UNC SCHOOL OF GOVERNMENT

PLANNING AND ZONING LAW BULLETIN NO. 31 | MARCH 2022

2021 North Carolina Legislation Related to Planning and Development Regulation

Adam Lovelady and Jim Joyce

CONTENTS

Checklist for Local Government Actions . . . 2

Comprehensive and Land Use Planning . . . 3

Zoning and Development Regulations . . . 3

- Decriminalizing Ordinance Enforcement (S.L. 2021-138) . . . 3
- Land Use Clarifications (S.L. 2021-168) . . . 6
- Chapter 160D Technical Corrections (S.L. 2021-88) . . . 6
- Remote Meetings (S.L. 2021-35) . . . 6
- Manufactured Housing (S.L. 2021-117) . . . 7

Affordable Housing . . . 7

- No Harmony Standard (S.L. 2021-180) . . . 7
- Winston-Salem Local Legislation (S.L. 2021-44) . . . 8

Signs . . . 8

- NCDOT Rules (S.L. 2021-117) . . . 8
- Sign Relocation (S.L. 2021-180) . . . 9

Fees and Exactions . . . 9

- System Development Fees (S.L. 2021-76) . . . 9
- Utilities for Schools, Including Charter Schools (S.L. 2021-180) . . . 10

Infrastructure . . . 10

- Acceptance and Measurement of Streets (S.L. 2021-121, Sections 3 and 9) . . . 10
- Broadband and Small Cell Wireless Infrastructure (Budget Bill, S.L. 2021-180) . . . 10

Agricultural Uses—The Farm Bill (S.L. 2021-78) . . . 12

Protection of Water Supply Watersheds and Coastal Areas . . . 13

- Redevelopment in Water Supply Watershed (S.L. 2021-164) . . . 13
- Coastal Area Management (S.L. 2021-158) . . . 13

Erosion and Sedimentation Control . . . 14

- Plan Requirements and Single-Family Development Rules (S.L. 2021-121) . . . 14
- Erosion and Sedimentation Fee Changes (S.L. 2021-180) . . . 15

Local Stormwater . . . 15

- Stormwater Infrastructure Fund (S.L. 2021-180) . . . 15
- Stormwater Regulation (S.L. 2021-158) . . . 16

Building and Housing Code Enforcement . . . 17

- Building Code Changes, Part 1 (S.L. 2021-121) . . . 17
- Building Code Changes, Part 2 (S.L. 2021-183) . . . 18
- Reinspection Fees (S.L. 2021-121) . . . 18
- Building Plan and Permit Modifications (S.L. 2021-192) . . . 19

Other Notable Legislative Proposals . . . 20

- Missing Middle Housing (H.B. 401/S.B. 349) . . . 20
- Limits on Exactions (H.B. 821) . . . 20
- Short-Term Rentals (H.B. 829) . . . 20
- Conditions on Affordable Housing (H.B. 712) . . . 21
- Tree Protection (H.B. 496) . . . 21

Adam Lovelady is associate professor of public law and government at the School of Government.
Jim Joyce is assistant professor of public law and government at the School of Government.
Both specialize in land use planning and development regulation.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

The 2021 "long session" of the North Carolina General Assembly convened on January 13, 2021, addressing a wide range of topics, and November saw successful passage of an appropriations bill. The legislature marched on through late November, returned at the end of December, and has continued its work into 2022.

A variety of bills affecting planning and development regulation were enacted in 2021. These included several clarifications, corrections, and updates to recent planning and development measures. Others focused on everything from signs, fees, open burning, water supply watersheds, and building and code enforcement, among other issues. One bill in particular, S.L. 2021-121 (H.B. 489), "An Act to Provide Various Building Code and Development Regulatory Reforms," covered many of these topics in an omnibus fashion. To paint a clearer picture of the range of legislative changes this session, this bulletin addresses portions of S.L. 2021-121 related to stormwater, erosion and sedimentation control, building codes, and other development regulations in separate sections. In addition, several notable pieces of legislation received a significant amount of attention and progressed through at least a portion of the legislative process but ultimately were not adopted. These issues could appear again in future sessions and, as such, are described in their own section at the end of the bulletin.

Checklist for Local Government Actions

Due to the number and variety of bills reviewed and passed in the 2021 Session, local governments may want to use the following checklist to ensure local codes stay up to date.

- Ensure the local government has a reasonably maintained comprehensive or land use plan by July 1, 2022.
- Amend the local ordinance to comply with decriminalization of local ordinances, including decriminalization of local land use ordinances.
- Ensure that remote meeting procedures adhere to new rules under S.L. 2021-35.
- Amend the local ordinance to strike any requirements for masonry curtain walls or masonry skirting for manufactured homes located on land leased to homeowners.
- Amend the local ordinance, review policies, or both to eliminate harmony requirements for permit approval for developments that include affordable housing units for families or individuals with incomes below 80 percent of area median income.
- Be aware of N.C. Department of Transportation (NCDOT) rules allowing relocation of billboards.
- Adjust policies and standards to confirm and preserve water and sewer capacity when requested by schools, including charter schools.
- For street right-of-way setbacks, update sight triangle calculations to ensure they measure from the edge of pavement or within the roadway.
- Adjust timelines for approval of broadband development requests.
- Confirm that fees for small cell wireless projects conform to new statutory restrictions in S.L. 2021-180, Section 38.10.
- Consider updating any local regulations regarding voluntary agricultural districts for consistency with farm bill changes.
- Revise limitations on redevelopment in water supply watershed areas.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

- Update sedimentation and erosion-control ordinances to align with new statutory limitations on fees, plan requirements, and enforcement.[1]
- Incorporate limits on reinspection fees.
- Align any building permit thresholds in ordinances to be consistent with new limits.

Comprehensive and Land Use Planning

While it was not new legislation for 2021, it is worth noting that by July 1, 2022, communities must have a reasonably maintained comprehensive plan or land use plan in order to retain authority to adopt and enforce zoning regulations. In 2019 the General Assembly passed legislation that reorganized North Carolina's planning statutes into a new chapter of the N.C. General Statutes, Chapter 160D. The legislation made a number of revisions to state planning statutes. Most were minor, technical matters, but Article 5 outlines the requirement to have a plan in order to have zoning authority—one of the notable substantive changes in Chapter 160D.

The adopted plan remains advisory: "Plans adopted under this Chapter shall be advisory in nature without independent regulatory effect."[2] Nevertheless, plans have an important role in zoning decisions. Plan consistency must be considered by the planning board and governing board for all zoning amendments.[3]

Zoning and Development Regulations

Decriminalizing Ordinance Enforcement (S.L. 2021-138)

With recent legislation, most development ordinance violations may no longer be enforced as criminal misdemeanors. Other options—notice of violation, civil penalties, and court action—are still available to enforce land development regulations. Arguably, certain development-related regulations may still be enforced as misdemeanors if the regulation is authorized under other state laws (not merely in Chapter 160D).

S.L. 2021-138 (S.B. 300) is a wide-ranging criminal justice reform law. Among other reforms, the law takes steps to decriminalize some local ordinances. Section 13 amends the local government authority for criminal enforcement of local ordinances (G.S. 153A-123 for counties and G.S. 160A-175 for municipalities).[4] Under the new statutory language, a local government must amend local ordinances to specifically identify violations that may be enforced criminally.

1. *See* S.L. 2021-121, § 5; S.L. 2021-180, § 12.10A.

2. G.S. 160D-501(c).

3. For more discussion of the plan requirement, see Adam Lovelady, *Comprehensive Plans and Land Use Plans Required for Zoning,* Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (Aug. 19, 2021), https://canons.sog.unc.edu/2021/08/comprehensive-plans-and-land-use-plans-required-for-zoning/. For guidance on the planning process, see Adam Lovelady et al., PlanNC Guidebook: A Practitioner's Guide to Preparing Streamlined Community Plans (2021), https://www.sog.unc.edu/publications/books/plannc-guidebook-practitioners-guide-preparing-streamlined-community-plans.

4. *See* Frayda Bluestein, *Legislature Decriminalizes Local Ordinances*, Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (Oct. 7, 2021), https://canons.sog.unc.edu/2021/10/legislature-decriminalizes-local-ordinances/.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Additionally—and more importantly for planning and zoning—the new law prohibits criminal enforcement of some local ordinances, including "[a]ny ordinance adopted under Article 19 of . . . Chapter [160A], Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings." In other words, land use regulations may not be enforced with criminal penalties.

In addition to the broad prohibition of criminal enforcement of development regulations, the new statute also lists other specific types of regulations that may not be criminally enforced. For counties, these include business licensing, mobile home registration, stream-clearing programs, outdoor advertising, solar collectors, cisterns and rain barrels, and tree ordinances. For municipalities, they include stream-clearing programs, business licensing, outdoor advertising, solar collectors, cisterns and rain barrels, taxi regulations, building setback lines, curb cut regulations, and tree ordinances.

As regards land use ordinances, G.S. 160D-404 provides some enforcement options and cross-references to G.S. 153A-123 for counties and G.S. 160A-175 for municipalities. Those statutes, in turn, allow for enforcement of ordinances by fines, civil penalties, and court action, and criminal enforcement of misdemeanors. With S.L. 2021-138, that general misdemeanor enforcement of ordinances adopted under Chapter 160D is no longer available.

What about development ordinances for which there is specific authority for misdemeanor enforcement in Chapter 160D? That authority is likely eliminated except for ordinances relating to unsafe buildings. G.S. 160D-807, for example, states that transfer of unpermitted lots is a Class 1 misdemeanor. S.L. 2021-138 does not specifically amend the language of G.S. 160D-807, but the broad prohibition on criminal enforcement of development regulations (ordinances under Chapter 160D) appears to prohibit criminal prosecution for illegal subdivision.

There are other examples in Chapter 160D of specific violations identified as criminal misdemeanors. Since these violations would be pursuant to ordinances adopted under Chapter 160D, S.L. 2021-138 would decriminalize them, but there is an exception "for those ordinances related to unsafe buildings." It is not clear if the reference to "unsafe buildings" is narrowly focused on building condemnation or a broad reference to building safety in general (encompassing building codes, certificates of compliance, minimum housing, and more). Depending on that interpretation, some or all of the following topics arguably may still be enforced as misdemeanors since they are violations of "ordinances related to unsafe buildings": enforcement of violations of stop-work orders (G.S. 160D-404), building permit violations (G.S. 160D-1110), certificate of compliance violations (G.S. 160D-1116), removing notice from condemned buildings (G.S. 160D-1120), and unsafe structure compliance (G.S. 160D-1124, -1129, and -1203).

A more difficult interpretation concerns local environmental regulations authorized in Chapter 160D with cross-reference to other chapters of the General Statutes. Whether they fall under the new general decriminalization statute likely depends on the details of the particular ordinance and its adoption: Was it authorized and adopted under Chapter 160D or under the separate authority? Consider this example: G.S. 160D-922 authorizes local governments to

© 2022. School of Government. The University of North Carolina at Chapel Hill.

"enact *and enforce* erosion and sedimentation control regulations as authorized by Article 4 of Chapter 113A of the General Statutes. . . ." In turn, G.S. 113-64 specifically authorizes criminal penalties.

> Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000).

Chapter 160D includes similar cross-references to substantive grants of power for floodplain regulations (G.S. 160D-923, with reference to G.S. 143, Article 21, Part 6), mountain ridge protection (G.S. 160D-924, with reference to G.S. 113A, Article 14), water supply watershed management regulations (G.S. 160D-926, with reference to G.S. 143-214.5), and airport zoning (G.S. 160D-904, with reference to G.S. 63, Article 4). Stormwater regulations get slightly more complex, with the statutes stating at G.S. 160D-925 that "[a] local government may adopt a stormwater management regulation pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers." That section provides (and cross-references) additional authority for local regulation of federal, state, and local government projects; additional discharge regulations; and regulations to comply with National Pollutant Discharge Elimination System permits.

For any of these examples, if an ordinance was merely adopted under Chapter 160D (or its predecessors in Chapters 160A and 153A) and enforced under the general enforcement authority for local land development regulations, then that ordinance likely is impacted by S.L. 2021-138. It may not be enforced criminally. But, for many of these examples, the reference in Chapter 160D is merely cross-referencing to the substantive grant of authority elsewhere in the General Statutes. As such, the local ordinance may have been adopted pursuant to clear authority beyond Chapter 160D. Arguably, such ordinances would not be impacted by S.L. 2021-138 and may still be enforced criminally.

S.L. 2021-138 does prohibit criminal enforcement of "[a]ny ordinance adopted under . . . Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings." Yet, a broad interpretation of S.L. 2021-138 to prohibit any and all criminal enforcement of erosion and sedimentation control, water supply watershed protections, and other matters would effectively decriminalize laws from G.S. Chapters 113A and 143. Such an interpretation would greatly broaden the scope of G.S. 2021-138, which does not seem to be the legislative intent.

Finally, Chapter 160D identifies certain actions as misdemeanors that are direct enforcement of provisions of Chapter 160D, not ordinances adopted under Chapter 160D. These include the failure of an official to perform duties (G.S. 160D-1109) and lying under oath in a quasi-judicial matter (G.S. 160D-406). These violations are not necessarily enforced through the local ordinance, so it is unclear if or how they are affected; arguably, they may still be enforced criminally.

Even for land use ordinances for which there is no longer criminal prosecution, other enforcement options remain, including notice of violation, civil penalty, withholding permits, and court action.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Land Use Clarifications (S.L. 2021-168)

H.B. 854 initially concerned landlord–tenant law. In early September, however, a committee substitute bill replaced the old content (landlord provisions) with wholly new content focused on land use clarifications relating to permit choice, vested rights, and land use litigation. The bill was enacted as S.L. 2021-168.

The statute outlining permit choice and vested rights, G.S. 160D-108, is amended. In particular, language is added to subsection (e), which provides coverage for projects requiring multiple permits. The new language states that "[t]his subsection does not limit or affect the duration of any vested right established under subsection (d) of this section." Subsection (d) sets the duration of vesting. In other words, the permit choice coverage for multiple-permit projects does not limit the vesting for those permits under standard vesting.

G.S. 160D-706 addresses conflicts between Chapter 160D regulations and other development regulations. S.L. 2021-168 amends that section to add the phrase, "Unless otherwise prohibited by G.S. 160A-174(b)." That statute provides that a local ordinance may not infringe on constitutional liberties nor contravene established state and federal law. The amended language confirms that Chapter 160D regulations may be more stringent than other regulations, but not to the point of unconstitutionality nor contravention to state or federal law.

S.L. 2021-168 makes several technical changes to challenges of quasi-judicial decisions. When a quasi-judicial matter is appealed and the governing board is a party to the matter, it has authority to settle the matter. This was already the law and, with S.L. 2021-168, it is codified at G.S. 160D-406(k). Second, failure to object to a conflict of interest at the quasi-judicial hearing does not waive the right to assert the conflict. Finally, if a court remands with instructions to issue the special use permit and the permit is issued, then appeal of the remand or issuance is moot.

Chapter 160D Technical Corrections (S.L. 2021-88)

In 2019 the General Assembly adopted a comprehensive rewrite of the enabling legislation for local planning and zoning in North Carolina, codified as Chapter 160D. As with any major legislative undertaking, it needed technical corrections and cleanup. During the 2021 legislative session, technical corrections for Chapter 160D were adopted as S.L. 2021-88 (H.B. 67). Many changes are clerical—correcting cross-reference citations, altering word choice, and the like. One clarification is noteworthy: The language concerning plan consistency, outlined at G.S. 160D-604, is clarified to refer to comprehensive plans *or* land use plans.

Remote Meetings (S.L. 2021-35)

During the early days of the COVID-19 pandemic and lockdown in spring 2020, the General Assembly adopted legislation creating procedures for remote meetings during declared emergencies. In 2021 the General Assembly enacted S.L. 2021-35 (H.B. 812), which included three important clarifications to these procedures. First, the law now clarifies that written comments must be accepted up to 24 hours in advance of the public hearing. Prior language indicated that written comments must be accepted after the hearing; that is no longer the case. Second, the amendments provide clear procedures for situations when an in-person meeting must be switched at the last minute to a remote meeting. Finally, the new legislation clarifies

© 2022. School of Government. The University of North Carolina at Chapel Hill.

that adhering to the statutory procedures gives a presumption that the meeting complies with applicable open meetings laws.[5] The rules for remote meetings apply only when there is a declared state of emergency.[6]

Manufactured Housing (S.L. 2021-117)

Under G.S. 160D-910, manufactured homes have certain protections from regulation, but they may be subject to some local development regulations. The statute prohibits any outright ban on manufactured homes—they must be allowed somewhere in the jurisdiction. Manufactured homes may not be regulated based on the age of the home. But manufactured homes may be regulated with appearance and dimensional criteria, they may be limited to certain zoning districts, and local governments may adopt overlay zoning districts for them.

The regulatory reform bill, S.L. 2021-117 (H.B. 366), amends G.S. 160D-910 to add specific new limitations on local government regulation of manufactured homes. Under the new subsection (g), local governments may require manufactured homes be installed in accordance with Department of Insurance requirements, but "a local government shall not require a masonry curtain wall or masonry skirting for manufactured homes located on land leased to the homeowner."

Affordable Housing

No Harmony Standard (S.L. 2021-180)

The budget bill, S.L. 2021-180 (S.B. 105), Section 5.16.(a), amends G.S. 160D-703 to add the following:

> (b1) Limitations.—For parcels where multifamily structures are an allowable use, a local government may not impose a harmony requirement for permit approval if the development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income.

The framing and phrasing of this particular section leave some ambiguity about the precise application. Given the language, though, it seems to apply to special use permits. Special use permits are quasi-judicial development decisions based on standards that require some judgment and discretion. A very common standard for special use permits in North Carolina is that the development must be "in harmony with the area." Thus, this prohibition on a harmony requirement would seem to apply to special use permits. The statute provides that it applies where multifamily is "an allowable use." That implies by right, not through a special use permit, but one may argue that multifamily is "an allowable use" on a site with a special use permit since

5. For more on this legislation, see Frayda Bluestein, *Clarification of Rules for Remote Meetings Under State Level State of Emergency: No More Waiting 24 Hours After Public Hearings!*, Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (June 18, 2021), https://canons.sog.unc.edu/clarification-of-rules-for-remote-meetings-under-state-level-state-of-emergency-no-more-waiting-24-hours-after-public-hearings/.

6. Frayda Bluestein provides important reminders about the rules that apply to remote meetings when there is no declared state of emergency. *See* Frayda Bluestein, *Public Meetings After the Lifting of the State-Level State of Emergency*, Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (July 6, 2021), https://canons.sog.unc.edu/public-meetings-after-the-lifting-of-the-state-level-state-of-emergency/.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

an applicant is legally entitled to the permit if they meet applicable standards. Moreover, the commonality of the harmony standard in special use permitting would argue that this statute is intended to address those permits. As such, it is reasonable to interpret it to prohibit the harmony standard in special use permit review when the requisite affordable units are included.

Depending on the local ordinance and standards for certain approvals, this provision may apply to site plan review, conditional zoning, or both. Site plan review typically is administrative (based on clear, objective standards) but some jurisdictions have standards for the site plan review process that involve judgment and discretion (making the site plan decision a quasi-judicial decision). For those jurisdictions, this new statutory provision will prohibit a harmony requirement when the requisite affordable units are included. Additionally, the language from S.L. 2021-180 is added at G.S. 160D-703(b1), immediately following the statutory section "Conditional Districts" (G.S. 160D-703(b)). There is no standard harmony requirement in conditional zoning. That said, some local ordinances may require "harmony" as part of the review for conditional zoning decisions. In such cases, it is reasonable to interpret this statute to limit the extent to which harmony can be part of the review.

The statutory language applies to any development that includes "affordable housing units" for households below 80 percent of area median income. There is no minimum number nor percentage of units that must be affordable and there is no time frame for affordability. Arguably, a project could include two affordable units (the statute does require plural unit*s*) that will meet the requirement for one year (or less) and still access this statutory preference in the permit review.

Winston-Salem Local Legislation (S.L. 2021-44)

S.L. 2021-44 (S.B. 145) is a local act authorizing Winston-Salem to convey city-owned property for affordable housing development. The authority allows the city to convey property with or without consideration and with deed restrictions that the property reverts back to the municipality if it is not used for affordable housing for the specified time frame. The action must be authorized by resolution of the governing body.

Signs

NCDOT Rules (S.L. 2021-117)

In 2020 and 2021, the N.C. Department of Transportation reviewed and updated regulations concerning outdoor advertising (Title 19A, Chapter 02E, Section .0200 of the North Carolina Administrative Code (hereinafter NCAC)). The regulations were re-adopted by the Rules Review Commission, but objections were raised for three sections (19A NCAC 02E .0204—Local Zoning Authorities, 19A NCAC 02E .0206—Applications, and 19A NCAC 02E .0225—Repair/Maintenance/Alteration/Reconstruction of Conforming Signs and Repair Maintenance of Non-Conforming Signs). Given the objections, there was a delayed effective date for those sections. Section 11.(a) of the regulatory reform bill, S.L. 2021-117 (H.B. 366), overrides those three sections of the regulations so the regulations will not become effective.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Sign Relocation (S.L. 2021-180)

The budget bill, S.L. 2021-180 (S.B. 105), adds a new section to the statutes concerning billboards. New G.S. 136-131.5 allows relocation of billboards under certain circumstances. Under this new provision, NCDOT may not require additional permits nor revoke existing permits for relocations under this section. NCDOT may require an addendum to an existing permit within 30 days after a relocation is completed. The rights outlined in this section attach to the permit and do not run with the land.

Relocation for any billboard. Any outdoor advertising sign with a valid NCDOT permit may be relocated on the same parcel or an adjoining conforming parcel. The requirements listed below apply. There must be 10 years between relocations to another parcel.

Relocation for billboards condemned or obstructed. G.S. 136-131.5 now provides that when a billboard (outdoor advertising sign) must be removed due to condemnation or is obstructed by a sound barrier, the billboard may be relocated subject to certain requirements. These provisions apply to “any lawfully erected outdoor advertising sign anywhere in the State” removed by condemnation, regardless of whether the sign is subject to NCDOT regulations.

Requirements for relocation. The requirements are as follows:

1. The new site may be in any area within 660 feet of a highway in the same zoning jurisdiction as the original site (or within the same territorial limits if the original site was in an unzoned jurisdiction).
2. The new site must conform to NCDOT standards.
3. The new site must be along the same highway as the original site (same route number or letter).
4. Reconstruction must conform with G.S. 136-131.2. (That section provides that local governments may not regulate or prohibit the repair or reconstruction of a billboard if there is no increase in advertising surface area. It includes specific allowances for monopole construction.)
5. The new site cannot be in a designated local historic district.
6. The new site cannot be adjacent to a scenic highway. (A sign currently on a scenic highway can be moved within the same parcel.)
7. Construction on the new site must begin within one year after the date of removal.

Fees and Exactions

System Development Fees (S.L. 2021-76)

S.L. 2021-76 (H.B. 344) amends the authority for water utility system development fees (impact fees). The authority for system development fees was established a few years ago, and the General Assembly has adopted several clarifications and amendments since. S.L. 2021-76 now includes wholesale water arrangements under the definition of water and sewer *service*. The bill also adds to the supporting analysis required for a system development fee an analysis of the use of gallons per day. Finally, the bill clarifies that the utility is responsible for any income taxes from taxable contributions.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Utilities for Schools, Including Charter Schools (S.L. 2021-180)

Article 37 of Chapter 115C of the N.C. General Statutes covers school sites and property, and G.S. 115C-521 addresses the construction of school buildings. The law requires local school boards to create long-range plans for school facilities, establishes duties for providing adequate school facilities, and sets parameters for the contracting, permitting, and construction of school facilities.

Section 7.64.(a) of the budget bill (S.L. 2021-180, S.B. 105) amends G.S. 115C-521 to address water and sewer capacity for new school facilities. The new subsection (i) states that prior to any development permit application (under Chapter 160D), the local board of education must make written inquiry to the public water or sewer system, or both, serving the site or closest to the site as to whether the public system has capacity to serve the school facility. The public system must respond within 30 days. If there is capacity, the public system must reserve it for the school facility for 24 months. The only exceptions are if there is no capacity or if the public system is under a moratorium precluding expansion.

Section 7.64.(b) of the budget bill amends G.S. 115C-218.35 to make the required reservation of water and sewer capacity applicable to charter schools as well.

Infrastructure

Acceptance and Measurement of Streets (S.L. 2021-121, Sections 3 and 9)

Among the many changes to building and development regulations in S.L. 2021-121 (H.B. 489), two concern the processes by which new transportation infrastructure is evaluated and accepted.

For municipal roads, Section 3(a) adds a new sub-sub-section (3) to G.S. 160A-306(b) that clarifies how to calculate the building setback standards that should be required for road safety. This new language provides that when a city designs street right-of-way setbacks, its measurement of sight triangles and other sight distances at street intersections must begin within the roadway or edge of pavement of a proposed or existing street.

Before a subdivision road can be added to the state highway system, NCDOT must confirm that the road meets minimum standards. The proposed addition then goes to the N.C. Board of Transportation (BOT) for approval. Previously, the Board did not have a deadline to approve roads NCDOT had confirmed were up to standard. Section 9 of this act amends G.S. 136-102.6(d) to set such a deadline. Once NCDOT has reviewed a petition and determines that the streets meet the BOT's minimum standards, the BOT has 90 days to approve the addition of the street improvements to the state highway system. This provision applies to petitions for road additions submitted on or after January 1, 2022.

Broadband and Small Cell Wireless Infrastructure (Budget Bill, S.L. 2021-180)

November's budget bill (S.L. 2021-180, S.B. 105), in Sections 38.1 through 38.10, includes several changes to the Growing Rural Economies through Access to Technology (GREAT) program, other rural broadband access initiatives, and the regulation of small cell wireless infrastructure. These changes include the following:

- Several changes to the rules regarding applications for the GREAT program in G.S. 143B-1373 widen the scope of potential applications: the definitions of *distressed areas*, *unserved areas*, and *eligible projects* are all modified to widen the range of potential applicants;

© 2022. School of Government. The University of North Carolina at Chapel Hill.

several tweaks have been made to the scoring and application systems; and the GREAT program is expanded to provide for up to $1 million of GREAT funds to cover grants for broadband providers to serve individual households.

- The Department of Information Technology (DIT) must develop a cybersecurity plan and submit it to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by February 1, 2022.
- Additional grants will be available to DIT from the State Fiscal Recovery Fund for Stopgap Solutions–Federal Broadband Funds to provide grants to Internet service providers, local government entities, and nonprofits for the provision and installation of broadband infrastructure for unserved and underserved households in the state.
- In complement or contrast to the GREAT program, the session law creates a new Completing Access to Broadband grant program (by way of new G.S. 143B-1373.1), in which every county can participate.
- DIT and the state chief information officer must prepare and maintain statewide broadband maps.
- Counties can now issue grants to broadband service providers. The act includes a Broadband Pole Replacement Program (state funds will reimburse up to 50 percent of costs for service providers to replace a pole where required), which sunsets at the end of 2024.

Of particular note for development regulation is Section 38.9, which adds G.S. 160A-296.1. This new statute limits the time cities have to approve or deny permit or encroachment applications from broadband providers to work in the city's right-of-way. The statute requires the municipality to issue a written decision approving or denying one of these applications within 30 days of the application's submission. If the application is not approved or denied in writing within that period, it is deemed approved. If it is denied, the city must provide the applicant with its reasons for the denial. The applicant then can address the deficiencies in the application and resubmit. The city may not charge another application fee for this resubmittal and must make its decision on the revised application within 10 days of resubmission.

Regulations of broadband permits can include reasonable guidelines to prevent interference with or endangering of public use of the street, can require an applicant to repair any damage it causes (or that its agents cause), and can require an affidavit or insurance to demonstrate financial responsibility. These are the only standards that can be imposed on applications to use the city right-of-way for broadband deployment, and the city cannot require an entity that has (1) a certificate of public convenience from the Utilities Commission or (2) a franchise to provide video programming from the Secretary of State to enter into a master encroachment or similar agreement as a condition of approval. This new limitation became effective upon enactment of the budget bill on November 18, 2021.

In addition to the provisions addressing broadband development, portions of Section 38.10 of the budget bill also focus on small cell wireless infrastructure. Section 38.10(m) alters the fee authority for collocation of small wireless facilities. It prohibits the assessment of any fees or recurring charges for a wireless provider to collocate a small wireless facility or to install, modify, or replace a utility pole, *except* for the city's allowed per-pole collocation charges, pole attachment fees, and rates for attaching to city utility poles. These charges are described in G.S. 160D-937 and include (1) collocation charges of no more than $50 a year per pole, (2) a pole

© 2022. School of Government. The University of North Carolina at Chapel Hill.

attachment rate or fee for the city's public enterprise, or (3) rates for use of or attachment to city utility poles that the city owns or controls. This fee authority limitation sunsets at the end of 2024.

Finally, a portion of Section 38.10 limits the range of entities excluded from the Chapter 160D rules for development of wireless telecommunication facilities. Whereas the previous version of the statute excluded a set of entities that included cities with their own power generation, transmission, or distribution systems, as well as electric membership corporations (EMCs), the amended statute only references EMCs. Thus, the practical effect of this section appears to make municipalities subject to the various requirements of G.S. 160D-937, which could simply be a clarification that cities are not to charge collocation fees to themselves or other cities.

Agricultural Uses—The Farm Bill (S.L. 2021-78)

The 2021 farm bill (S.L. 2021-78, S.B. 605) makes a variety of changes to agriculture and forestry laws. Of most significance to the development community may be Section 1, which alters some of the rules for voluntary agricultural districts, and Section 3, which modifies the exceptions to open-burning laws.

Section 1 includes changes related to the purpose of voluntary agricultural districts (VADs), the range of allowable uses, the process of establishing a VAD, and the authority of voluntary agricultural boards. First, the law tweaks G.S. 106-738 to provide that the purpose of VADs includes "decreas[ing] the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors," where the prior text simply referred to "increas[ing] protection from nuisance suits."

Second, the farm bill modifies VAD regulations by expanding the definition of *qualifying farmland* that can be included in a VAD. This definition, in G.S. 106-737(1), formerly referenced the definition of *agriculture* in G.S. 106-581.1 and now refers to a broader set of "bona fide farm purposes" described in G.S. 106-743.4(a) and G.S. 160D-903. Thus, property subject to a conservation agreement (that can receive up to 25 percent of its gross sales from the sale of nonfarm products), uses incident to the farm (such as residences), and agritourism uses will now be eligible to be part of a VAD. Property in a VAD can be subject to utility waivers, additional notice related to condemnation actions, and other benefits as may be defined by ordinance.

Third, the law now requires the establishment of a VAD on different bases than before. Previously, G.S. 106-738 required that a VAD ordinance provide for the formation of districts consisting initially of the number of acres or farms deemed appropriate by the governing board, upon the execution of an agreement by the owners of the farm acreage and the approval of the agricultural advisory board. Now, local ordinances must provide for the establishment of a VAD upon execution of a conservation agreement and must provide a minimum size for VADs.

Finally, the farm bill expands the potential authority of agricultural advisory boards. The form of any conservation agreement within the district must be approved by the agricultural advisory board. In addition, local governments can now, by ordinance, allow an agricultural advisory board to make decisions regarding the establishment and modification of agricultural districts.

Aside from the changes to VADs and VAD boards, the farm bill also makes minor revisions to the language in G.S. 106-737(4) and 106-737.1 to explicitly recognize a municipality's authority to enter into conservation agreements with property owners.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Section 3 is the other pertinent part of this bill. It adds an exemption from open-burning laws in new G.S. 106-950(a2) stating that, in general, the law does not apply to fires started "for cooking, warming, or ceremonial events." This new exemption does come with limitations common to other exemptions. These include (1) an exception to the exemption (in other words, the open burning law would apply) where all open burning has been prohibited because of hazardous forest fire conditions or during air pollution episodes and (2) a requirement that the fire must be confined "within an enclosure from which burning material may not escape" or within a protected area where a watch is maintained and adequate fire protection equipment is available.

Protection of Water Supply Watersheds and Coastal Areas

Redevelopment in Water Supply Watershed (S.L. 2021-164)

S.L. 2021-164 (H.B. 218) allows redevelopment of certain property in a water supply watershed in excess of the normally allowed density. Previously, any new development in water supply watershed areas (including redevelopment of existing lots) had to comply with often strict density limitations. The new language comes in subsection (d3) to G.S. 143-214.5. This provision allows an applicant to exceed allowable density under water supply watershed rules if the following apply:

1. The property was developed prior to the effective date of the local water supply watershed program.
2. The property has not been combined with additional lots after January 1, 2021.
3. The property has not been a participant in a density averaging transaction under subsection (d2) of this section.
4. The current use of the property is nonresidential.
5. In the sole discretion, and at the voluntary election, of the property owner, the stormwater from all the existing and new built-upon area on the property is treated in accordance with all applicable local government, state, and federal laws and regulations.
6. The remaining vegetated buffers on the property are preserved in accordance with the local water supply watershed protection program requirements.

This new law applies to applications received on or after November 1, 2021.

Coastal Area Management (S.L. 2021-158)

In addition to the stormwater management changes discussed above, S.B. 389 (S.L. 2021-158) makes a few minor changes to the Coastal Area Management Act (CAMA).

Section 1 modifies some of the conditions for funds made available through the Public Beach and Coastal Waterfront Access Program. Specifically, any land acquired with program grants must be dedicated "in perpetuity for public access and for the benefit of the general public," and the dedication must be recorded with the register of deeds. If program grants are used to acquire a lease or easement, the lease or easement must have a term of at least 25 years. If the local government uses the land for another purpose or disposes of the property, it must reimburse the State the greater of the amount of grant funds provided for the purchase or an amount of the property's fair market value proportionate to the fraction of the price paid with program funds.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

The previous rule stated that if the local government used property acquired with program funds for a purpose other than beach or coastal waters access, it was required to transfer title to that property to the State.

Section 2 modifies CAMA's notification requirements in two ways:

1. It removes the requirement (in G.S. 113A-119(b)) that the Secretary of the Department of Environmental Quality (DEQ) (through the Division of Coastal Management (DCM)) mail copies of an application for a new major CAMA permit or substantial modification of an existing major permit to interested citizens and agencies. Notice of a major permit application still must be posted at the location of the proposed development and published in a newspaper of general circulation in the area, but the mailing requirement is eliminated.
2. It deletes G.S. 113A-119(a)(3), which required DCM to maintain a list of persons who wished to be notified of proposed rules and developments, and which required the Department to mail out notice of proposed developments to those on the list.

These notification requirements apply to permit applications received on or after July 1, 2021.

Section 3 extends the deadline from 15 to 30 days for the Coastal Resources Commission (CRC) to determine whether it is appropriate to proceed with a contested case hearing to review a decision to grant or deny a development permit. The new deadline applies to requests for determination of appropriateness received by the CRC on or after October 1, 2021.

Erosion and Sedimentation Control

Plan Requirements and Single-Family Development Rules (S.L. 2021-121)

S.L. 2021-121 (H.B. 489), among a number of other changes to building-related statutes, establishes a ceiling on sedimentation control fees. For single-family lots of less than one acre that are in residential developments or under a common plan of development, the fee cannot exceed $100 per lot. For other developments, fees must be calculated on the number of acres disturbed. This limitation was added to G.S. 113A-60(a) by Section 5(c) of the new law.

S.L. 2021-121 also makes several changes related to erosion and sedimentation control plans for single-family residential developments. Section 5(a) adds new subsection (f) to G.S. 113A-54.1. This new provision states that, where a single-family residential lot involves land disturbance of less than one acre, financial responsibility for the land-disturbing activity transfers from the builder or developer to the new owner once a deed transferring the property is recorded and the local erosion control program is notified.

Section 5(c) of this law prohibits a local government from requiring separate erosion-control plans for development of lots of less than one acre of disturbance if there is already an approved erosion-control plan for the entire development, but only if the builder and developer are the same financially responsible entity. When the developer and builder are different entities, the local government can require only certain information (including the existing platted survey and a sketch plan that does not need to be sealed, among other data) for review of an erosion-control plan for a single-family lot in a common plan of development.

Other limitations apply as well: Local erosion control programs cannot require periodic self-inspections or rain gauge installation on individual residential lots where less than one acre on each lot is being disturbed. For land-disturbing activity on more than one residential lot, the entity responsible for the activity can submit a single erosion control plan for all of the

© 2022. School of Government. The University of North Carolina at Chapel Hill.

disturbed lots or may submit erosion control measures for each lot. This subsection of the act also prohibits requiring a silt fence or other erosion control measure, or requiring a silt fence to be wire-backed, where it would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract. Section 5(c) applies to erosion control plans submitted for review and approval on or after October 1, 2021.

Section 5(d) states that no civil penalties may be assessed under G.S. 113A, Article 4 (Sedimentation Pollution Control Act of 1973), for damage or destruction of a silt fence during land disturbance or construction if the fence is repaired or replaced in the time period indicated in an inspection report or notice of violation.

Except for Section 5(c), S.L. 2021-121 became effective August 30, 2021.

Erosion and Sedimentation Fee Changes (S.L. 2021-180)

Section 12.10A of the budget bill (S.L. 2021-180, S.B. 105) makes a couple of changes to the allowable fees for sedimentation and erosion control review. The application fee for review of an erosion and sedimentation control plan, authorized by G.S. 113A-54.2(a), is increased from $65 to $100 per acre. The statute also defines the fee as an “application and compliance fee” rather than just an application fee, and states that the fee is to cover “related compliance activities” in addition to review of the proposed plan. This subsection does not define what is meant by “related compliance activities,” but presumably this fee should cover costs of inspection and other means of confirming plan compliance.

The allowable fee for limited erosion and sedimentation control plans (G.S. 113A-60(d)) was also increased, in this case from $100 to $150 per acre. This law became effective upon enactment, so the new fee limits now apply.

Local Stormwater

Stormwater Infrastructure Fund (S.L. 2021-180)

Section 12.14(a) of the budget bill (S.L. 2021-180, S.B. 105) establishes a Local Assistance for Stormwater Infrastructure Investments Fund at the Department of Environmental Quality (DEQ), and Section 12.14(b) identifies 11 municipalities and public works commissions that will receive some of the initial grants. The section also describes the procedure for allocating these grants: DEQ must use 70 percent of the remaining funds for construction grants (that is, for implementing, retrofitting, or rehabilitating stormwater control measures or installing “innovative technologies or nature-based solutions”) and the remaining 30 percent for planning grants (that is, for research, alternatives analysis, development of concept plans or designs, or other similar activities). Construction grants must be limited to $15 million and planning grants to $500,000. Up to 3 percent of allocated funds may be used for administrative expenses.

Regardless of whether they are among the 11 required recipients, any city or county that documents a stormwater quality or quantity issue and demonstrates it would experience a significant hardship raising the revenue needed to finance stormwater management is eligible to apply for the grants. Councils of government and nonprofits that partner with cities or counties are also eligible. If funds are granted for a purpose that would violate federal law, they must be returned.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

DEQ must submit an annual report to the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division on the projects and activities funded and may comment on recommended legislative funding or other changes.

Stormwater Regulation (S.L. 2021-158)

S.B. 389 (S.L. 2021-158) makes various changes to environmental and cultural resources laws, including several that relate to stormwater and water quality management.

Section 4 adds subsection (b4) to G.S. 143-214.7 mandating that new or reissued stormwater permits must require the permittee to submit an annual certification of the project's conformance with permit conditions. The Department must provide an electronic means of submittal for the certification, but adding the annual certification is not to be considered a new or increased stormwater control.

The law also provides additional details and clarifications to the conditions of G.S. 143-214.7(c5)(1) under which a permit can be transferred without the permit holder's or successor-owner's consent. DEQ now can choose whether to require submittal of an application for permit transfer, and the law makes some clarifying changes to the categories of permit holders and successor-owners from whom a permit can be transferred without their consent. It also sets deadlines for these transfers.

Section 4(a) of the law provides for an after-the-fact modification to certain low-density stormwater permits to allow the project to maintain a built-upon area that exceeds the permitted amount. Applicable only to permits issued prior to January 1, 2017, this modification (authorized by new subsection c6 of G.S. 143-214.7) allows the permittee to submit a permit modification application to change the built-upon area limit to the current level of built-upon area. However, if the actual built-upon area is more than 110 percent of the maximum allowable built-upon area for low-density permits at the time of permit issuance, the permittee must mitigate the impacts of its excess built-upon area through additional stormwater control measures.

Subsection 4(b) of the law revokes all low-density stormwater certifications and approvals issued prior to September 1, 1995. For these projects, the built-upon area is to be considered existing development for purposes of G.S. 143-214.7(a1), and future development must comply with the requirements of G.S. 143-214.7 and any recorded deed restrictions.

Section 5 of the law moves up the deadline for requests for remission of civil penalties imposed under G.S. 113A-64. These requests are now due within 30, rather than 60, days of receipt of the notice of assessment.

Section 8 modifies the G.S. 143.215.8B requirements for basin-wide water quality management plans for each of the state's 17 major river basins. First, the plans are renamed from water "quality" management plans to water "resources" management plans. The list of activities to consider no longer includes septic tank systems, golf courses, farms that use fertilizers and pesticides for crops, and commercial lawns and gardens, and now includes waste disposal sites. Although this list follows the phrase "such as" and is therefore at least nominally a list of examples, the change to specific sources suggests that the General Assembly may have wanted to preclude certain sources from (and add one source to) the plan's consideration. For nutrient-sensitive waters, the plan is no longer required to establish a goal to reduce the average annual mass load of nutrients delivered to surface water and instead must simply "report on the status of those waters." Similarly, the plan shall report on, not require, incremental progress toward achieving reduction of nutrient pollution. One new requirement is that each plan "[p]rovide

© 2022. School of Government. The University of North Carolina at Chapel Hill.

surface and ground water resources to the extent known by the Department, other withdrawals, permitted minimum instream flow requirements and evident needs, and pertinent information contained in local water supply plans and water shortage response plans."

Further, the 10-year review required by G.S. 143.215.8B must also address changes in water quantity and advances in water conservation and reuse and may include critical basin issues that arise from the annual report. The annual report is now required only in every even-numbered year. The report does not have to include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the state; rather, the report must address water quality and quantity conditions more generally.

Section 10 removes from G.S. 113A-61.1(c) the requirement that notices of violation be delivered in person to repeat offenders of sedimentation and erosion control program rules, effective October 1, 2021.

Section 11 deletes language from G.S. 113A-65.1 (1) providing that issuance of a stop-work order is a final agency action subject to judicial review and (2) requiring the attorney general to file for a restraining order to abate the violation. The session law does not provide any additional information regarding review of stop-work orders, so the course for challenges to these orders is not patently obvious. However, since a stop-work order is not necessarily a final agency action, developers and others who wish to appeal stop-work orders may have to look to the local board of adjustment or the Office of Administrative Hearings before seeking judicial review in superior court. This change was effective October 1, 2021.

Building and Housing Code Enforcement

Building Code Changes, Part 1 (S.L. 2021-121)

Several provisions of S.L. 2021-121 (H.B. 489) also modify the State Building Code and the way in which it is updated.

Section 2 requires the N.C. Building Code Council to conduct its own independent cost-benefit analysis when revising the State Building Code, in addition to whatever analysis was provided by the proponent of the proposed amendment.

Section 6 requires the N.C. Building Code Council to modify Section D107 of the 2018 N.C. Fire Code, as well as other provisions relating to fire access roads for one- and two-family dwelling residential developments, to eliminate any requirement for an automatic sprinkler system in one- or two-family dwellings where there are fewer than 100 dwelling units on a single public or private fire-apparatus access road with access from one direction. The Council is given special rulemaking authority outside certain Administrative Procedure Act requirements to streamline the rules-adoption process. This limitation on requiring sprinklers applies from the time it is effective until the Building Code Council updates the Fire Code to match the law's language.

Section 7 requires the Council to adopt a rule allowing the American Water Works Association C900 standard to be an acceptable standard for PVC pipe under the 2018 N.C. Residential Code and the 2018 N.C. Plumbing Code. Again, the law makes this change effective, and it applies until the Building Code Council updates the Residential Code and the Plumbing Code.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Building Code Changes, Part 2 (S.L. 2021-183)

One of the later revisions to North Carolina building code law, S.L. 2021-183 (S.B. 308), makes a few changes to building, electrical, and fire code compliance. Section 1 modifies the reinspection limitations in S.L. 2021-121 and is discussed below.

Section 2 removes a reference to the National Electric Code from G.S. 143-143.2, such that electric wiring of houses or buildings now must conform to the requirements of the State Building Code and other applicable state and local laws, but presumably only where the National Electric Code is referenced in the State Building Code.

Section 3 requires the Building Code Council to modify Sections D107.1 and D107.2 of the 2018 N.C. Fire Code such that, for one- or two-family dwelling residential developments where two fire access roads are required, the code limits how close the Council and relevant code officials may require those access roads to be. This limit is one-half of the length of the maximum overall diagonal dimension of the property or area served, measured in a straight line between accesses. If the property owner or developer believes that it is "technically infeasible" to place the access roads that close together, the relevant official either must not require two access roads or must allow the roads to be built "to the maximum [separation] technically feasible." The Council must adopt a rule consistent with this legislation, and the legislation effects this change as of November 23, 2021 (when the legislation became law), until the Council makes the conforming changes to its rules.

Reinspection Fees (S.L. 2021-121)

S.L. 2021-121 (H.B. 489), entitled "An Act to Provide Various Building Code and Development Regulatory Reforms," makes a number of changes to statutes governing code enforcement and land development. Provisions of the law related to erosion and sedimentation control are discussed above, under the heading "Modify Erosion and Sedimentation Control (S.L. 2021-121)."

Regarding code enforcement, Section 4 limits a local government's authority to charge for reinspection of newly discovered building code violations. It modifies G.S. 160D-1104(d) to state that, when an inspection is conducted to verify completion or correction of instances of noncompliance and this inspection discovers violations that were previously approved, the inspections department may not charge for reinspection of those new violations. For example, say a building is inspected in January and violations are found relating to wiring, but the plumbing is approved. In February, the inspector goes to confirm the wiring problems are corrected but finds there in fact *are* plumbing violations. The inspections department may charge for the January and February inspections, but it may *not* charge for the reinspection for correction of the *new* plumbing violations in March. This provision applies to inspections conducted on or after August 30, 2021, the date the bill became law. In addition to the prohibition on charging for reinspection of newly discovered violations, these violations also may not delay issuance of a temporary certificate of occupancy. This last provision is the result of a further revision in S.L. 2021-183 (S.B. 308), Section 1(a), and applies to inspections associated with permits applied for on or after January 1, 2022.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Building Plan and Permit Modifications (S.L. 2021-192)

The last bill to be signed into law in 2021, S.L. 2021-192 (S.B. 329), raises the thresholds for requiring building permits and modifies the scope of requirements under which certain plans must be submitted under seal.

Section 1 modifies G.S. 83A-13(c)(3), which exempts the plans and specifications of institutional or commercial buildings from the requirement that they be prepared by a licensed architect. The new law increases the threshold total value that requires architect preparation from $200,000 to $300,000. In addition, the threshold requirement for a professional architectural seal for a commercial building project (in G.S. 83A-13(c1)) is increased from $200,000 to $300,000. This session law also adds exemptions from architectural seal requirements to G.S. 83A-13(c1) for any alteration, remodeling, renovation, or repair of a commercial building if the total value of the project is less than $300,000 or the total building area is 3,000 square feet (gross) or less. This exception expires on December 31, 2024. An additional exemption at new G.S. 160D-1104(d1) prevents local governments from adopting or enforcing a policy or ordinance requiring plans or specifications for alteration, remodeling, renovation, or repair of commercial buildings where the cost of the project is less than $300,000 or the total building area is 3,000 square feet or less. The latter two exceptions become effective December 15, 2021, and apply to projects beginning on or after that date. They expire on December 31, 2024.

This session law also adds provisions for exclusions from the general building permit requirement. The language in new G.S. 143-138(b21) excludes from any building permit requirement “any construction, installation, repair, replacement, or alteration” made in accordance with the State Building Code that costs $20,000 or less in any commercial building or structure, unless the work falls under the exclusion for certain minor activities in residential and farm structures (G.S. 143-138(b5)). In calculating the $20,000 limit, the cost considered must include “all building addition, demolition, alteration, and repair work, occurring on the property within 12 consecutive months.”

Similarly, new G.S. 143-138(b22) prohibits the State Building Code from requiring architectural or engineer seals on plans and specifications for any alteration, remodeling, renovation, or repair of a commercial building or structure where the (1) cost of the work is less than $300,000 or (2) total building area does not exceed 3,000 square feet of gross floor area. There are exceptions to this exception, however. To qualify, the alteration, remodeling, renovation, or repair must (1) not include addition, repair, or replacement of load-bearing structures; (2) not be a public works project (subject to G.S. 133-1(a)); and (3) be performed in accordance with the most recent version of the North Carolina Fire Prevention Code.

Section 4 raises the threshold in G.S. 160D-1110(c) for building permits (those issued under Article 9 or 9C of Chapter 143) from $15,000 to $20,000 and expands the exception to include commercial buildings. This exception has several caveats, and Section 4 tweaks them slightly. First, where the statute referenced use of materials not permitted by the Residential Code, it now references the State Building Code. Second, it adds a sixth condition related to “[a]ny changes to which the North Carolina Fire Prevention Code applies.” Third, it revises G.S. 143-138(b5) to likewise raise the threshold from $15,000 to $20,000 and expands the exception to include commercial buildings there as well. In addition to referencing the State Building Code and Fire Prevention Code, as in Section 4(a), it rewords the condition related to “[other things,] . . . appliances or equipment” to “. . . appliances, or equipment, other than a like-kind replacement of electrical devices and lighting fixtures.”

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Section 5 includes a clarification to Section 3 of S.L. 2021-163, stating that Section 1(c) of that act "does not apply to timeshare transfer services or to transfer service providers prior to July 1, 2022." This alteration was effective as of October 6, 2021.

Sections 1–4 of the act became effective December 15, 2021, and apply to projects beginning on or after that date.

Other Notable Legislative Proposals

This section outlines legislation that was not enacted but garnered notable attention or discussion during the session. These or similar proposals could be considered in future legislative sessions.

Missing Middle Housing (H.B. 401/S.B. 349)

Across the country states and cities have considered and implemented provisions to allow for a greater mix of housing types. "The missing middle," as these are commonly called, include the range of middle-density housing in between one-family residential and high-density multifamily residential: duplex, triplex, quadplex, townhomes, and more. Additionally, many states and cities have considered and implemented greater allowances for accessory dwelling units.

H.B. 401 and its companion, S.B. 349, would have added North Carolina to the list of state-level rules requiring local governments to allow missing middle housing and accessory dwelling units. The bill also included notable changes to vested rights, downzoning, and land use disputes.

Limits on Exactions (H.B. 821)

Language in H.B. 821 proposed to clarify and limit local government authority for certain exactions related to land use development. The proposed language would have added a new section, G.S. 160D-112:

> Unless otherwise provided by local act, local governments have no authority under this Chapter to do any of the following:
>
> (1) Impose impact fees for development.
> (2) Condition a development approval on the existence of a community benefits agreement. The term "community benefits agreement" means a development-specific arrangement between a developer and persons affected by the development that details the development's contributions to the persons affected or ensures support for the development by the persons affected.
> (3) Require a developer to provide funds for affordable housing or construct, set aside, or designate one or more dwellings or developments as affordable housing.
> (4) Require a completed traffic impact analysis prior to a development approval.
> (5) Require a developer to construct a greenway.

Short-Term Rentals (H.B. 829)

H.B. 829 would have made a simple deletion from the text of G.S. 160D-1207—a small text change with potentially significant impacts to the authority to regulate residential property. As currently written, G.S. 160D-1207(c) provides that a local government may not, among other things, require the owner of residential rental property to obtain permits under the State

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Building Code or local housing code to lease or rent residential real property. H.B. 829 would strike the reference to those codes so that a local government could not require *any permit* to lease or rent residential real property. This would prevent zoning permits for conversion of residential properties to bed and breakfasts, short-term rentals, or other types of vacation rentals.

Conditions on Affordable Housing (H.B. 712)

H.B. 712 proposed to limit what conditions may be imposed on a conditional rezoning when the project contains affordable housing. If a development contains affordable housing units for families or individuals with incomes below 80 percent of area median income, then the conditional zoning could stipulate only conditions related to (1) height, number of stories, and size of buildings and other structures; (2) the percentage of lots that may be occupied; (3) the size of yards, courts, and other open spaces; (4) the density of population; and (5) the location and use of buildings, structures, and land.

Tree Protection (H.B. 496)

H.B. 496 proposed to prohibit local tree ordinances unless explicitly authorized by local legislation. Comparable language was also included in earlier versions of the budget bill but was not included in the final budget legislation.

© 2022. School of Government. The University of North Carolina at Chapel Hill.

Use of this publication for commercial purposes or without acknowledgment of its source is prohibited. Reproducing, distributing, or otherwise making available to a non-purchaser the entire publication, or a substantial portion of it, without express permission, is prohibited.
For permissions questions or requests, email the School of Government at copyright_permissions@sog.unc.edu.
Other School bulletins can be accessed on the Publications page of our website: sog.unc.edu/publications.