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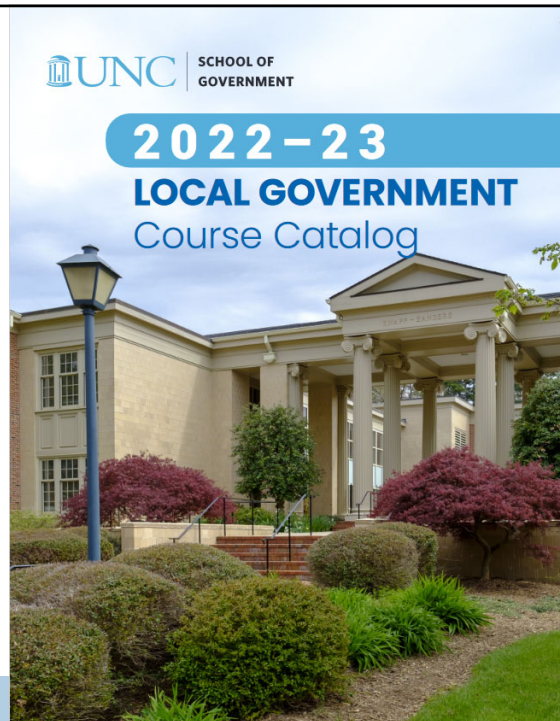
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## Training Opportunities

- Board Workshops (remote, coming soon)
- PlanNC Workshop (October)
- P&Z 101 (January)
- Planning and Development Regulation
  - Three weeks (Sept, Oct, Nov)
  - Certification Exam
  - Already waitlisted

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## Training Opportunities



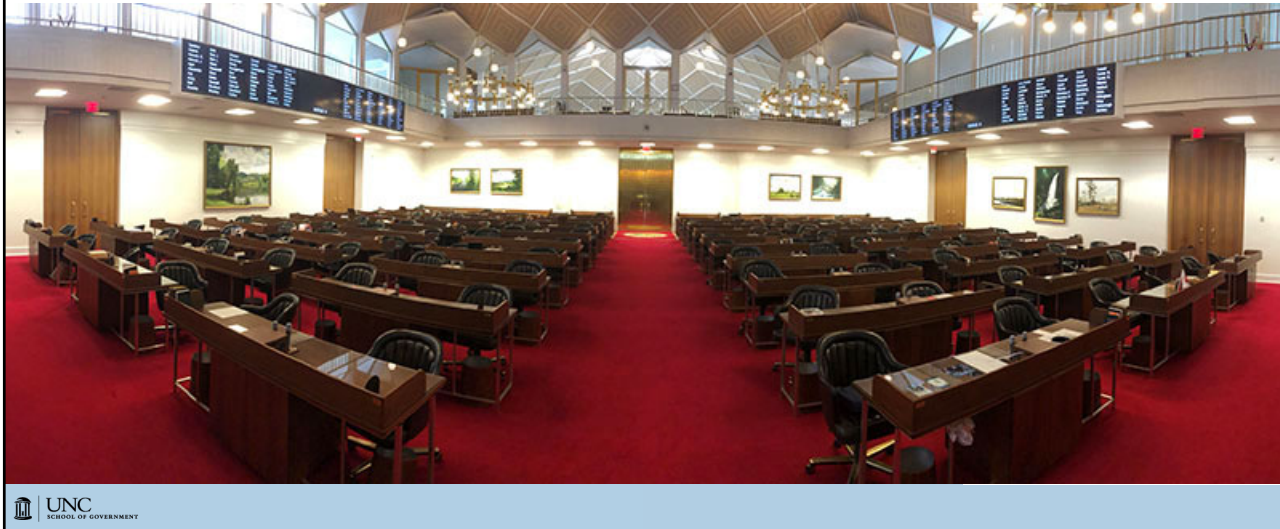
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- <https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation>



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# Legislative Top 10



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## 10. Septic System Shot-Clock

- Applies to improvement permits and construction authorizations from qualifying soil specialists
- Local health department must act within 10 days of receiving the application and either
  - issue the permit,
  - deny the permit and cite the applicable rules, or
  - identify any additional information needed for an incomplete application
- Section 5 [S.L. 2022-11](#) (S.B. 372)

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## 9. Designate an Officer to Oversee Building Code Duties

- 160D-1102 is amended to require that “[e]very local government shall designate a person responsible for the daily oversight of the local government's duties and responsibilities under G.S. 160D-1104.”
- Section 9 of [S.L. 2022-11](#) (S.B. 372)

## 9. Designate an Officer to Oversee Building Code Duties

- Duties and responsibilities under G.S. 160D-1104
  - receipt of applications for permits
  - issuance or denial of permits,
  - necessary inspections in a timely manner,
  - issuance or denial of certificates of compliance,
  - issuance of orders to correct violations,
  - bringing of judicial actions against actual or threatened violations,
  - keeping of adequate records, and any other actions that may be required

## 8. Prepare Financial Report on Permit Fees

“No later than October 1 of 2023, 2024, and 2025, every local government shall publish an annual financial report on how it used fees from the prior fiscal year for the support, administration, and implementation of its building code enforcement program as required by G.S. 160D-402(d). This report is in addition to any other financial report required by law.”

Section 9 of [S.L. 2022-11](#) (S.B. 372)



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## 7. Tweaks to Rules for Farm Buildings

- Excluded from building code regulation:

farm buildings “used primarily for the storage of agricultural commodities or products or storage and use of materials for agricultural purposes.”

- Regardless of whether it is located on same property as where ag products were produced
- Requires public ways and yards at least 60 feet
- Owner must post placard to state “Ag. Exempt”
- Appears limited to building code (not zoning, sales tax exemption, or present use value program)



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## 7. Tweaks to Rules for Farm Buildings

- Bona fide farm exemption clarified to include any “building or structure that is used solely for storage of cotton, peanuts, or sweet[]potatoes, or any byproduct of those commodities.”
- Clarification that documentation at G.S. 160D-903 are sufficient, not necessary
  - (sales tax exemption certificate, property tax listing showing present use valuation, federal Schedule F, or forest management plan) are not the only evidence that can be considered in determining whether property is in bona fide farm use

## 6. Clarify Subdivision Appeals

- |   |  |
|---|--|
| • Admin decision by staff   | to board of adjustment                   |
| • Admin decision by board   | to superior court for declaratory relief |
| • Quasi-Judicial by board   | to superior court in nature of cert.     |
| <ul style="list-style-type: none"> <li>• <a href="#">S.L. 2022-62</a> (SB 768)</li> </ul> |  |

## 5. Reduce Fire Access for Small Subdivision

- Amended in 2021, further amended in 2022
- “The [North Carolina Building Code] Council shall not require two or more separate and approved fire apparatus access roads in developments of one- or two-family dwellings where there are fewer than 100 dwelling units.”
- [S.L. 2022-11](#) (S.B. 372),

## 4. Maximum Size for Parking Spaces

- G.S. 160D-702 amended to state local regs shall not
- “[s]et a maximum parking space size larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.”
- [S.L. 2022-11](#) (S.B. 372)



### 3. CAMA Plan Notice Alignment

- G.S. 113A-110(e) amended to align CAMA notice with zoning notice
- Published notice now required 10-25 days before hearing (had been 30 days)

### 2. Extension for Small Town Plans

- July 1, 2022      General Deadline (already passed!!!)
- July 1, 2023      New deadline to for municipalities under 1,500
- [S.L. 2022-75](#) (H.B. 911)

# 1. State of Emergency Ends

- Permit Extension for “development approvals”
- If permit should have expired between March 10, 2020, and April 1, 2020
  - Was extended 120 days (August-September 2020)
- Should have expired between September 2, 2020 and January 12, 2023
  - Now expires January 12, 2023

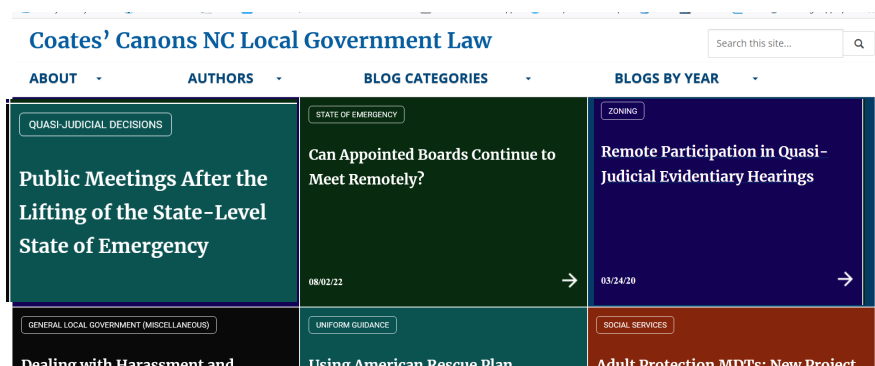
# 1. State of Emergency Ends

- “development approvals”
  - erosion and sedimentation control plan
  - building permit
  - Subdivision approvals
  - Zoning permits
  - Development agreements
  - Building permits
  - Certificates of appropriateness
- Section 2.21 of Session Law 2021-3

# 1. State of Emergency Ends

- Elected board
  - statutory quorum requirements may reasonably be interpreted to require in-person participation by board members
- Appointed board
  - Flexibility for appointed boards to meet remotely as long as that complies with applicable local rules
- Quasi-judicial hearings
  - Flexibility to hold meetings remotely, but heightened *due process* considerations

# 1. State of Emergency Ends



- <https://canons.sog.unc.edu/2021/07/public-meetings-after-the-lifting-of-the-state-level-state-of-emergency/>
- <https://canons.sog.unc.edu/2022/08/can-appointed-boards-continue-to-meet-remotely/>
- <https://canons.sog.unc.edu/2020/03/remote-participation-in-quasi-judicial-evidentiary-hearings/>

# Legislative Top 10



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## Caselaw Update



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# Short-Term Rentals

Schroeder



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## Wilmington STR Ordinance

- 400-foot separation between short-term rentals
- cap on the total number of short-term rentals
- registration of short-term rentals  
(held a lottery for the initial registration)
- one-year amortization period for existing operators to cease operations
- operational and safety requirements (zoning districts, parking standards, posted safety info, no cooking in bedrooms)



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## Inspections, Permits, and Registration Programs

- prohibit periodic inspections of residential rental properties
- limit fees, permits, and registration requirements for residential rental properties
- limits on IPR programs *do apply* to properties subject to the Vacation Rental Act (short-term rentals)

## 160D-1207 Clarification

- local governments may not “require any owner or manager of rental property to obtain any permit or permission under Article 11 [building codes] or Article 12 [housing codes]. . . to lease or rent residential real property or to register rental property with the local government.”

## STR after *Schroeder*

- No registration programs for STRs
- No provisions dependent upon a registration program
- Other Development Regulations Remain
  - Define short-term rental as a land use
  - Apply development standards and operational limits
  - Require development approvals (but not regular registrations)
  - Separation and density caps?

<https://canons.sog.unc.edu/2022/04/short-term-rental-regulations-after-schroeder/>



# Sign Ordinances

Austin  
Clemmons



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*Reed* Decision

Temporary Directional  
Sign for Religious or  
Charity Event

Political/  
Campaign  
Sign

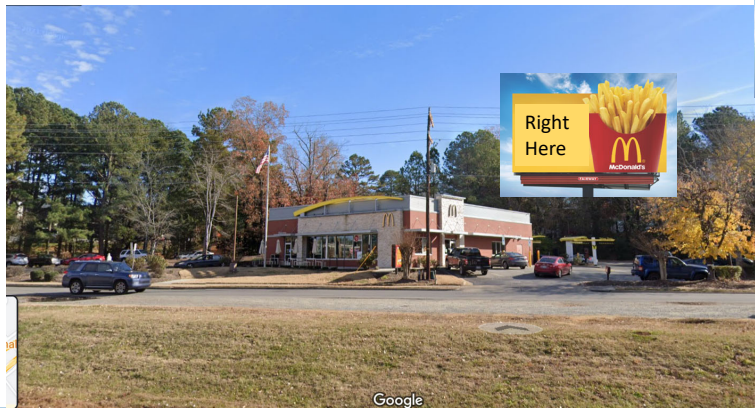
Ideological Sign



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## Austin Ordinance



## Austin v. Reagan National Advertising

“The message on the sign matters only to the extent that it informs the sign’s relative location. The on-/off-premises distinction is therefore similar to ordinary time, place, or manner restrictions.”

## Take-Aways

- Can a sign code distinguish based on the content of the sign's message? Generally, no.
- So, if the enforcement officer must read the sign to apply the code, is the code automatically content-based? No.
- Can the sign code distinguish between on-premises and off-premises signs? Generally, yes.
- Can the sign code distinguish commercial messages from noncommercial messages? Generally, yes.

## Visible Properties, LLC v. Village of Clemmons

**“Determining which zoning provisions apply requires so much cross-referencing it is almost dizzying.”**

## Visible Properties, LLC v. Village of Clemmons

- General zoning district      permitted the sign
- Overlap district              prohibited the sign
- Sign ordinance                permitted the sign
  
- Sign ordinance                if there is a conflict, sign ordinance wins
- General ordinance            if there is a conflict, most restrictive wins

## Ordinance terminology

- “moving and flashing signs”
- “electronic message boards”

## Court's Interpretive Principles

- strive to harmonize provisions and avoid conflicts whenever possible
- construe ambiguous provisions in favor of the free use of land

## Take-Away: Clean Up Your Ordinance

“[Z]oning regulations are not intended to be a system of murky, ambiguous rules where the permitted uses of property ultimately depend on the interpretive discretion of government bureaucracy.”

# Permit Choice and Vested Rights

Ashe County  
Union County



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## Ashe County v. Ashe County Planning Board

- When is an application submitted?
- June 2015      application and fee (no air permit)
- June 2015      letter from planner; good to go, just need air permit
- Oct 2015      moratorium to change rules
- Feb 2016      air permit submitted
- April 2016      permit denial



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## Ashe County v. Ashe County Planning Board

- When is an application submitted?
- ~~June 2015~~ — ~~application and fee (no air permit)~~
- June 2015      letter from planner; good to go, just need air permit
- Oct 2015      moratorium to change rules
- Feb 2016      air permit submitted
- April 2016      permit denial

## Thompson v. Union County

- Residence built in 2004 and detached garage built in 2009
- Property sale in 2018 highlighted setback encroachment and easement encroachment
- NOV and civil penalties
- Board of adjustment and superior court upheld
- Court of appeals ruled for property owner
  - County failed to prove violation (No ordinances, no permits in the record)
  - Vested rights established under 160D-108

# Exactions

Mooreville  
Wake Forest



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## TAC Stafford, LLC v. Town of Mooreville

- Developer sought subdivision plat approval for 467 lots on 209 acres
- Town required TIA and any required on-site and off-site improvements
- Required improvements included road improvements 2.3 miles off-site
- Developer could not get right-of-way, town refused to condemn right-of-way, and town denied COs for half of the subdivision



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## TAC Stafford, LLC v. Town of Mooresville

- No authority to require off-site transportation improvements
- Town refunds to developer \$100k paid directly to town
- Town pays for developer attorneys fees for exceeding unambiguous authority
- Funds paid to third-party landowners for off-site rights-of-way were not exactions paid to the government
- Remand to determine if funds paid to engineering firm is exaction to be repaid by town

## Schooldev East, LLC v. Town of Wake Forest

- QJ major site plan for K-12 charter school
  - plan consistency,
  - adequate infrastructure, a
  - not detrimental to the use or development of adjacent properties
- Denied for failure to meet town policy for pedestrian and bike connectivity



## Schooldev East, LLC v. Town of Wake Forest

160A-307.1: “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.”

- Court used ordinary meanings of “street,” “improvements,” and “for ingress and egress”
- while sidewalks might be a part of a “street,” they were not related to the safe entry and leaving of the city street system, so when read as a whole this statutory limit was not intended to include sidewalks

## Schooldev East, LLC v. Town of Wake Forest

- record included competent, material, and substantial evidence that the application was not consistent with adopted town plans and policies

## Caselaw Update

