Transportation Authority," means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) "Unit of local government" means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) "Unit of local government's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested. (1997-393, s. 1.)

§ 160A-632. Definition of territorial jurisdiction of Authority.

An authority may be created for the area of any Metropolitan Planning Organization of the State that, at the time of creation of the authority, meets the following criteria, such area being the initial territorial jurisdiction of the Authority:

(1) The area consists of all or part of five counties, all five counties of which form a contiguous territory;

(2) At least two of those counties are contiguous to each other and each have a population of 250,000 or over; and

(3) The other three counties each have a population of 100,000 or over. (1997-393, s. 1.)

§ 160A-633. Creation of Authority.

(a) The city councils of the four largest cities within an area for which an authority may be created as defined in G.S. 160A-632 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the

time and place of the public hearing to be held thereof. No city shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;

(2) A statement that such authority is organized under this Article; and

(3) The names of the four organizing cities.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority, a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided, the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended. (1997-393, s. 1.)

§ 160A-634. Territorial jurisdiction and service area of the Authority.

(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties. The jurisdiction and area include the entire area of the county if the Board of Trustees has been expanded to include the chair or other member of the board of commissioners of that county pursuant to G.S. 160A-635(a)(4).

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the United States Department of Transportation, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. (1997-393, s. 1; 1999-445, s. 1.)

§ 160A-635. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.

(2) At least two, but not more than three, members of the Board of Transportation appointed by the Secretary of Transportation. Members appointed under this subdivision shall be (i) division members from a highway division or highway divisions located wholly or partially within the territorial jurisdiction of the Authority, (ii) at-large members who represent or have an expertise in mass transit and reside within the territorial jurisdiction of the Authority, or (iii) a combination of division members and at-large members meeting the requirements set forth in this subdivision.

(3) The chair of each Metropolitan Planning Organization or a member of the Metropolitan Planning Organization designated by the Metropolitan Planning Organization in the territorial jurisdiction.

(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(5) The chair of the principal airport authority or airport commission of each of the two most populous counties within the territorial jurisdiction, as determined by the most recent decennial federal census. The chair of the airport authority or airport commission may appoint a designee. The designee is not required to be a member of the airport authority or airport commission.

(b) The members appointed by the Secretary of Transportation shall serve at the pleasure of the Secretary.

(c) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-634.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, a Vice-Chairperson, a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority. (1997-393, s. 1; 1999-445, s. 2; 2004-203, s. 56; 2005-322, s. 1; 2016-54, s. 1.)

§ 160A-636. Voting; action by the Board of Trustees.

(a) Quorum. – A majority of the membership of the Board of Trustees, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting

without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under any other provision of law.

(b) Action. – An affirmative vote equal to a majority of all the members of the Board of Trustees not excused from voting on the question in issue shall be required to authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the Authority. (1997-393, s. 1; 2016-54, s. 2.)

§ 160A-637. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees. (1997-393, s. 1.)

§ 160A-638. Purpose of the Authority.

The purpose of the authority is to enhance the quality of life in its territorial jurisdiction by promoting the development of sound transportation systems which provide transportation choices, enhance mobility, accessibility, and safety, encourage economic development and sound growth patterns, and protect the man-made and natural environments of the region. (1997-393, s. 1.)

§ 160A-639. General powers of the Authority.

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued.

(2) To have a seal.

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management.

(4) To employ a chief administrative officer to carry out the functions and duties of the Authority. The Board of Trustees shall fix the compensation of the chief administrative officer and any employees hired by the chief administrative officer pursuant to G.S. 160A-639.1, within the limit of available funds.

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other

property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties, including, but not necessarily limited to, parking facilities.

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.

(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.

(10) To surrender to the State of North Carolina any property no longer required by the Authority.

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority and to prepare and make recommendations in regard thereto.

(12) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries.

(13) To develop and carry out demonstration projects.

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation.

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares, or transfer of passengers.

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation.

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of buses, taxicabs, and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local

government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government.

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities, and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section.

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities, or units of local government pursuant to the provisions of G.S. 160A-460 through G.S. 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the Authority.

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation.

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees, and charges for use of its public transportation system.

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority.

(23) To facilitate the coordination of transportation plans in the service area and the activities of the member Metropolitan Planning Organizations.

(24) To maintain databases for the projection of future travel demands in the region.

(25) To provide and operate regional ridesharing and vanpool operations.

(26) To provide and operate regional transportation services for the elderly and handicapped.

(27) To provide other transportation related services, including air quality monitoring and analysis, as determined by the Board of Trustees.

(28) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations.

(29) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties. (1997-393, s. 1; 1998-70, s. 3; 2016-54, s. 3.)

§ 160A-639.1. Duties of the chief administrative officer; appointment of clerk.

(a) Duties. – The chief administrative officer employed by the Authority in accordance with G.S. 160A-639 shall be responsible to the Board of Trustees for administering all matters placed in his or her charge by the Board of Trustees and shall have all of the following powers and duties:

(1) To hire, appoint, suspend, or remove any employee of the Authority, provided that nothing in this subdivision shall be construed as superseding or altering any other provision of law governing the suspension or removal of an employee of the Authority.

(2) To direct and supervise all employees of the Authority and the administration of all departments, offices, and agencies of the Authority, subject to the general direction and control of the Board of Trustees and except as otherwise provided by law.

(3) To attend all meetings of the Board of Trustees and recommend any measures he or she deems expedient.

(4) To see that all laws of the State are faithfully executed.

(5) To prepare and submit the annual budget and capital program to the Board of Trustees.

(6) To annually submit to the Board of Trustees and make available to the public a complete report on the finances and administrative activities of the Authority as of the end of the fiscal year.

(7) To make any other reports that the Board of Trustees may require concerning the operations of the Authority.

(8) To perform any other duties that may be required or authorized by the Board of Trustees.

(b) Clerk. – In addition to the duties set forth in subsection (a) of this section, the chief administrative officer shall designate an employee of the Authority as clerk, whose duties shall include all of the following:

(1) Provide notice of meetings of the Board of Trustees.
(2) Keep a journal of the proceedings of the Board of Trustees.
(3) Be the custodian of all Authority records.
(4) Perform any other duties that may be required by law or the Board of Trustees. (2016-54, s. 4.)

§ 160A-640. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction. (1997-393, s. 1.)

§ 160A-641. Fiscal accountability.

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1997-393, s. 1.)

§ 160A-642. Funds.

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an Authority any funds appropriated for transportation, or any funds whose use is not restricted by law. (1997-393, s. 1.)

§ 160A-643. Competition.

No equipment of the Authority may be used for charter, tour, or sight-seeing service. (1997-393, s. 1.)

§ 160A-644. Effect on existing franchises and operations.

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of prior mutual agreement between the Authority and the respective unit of local government. (1997-393, s. 1.)

§ 160A-645. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority. (1997-393, s. 1.)

§ 160A-646. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1997-393, s. 1.)

§ 160A-647. Bonds and notes authorized.

In addition to the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date. (1997-393, s. 1.)

§ 160A-648. Equipment trust certificates.

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts, and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid. (1997-393, s. 1.)

§ 160A-649. Power of eminent domain.

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, exchange, purchase, lease with or without option to purchase, or any other lawful method, including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes. (1997-393, s. 1; 2011-284, s. 122.)

§ 160A-650. Tax exemption.

The property of the Authority, both real and personal, its acts, activities, and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be

considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes. (1997-393, s. 1.)

§ 160A-651. Removal and relocation of utility structures.

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances, or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate, or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances, or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances, or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(c) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-649 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(d) Any affected public utility, railroad, or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-649, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(e) The method and procedures of a particular adjustment to the facilities of a public utility, railroad, or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(f) The Authority shall reimburse the public utility, railroad, or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances, or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances. (1997-393, s. 1.)

§§ 160A-652 through 160A-659. Reserved for future codification purposes.

Article 28.

Regional Natural Gas District.

§ 160A-660. Title.

This Article is the "Regional Natural Gas District Act" and may be cited by that name. (1997-426, s. 2.)

§ 160A-661. Purpose; definitions.

(a) The purpose of a district created under this Article is to enhance the quality of life in its territorial jurisdiction by promoting the development of natural gas systems to enhance the economic development of the area.

(b) The following definitions apply in this Article:

(1) Board of Trustees. – The governing board of the district in which the general legislative powers of the district are vested.
(2) District. – A regional natural gas district.
(3) Natural gas system. – A gas production, storage, transmission and distribution system, or any part or parts thereof.
(4) Regional natural gas district. – A public body and body politic and corporate of the State of North Carolina organized in accordance with the provisions of this Article exercising public and essential governmental functions to provide for the preservation and promotion of the public welfare for the purposes, with the powers, and subject to the restrictions set forth in this Article.
(5) Unit of local government. – Any county, city, town, or municipality of this State, and any other political subdivision, public corporation, or district in this State, that is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, or operate natural gas systems.
(6) Unit of local government's chief administrative official. – The county manager, city manager, town manager, or other person, by whatever title known, in whom the responsibility for the unit of local government's administrative duties is vested. (1997-426, s. 2.)

§ 160A-662. Territorial jurisdiction and service area of district.

(a) A district may be created for one or more entire counties that are totally unserved with natural gas and in which a specific natural gas project has not been approved by the Utilities Commission at the time of creation of the district. A letter from the Utilities Commission to this effect shall conclusively establish that the area is totally unserved and that a project has not been approved. This area is the territorial jurisdiction and the service area of the district.

(b) The creation of a district does not confer on the district the exclusive right to provide natural gas service in that territorial jurisdiction. (1997-426, s. 2.)

§ 160A-663. Creation of district.

(a) The boards of commissioners of any one or more counties within an area for which a district may be created as provided by G.S. 160A-662, and the governing body of any city geographically located within one or more of these counties and that chooses to join in the organization of a district, may by resolution signify their determination to organize a district under the provisions of this Article. Each of these resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the district, and shall state the time and place of the public hearing. A copy of the notice shall be mailed not later than the first day of newspaper publication to the business office of any public utility that holds a franchise from the North Carolina Utilities Commission to serve any part of the proposed district with natural gas service. No county or city shall be required to make any other publication of the resolution under the provisions of any other law.

(b) Each resolution shall include articles of incorporation which shall set forth all of the following:

(1) The name of the district.

(2) The composition of the board of trustees, terms of office, and the manner of making appointments and filling vacancies.
(3) A statement that the district is organized under this Article.
(4) The names of the organizing counties and cities.
(5) Provision for the distribution of assets in the event the district is terminated.

(c) A certified copy of each of the resolutions signifying the determination to organize a district under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication and mailing of the notice of hearing on each of the resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published and mailed, the Secretary of State shall file the resolutions and proofs of publication and mailing, shall issue a certificate of incorporation under the seal of the State, and shall record the certificate in an appropriate book of record. The issuance of this certificate of incorporation by the Secretary of State shall constitute the district a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under this Article.

(d) When the district has been duly organized and its officers elected, the secretary of the district shall certify to the Secretary of State the names and addresses of the officers, the name and address of the registered agent, and the address of the principal office of the district. The district shall be subject to the provisions of Article 5 of Chapter 55A of the General Statutes. (1997-426, s. 2.)

§ 160A-664. Membership; officers; compensation.

(a) The governing body of a district is the Board of Trustees. The Board of Trustees shall consist of members as provided in the articles of incorporation.

(b) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(c) Members of the Board of Trustees shall reside within the territorial jurisdiction of the district as defined by G.S. 160A-662.

(d) The Board of Trustees shall annually elect from its membership a Chair and a Vice-Chair and shall annually elect a Secretary and a Treasurer.

(e) Members of the Board of Trustees shall receive a sum not to exceed fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the district. (1997-426, s. 2.)

§ 160A-665. Quorum.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business. (1997-426, s. 2.)

§ 160A-666. Advisory committees.

The Board of Trustees may provide for the selection of any advisory committees that it finds appropriate, which may or may not include members of the Board of Trustees. (1997-426, s. 2.)

§ 160A-667. General powers of the district.

The general powers of the district include all of the following:

(1) To sue and be sued.
(2) To have a seal.
(3) To make rules not inconsistent with this Article, for its organization and internal management.
(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the district and to fix their compensation, within the limit of available funds.
(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.
(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.
(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, if any loans or grants by the Department of Commerce have not been repaid, all or a substantial part of an operating natural gas district may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.
(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.
(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.
(10) To develop and make data, plans, information, surveys, and studies of natural gas systems within the territorial jurisdiction of the district and to prepare and make recommendations in regard thereto.
(11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.
(12) To develop and carry out demonstration projects.
(13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.

(14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.

(15) To own, lease, and operate natural gas systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies within or without the State. A district may operate that part of a gas system involving the purchase or lease, or both, of natural gas fields, natural gas reserves, and natural gas supplies, in an operating agreement, partnership or joint venture arrangement with natural gas utilities and private enterprise. The district may acquire, purchase, construct, receive, own, operate, maintain, enlarge, and improve natural gas systems and transport and sell at wholesale all or any part of its gas supply.

(16) To purchase or finance real or personal property under G.S. 160A-20.

(17) To obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source.

(18) To enter into and perform contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government pursuant to the provisions of Part 1 of Article 20 of Chapter 160A of the General Statutes and to enter into contracts and agreements with private natural gas companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a natural gas system outside the service area of the district. A district may provide service or contract for the providing of service to a city geographically located within a district, notwithstanding that the city did not join the district pursuant to G.S. 160A-663(a) or G.S. 160A-672.

(19) Except as restricted by covenants in bonds, notes, security interests, or trust certificates, to set in its sole discretion rates, fees, and charges for use of its natural gas system in accordance with G.S. 160A-676.

(20) To do all related things necessary to carry out its purpose and to exercise the powers granted to the district.

(21) To issue revenue bonds and notes and to incur other obligations as authorized by this Article. (1997-426, s. 2.)

§ 160A-668. Fiscal accountability.

A district is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1997-426, s. 2.)

§ 160A-669. Funds.

The establishment and operation of a district is a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the district. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the district. A district may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Commerce may allocate to a district any funds appropriated for natural gas. (1997-426, s. 2.)

§ 160A-670. Effect on existing franchises and operations.

Creation of the district does not affect any existing franchises granted by any unit of local government. Those existing franchises shall continue in full force and effect until legally terminated, and all ordinances and resolutions of the unit of local government regulating local natural gas systems shall continue in full force and effect unless superseded by rules of the district. This superseding, if any, may occur only on the basis of prior mutual agreement between the district and the respective unit of local government. (1997-426, s. 2.)

§ 160A-671. Termination of district.

The Board of Trustees, after providing for the continued availability of natural gas service to its customers, if any, may terminate the existence of the district at any time when it has no outstanding indebtedness. The Board of Trustees shall file notification of the termination with the Secretary of State. (1997-426, s. 2.)

§ 160A-672. Joinder of county or city.

(a) Whenever a district has been organized under the provisions of this Article, a county as defined in G.S. 160A-662(a) or a city within that county, or a city that did not join in the organization of a district but is geographically located within the district may, with the consent of the district as evidenced by a resolution adopted by a majority of the members of the Board of Trustees of the district, join the district.

(b) A county or city desiring to join an existing district shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 160A-663. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing.

(c) A certified copy of each resolution signifying the desire of a county or city to join an existing district, together with proof of publication of the notice of hearing on the resolution, and a certified copy of the resolution of the Board of Trustees of the district consenting to the joining shall be filed with the Secretary of State. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, the Secretary of State shall file such resolutions and proofs of publication in the office of the Secretary of State, shall issue a certificate of joinder, and shall record the certificate in the appropriate book of record. The issuance of the certificate shall be conclusive evidence of the joinder of the county or city to the district. (1997-426, s. 2.)

§ 160A-673. Bonds and notes authorized.

The district may issue revenue bonds and revenue bond anticipation notes pursuant to the provisions of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and Article 9 of Chapter 159 for the purposes provided in this Article. If and to the extent any provisions of Articles 5 and 9 of Chapter 159 are inconsistent with the provisions of this Article, the provisions of this Article shall be controlling. A district may proceed with the issuance of bonds and notes under Articles 5 and 9 of Chapter 159 notwithstanding that, to the extent of any inconsistency only, the district complies with the provisions of this Article and not the provisions of Articles 5 and 9 of Chapter 159. (1997-426, s. 2.)

§ 160A-674. Acquisition, power of eminent domain.

(a) The district shall have continuing power to acquire, by gift, grant, devise, exchange, purchase, lease with or without option to purchase, or any other lawful method

including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the district.

(b) Exercise of the power of eminent domain by the district shall be as a private condemnor in accordance with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the General Statutes, before final judgment may be entered in any action of condemnation initiated by the district, the district shall furnish proof that the board of commissioners of the county where the land is located has consented by resolution or ordinance to the taking. (1997-426, s. 2; 2011-284, s. 123.)

§ 160A-675. Tax exemption.

A district, and its property, bonds and notes, and income, are exempt from property taxes and income taxes to the same extent as if it were a city. A district is subject to gross receipts tax under G.S. 105-116. (1997-426, s. 2.)

§ 160A-676. Authority to fix and enforce rates.

(a) A district may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties made applicable throughout the district for the gas services. Schedules of rents, rates, fees, charges, or penalties may vary according to classes of service. Before it establishes or revises a schedule of rents, rates, fees, charges, or penalties, the district Board of Trustees shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing.

(b) A district may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A district may also discontinue service to any customer whose account remains delinquent for more than 30 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the district to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the person contracting for them and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the owner of the premises served when the property or premises are leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter. (1997-426, s. 2.)

§ 160A-677: Reserved for future codification purposes.

§ 160A-678: Reserved for future codification purposes.

§ 160A-679: Reserved for future codification purposes.

Article 29.

Ferry Transportation Authority.

§ 160A-680. Title and purpose.

This Article shall be known and may be cited as the "Ferry Transportation Authority Act." The purpose of this Article is to authorize creation of an Authority to provide reliable and safe public ferry transportation services in its service area. (2017-120, s. 1.)

§ 160A-681. Definitions.

The following definitions apply in this Article:

(1) Authority. – The Ferry Transportation Authority.

(2) Board of Trustees. – The governing board of the Authority.

(3) Ferry Transportation Authority. – A public body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(4) Ferry transportation service. – Transportation of passengers or freight by any means of conveyance, including a ferry, barge, vehicle, or tram.

(5) Ferry transportation system. – A combination of real and personal property, structures, improvements, buildings, equipment, maritime vessels, vehicles, vehicle parking, trams, shuttle buses, docks, terminals, and other facilities necessary for the maintenance and operation of a ferry transportation service. The term does not include public streets, roads, or highways.

(6) Unit of local government. – A county, city, town, or municipality of this State, and any other political subdivision, public corporation, authority, or district in this State, that is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, or operate a ferry transportation system.

(7) Unit of local government's chief administrative official. – The county manager, city manager, town manager, or other person in whom the responsibility for the unit of local government's administrative duties is vested.

(8) Vessel. – Watercraft or other artificial contrivance used, or capable of being used, as a means of transportation of passengers or freight on water. (2017-120, s. 1.)

§ 160A-682. Service area of Authority.

The boundaries of the service area of the Authority shall be determined by the Board of Trustees, consistent with the purpose of the Authority. The service area of an authority created pursuant to this Article may include, but cannot exceed, all of the following:

(1) The area of a tidal river, and adjoining estuaries, in the vicinity of a municipality that is only accessible by vessel.

(2) Terminals, parking, maintenance facilities, facilities utilized for tram and bus service, and other related facilities in or in the vicinity of the same tidal river and a municipality that is only accessible by vessel.

(3) Terminals, parking, maintenance facilities, facilities utilized for tram and bus service, and other related facilities in or in the vicinity of the same tidal river and a municipality in which the mainland terminal used to provide ferry transportation service is located. (2017-120, s. 1.)

§ 160A-683. Creation of Authority.

(a) Resolution of Creation. – An Authority may be organized under the provisions of this Article upon the adoption of a resolution to create such an Authority by each of the following:

(1) The elected board of a municipality only accessible by vessel.

(2) The elected board of a municipality where any mainland terminal of the Authority is located.

(3) The board of commissioners of the county where the Authority is located.

(b) Public Hearing. – A resolution to form an Authority under this Article shall be adopted after a public hearing. Notice of the public hearing must be given at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice must contain a brief statement of the substance of the proposed resolution, the proposed articles of incorporation of the Authority, and the time and place of the public hearing.

(c) Articles of Incorporation. – A resolution to form an Authority under this Article must include articles of incorporation that set forth all of the following:

(1) The name of the Authority.

(2) A statement that the Authority is organized under this Article.

(3) The name of each organizing entity.

(d) Certificate of Incorporation. – A certified copy of each resolution organizing an Authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing. If the Secretary of State finds that each resolution, including the articles of incorporation, conform to the provisions of this Article and that the notice of hearing was properly published, then the Secretary must issue a certificate of incorporation under the seal of the State and record the same in an appropriate book of record. The issuance of the certificate of incorporation by the Secretary of State shall constitute the Authority, a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation is conclusive evidence of the fact that the Authority has been duly created and established under the provisions of this Article.

(e) Officers. – When the Authority has been duly organized and its officers elected, the secretary of the Authority shall certify to the Secretary of State the names and addresses of the officers as well as the address of the principal office of the Authority. (2017-120, s. 1.)

§ 160A-684. Board of Trustees.

(a) Members. – The Board of Trustees consists of 11 members. The Mayor and Mayor Pro Tempore of the municipality only accessible by vessel serve as ex officio voting members. The remaining nine members serve staggered three-year terms and are appointed as provided in subsection (b) of this section. Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority.

(b) Appointment. – Nine members of the Board of Trustees are appointed as provided in this subsection. The members must be residents of this State at the time of appointment and must maintain their residency during the duration of their term. Appointed members serve at the pleasure of the appointing authority. A vacancy in a term prior to the expiration of the term must be filled by the appropriate appointing authority. The members are appointed as follows:

(1) One member by the Governor.

(2) Two members by the General Assembly under G.S. 120-121, one of whom is appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom is appointed upon the recommendation of the Speaker of the House of Representatives.

(3) Three members appointed by the Secretary of the Department of Transportation, at least one of whom must be a resident of the service area of the Authority, as determined under G.S. 160A-682, and at least one of whom must be a member of the Board of Transportation.

(4) One member by the board of commissioners of the county where the Authority is located, who must be a resident of the county but not a resident of the municipality only accessible by vessel.

(5) One member by the elected board of a municipality where the mainland terminal of the Authority is located, who must be a resident of that municipality.

(6) One member appointed by the elected board of a municipality only accessible by vessel, who must be a resident of the municipality only accessible by vessel.

(c) Terms. – A term begins on July 1 of the year of appointment and ends on June 30 of the third year. A member appointed under subsection (b) of this section may not serve more than two consecutive terms on the Board of Trustees. In calculating the number of terms served, a partial term that is less than 18 months in length will not be included.

(d) Meetings. – The Board of Trustees must meet at least once every three months. A majority of the members of the Board of Trustees constitute a quorum for the transaction of business. The Board of Trustees must annually elect from its membership a chair and vice-chair. The Board of Trustees may elect from its membership or appoint a nonmember to serve as secretary or treasurer.

(e) Ethics. – Members of the Board of Trustees are subject to the provisions of G.S. 136-13, 136-13.1, and 136-14.

(f) Reports. – The Board of Trustees must submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant,

to the Secretary of the Department of Transportation and to the Joint Legislative Commission on Governmental Operations. The report must be submitted by October 1 of each year. (2017-120, s. 1.)

§ 160A-685. Ferry Transportation Authority.

(a) Financial Accountability. – An Authority created under this Article is a public authority subject to the provisions of Chapter 159 of the General Statutes.

(b) Funds. – The establishment and operation of an Authority are governmental functions and constitute a public purpose. The State or any unit of local government may, but is not obligated to, appropriate funds to support the establishment and operation of the Authority. The State or any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants or any other type of financing from the State, the United States, or any department, agency, or instrumentality thereof.

(c) General Powers. – The general powers of the Authority include any one or more of the following:

(1) To sue and be sued.

(2) To have a seal.

(3) To make rules and regulations, not inconsistent with this Article, for its organization and internal management.

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation within the limit of available funds.

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any property, real or personal, tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer, or dispose thereof, whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights that are useful for the Authority's purposes, including, but not necessarily limited to, barge service, marine maintenance, ferry terminals, and parking facilities.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a ferry transportation system or to contract for the maintenance, operation, or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by

private parties, including, but not necessarily limited to, barge service, marine maintenance, ferry terminals, and parking facilities.

(9) To accept gifts or grants of money, real or personal property, or services from a person, the State, the federal government, or a unit of local government.

(10) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.

(11) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.

(12) To surrender to the State of North Carolina, upon the approval of the Secretary of the Department of Administration, any property no longer required by the Authority.

(13) To develop and make data, plans, information, surveys, and studies within the service area of the Authority and to prepare and make recommendations in regard thereto.

(14) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries.

(15) To make, enter into, and perform contracts with private parties and transportation companies with respect to the management and operation of ferry transportation services.

(16) To make, enter into, and perform contracts with other entities for the joint use of property or rights, for the establishment of connecting routes, joint fares, or transfer of passengers.

(17) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation.

(18) With the consent of the unit of local government that would otherwise have jurisdiction to exercise the powers enumerated in this subdivision, to issue certificates of public convenience and necessity, and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of ferries, buses, trams, taxicabs, and other methods of public passenger transportation that originate and terminate within the service area of the Authority as fully as the unit of local government is now or hereafter empowered to do within the jurisdiction of the unit of local government.

(19) To operate a ferry transportation system and to enter into and perform contracts to provide and operate ferry transportation services and facilities, and to own or lease property, facilities, and equipment

necessary or convenient therefor, and to rent, lease, or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of a ferry transportation system outside the service area of the Authority.

(20) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities, or units of local government pursuant to the provisions of Part 1 of Article 20 of this Chapter; further, to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a ferry transportation system outside the service area of the Authority.

(21) To operate public transportation systems extending service into any political subdivision of the State of North Carolina, unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board shall deny consent, but such service may not extend more than 10 miles outside of the service area of the Authority.

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority.

(23) To facilitate the coordination of transportation plans in the service area.

(24) To maintain databases for the projection of future travel demands in the service area.

(25) To provide other transportation related services within the service area of the Authority, as determined by the Board of Trustees in its discretion.

(26) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased, operated, or under the control of the Authority, and within the service area thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages that obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. A member of the security force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which the member is discharging those duties.

(27) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees, and charges for use of its ferry transportation system.

(28) To issue bonds and bond anticipation notes under the Local Government Revenue Bond Act, Articles 5 and 9 of Chapter 159 of the General Statutes, or as otherwise provided by law, for the purpose of acquiring, constructing, improving, maintaining, operating, or financing a ferry

transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or notes. As provided in G.S. 159-94, the principal of and interest on the bond is payable solely from the revenues pledged to its payment and neither the State nor the municipality is obligated to pay the principal or interest, except from such revenues. (2017-120, s. 1.)

§ 160A-686. Rates, fees, charges, routes, and schedules.

(a) Notice. – The Board of Trustees must give at least 30 days' public notice of any change to rates, fees, charges, routes, or schedules, except as necessitated by an emergency situation. The Board of Trustees must report any change to rates, fees, charges, routes, or schedules to the Secretary of the Department of Transportation and to the Joint Legislative Commission on Governmental Operations.

(b) Regulation. – Notwithstanding G.S. 62-3(23)a.3. and 4., the North Carolina Utilities Commission shall not have jurisdiction over the provision of ferry transportation service within the Authority's service area. (2017-120, s. 1.)

§ 160A-687. Competition.

(a) Prohibition. – No equipment of the Authority may be used for charter, tour, or sight-seeing service, except as provided by this section.

(b) Charter Services. – Equipment of the Authority may be used for occasional charter service events, if all of the following conditions are met:

(1) The use of the equipment for the charter service is approved in writing by the Board of Trustees.

(2) The revenues received by the Authority from the provision of the charter service exceed fully allocated expenses.

(3) The charter service does not adversely affect regularly scheduled ferry transportation services provided by the Authority. (2017-120, s. 1.)

§ 160A-688. Power of eminent domain.

The Authority shall have continuing power to acquire, by gift, grant, devise, exchange, purchase, lease with or without option to purchase, or any other lawful method, including the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority. Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes. (2017-120, s. 1.)

§ 160A-689. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority. (2017-120, s. 1.)

§ 160A-690: Reserved for future codification purposes.

§ 160A-691: Reserved for future codification purposes.

§ 160A-692: Reserved for future codification purposes.

§ 160A-693: Reserved for future codification purposes.

§ 160A-694: Reserved for future codification purposes.

§ 160A-695: Reserved for future codification purposes.

§ 160A-696: Reserved for future codification purposes.

§ 160A-697: Reserved for future codification purposes.

§ 160A-698: Reserved for future codification purposes.

§ 160A-699: Reserved for future codification purposes.

Article 30.

Public Education.

§ 160A-700. Funding for public education.

(a) Authority. – A city may use property tax revenues authorized under G.S. 160A-209(c)(26b) and other unrestricted revenues to supplement funding for elementary and secondary public education that benefits the residents of the city. Cities may direct or restrict the use of funds appropriated for specific purposes, functions, projects, programs, or objects, as provided in this section.

(b) Purposes. – A city may appropriate funds under this section as follows:

(1) For a public school located inside the city limits, for capital, for current operating expenses, or for other specific uses directed by the city. Funds appropriated by cities in accordance with this subdivision may be used to enter into operational and financing leases for real property or mobile classroom units for use as school facilities for public schools and may be used for payments on loans made to public schools for facilities, equipment, or operations. However, municipal appropriations shall not be used to obtain any other interest in real property or mobile classroom units. Every contract or lease into which a public school enters involving a municipal appropriation pursuant to this section shall include the following sentence: "No indebtedness of any kind incurred or obligation created by the public school shall constitute an indebtedness or obligation

of the city, and no indebtedness or obligation of the public school shall involve or be secured by the faith, credit, or taxing power of the city."

(2) For a public school located outside the city limits, on a per pupil basis for students attending that school who are residents of the city for current operating expenses or other specific uses directed by the city.

(c) Procedure. – If a public school is under the control of a local board of education, the appropriation for that school shall be made to the local board of education of the local school administrative unit.

(d) For the purposes of this section, "public school" means:

(1) A school under the control of a local board of education.

(2) An innovative school operated under Article 7A of Chapter 115C of the General Statutes.

(3) A laboratory school under the control of a constituent institution of The University of North Carolina.

(4) A charter school created under Article 14A of Chapter 115C of the General Statutes.

(5) A regional school created under Part 10 of Article 16 of Chapter 115C of the General Statutes. (2018-5, s. 38.8(b); 2018-97, s. 11.1.)