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2022 North Carolina Legislation Related to Planning and Development Regulation

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After a very long "long session" that spilled over from 2021 into 2022, the North Carolina General Assembly convened in May 2022 for the "short session." While the main purpose of a short session is to adjust the state budget passed in the prior year, the legislature also takes up other matters in the session. This year, the short session included a variety of planning and development regulation–related topics. State leaders extended the deadline for small towns to adopt a land use plan; adopted notable, if technical, changes to a mix of zoning, building code, and environmental standards; and updated the rules and regulations for social districts, among other things. This bulletin summarizes the legislation related to planning and development regulation.

I. Checklist for Local Government Actions

Due to the number and variety of bills reviewed and passed in the 2022 legislative session, local governments may want to use the following checklist to ensure that local codes, policies, and practices are up to date:

- Adopt a land use or comprehensive plan. Each small town (population at or under 1,500) in the state has until July 1, 2023, to adopt a land use plan or comprehensive plan if the town wants to enforce zoning. For other jurisdictions, the deadline was July 1, 2022.
- Amend development regulations to ensure that maximum sizes for parking spaces adhere to Chapter 160D, Section 702 of the North Carolina Statutes (hereinafter G.S.).
- Note the slightly revised procedures for designating local historic landmarks.
- Consider farm use exceptions. Building inspectors should take note of the changes to the building code exclusion for farm uses, and zoning officials should note the expanded scope of the bona fide farm use zoning exception.
- Note that the state building code will not require more than one fire access road for developments of one- or two-family dwellings where there are fewer than 100 dwelling units.
- Amend development regulations to align appeals of subdivision plat decisions with the clarified statutory rules.
- Ensure that the local government has designated an official to oversee the local government's statutory duties related to building code inspections (listed at G.S. 160D-1104).
- Prepare and publish an annual financial report on how permitting fees are used to support administration of building code enforcement as required by G.S. 160D-402(d). Reporting is due by October 1 of 2023, 2024, and 2025.
- Fill out and turn in funding request paperwork and budget information for receipt of monies from certain state funds. If you have received direct allocations from the State Fiscal Recovery Fund or the Local Assistance for Stormwater Infrastructure Investments Fund, submit a completed Request for Funding form and a project budget no later than June 30, 2023.
- Update local notice requirements for Coastal Area Management Act (CAMA) land use plan amendments. Note that local health departments now have a ten-day permitting shot clock for certain onsite wastewater permits.
- Check statutory updates related to social districts. Any jurisdiction that has or is considering a "social district" should review the updated statutes.

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II. Comprehensive and Land Use Planning

A. Extension for Small Town Land Use Plans

S.L. 2022-75 (H.B. 911) extends the deadline for small towns (population at or under 1,500) to adopt a land use plan. The deadline is now July 1, 2023, for qualifying municipalities.

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 includes one of the notable substantive changes in Chapter 160D: the requirement that communities must have a reasonably maintained comprehensive plan or land use plan in order to retain authority to adopt and enforce zoning regulations.

The plan requirement was adopted in 2019, but the General Assembly gave local governments until July 1, 2022, to adopt a plan (if they did not already have one) or to update their current plan (if that plan had not been reasonably maintained). Section 10 of S.L. 2022-75 extends the deadline for small towns to July 1, 2023: "Any local government that has adopted zoning regulations but that has not adopted a comprehensive plan shall adopt such plan no later than July 1, 2022, in order to retain the authority to adopt and apply zoning regulations, except that municipalities with a population of 1,500 or less according to the most recent federal decennial census shall adopt such plan no later than July 1, 2023."

III. Zoning and Development Regulations

A. Maximum Parking Space Size

S.L. 2022-11 (S.B. 372) amends G.S. 160D-702 to set a maximum size for parking spaces in local development regulations. Under the new language in Section 10.(a) of S.L. 2022-11, a local development regulation 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."

The provision is effective October 1, 2022. Any development regulation inconsistent with this limitation will be void and unenforceable after that date.

B. Historic Landmark Designation

S.L. 2022-64 (H.B. 1018) amends G.S. 160D-946 to clean up the language and clarify the process for local landmark designation. The amended language does not create major substantive changes.

As was already the case, each local preservation commission is charged to create an inventory of the properties in the jurisdiction of historical, architectural, prehistorical, and cultural significance. Under S.L. 2022-64, Section 7, the inventory may be undertaken "at the earliest possible time and consistent with the resources available to [the commission]." The inventory, and any updates to it, must be submitted to the Office of Archives and History of the Department of Natural and Cultural Resources (DNCR).

As a reminder, prior to designating a local landmark or acquiring any property, a local government must take the steps outlined below. These rules are essentially the same as before, with one minor procedural change noted.

- The preservation commission must prepare and adopt rules of procedure and principles and standards for landmarks.

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- The preservation commission must investigate the proposed landmark designation or acquisition and then prepare and forward to the DNCR a report on the designation or acquisition proposed.
- Under S.L. 2022-64, Section 7, the DNCR has thirty days to provide written comments about the proposed landmark designation or acquisition. Newly added language provides that if the DNCR fails to provide comments within this thirty-day period, the local government may move forward without having to consider any comments from the DNCR.
- The preservation commission and governing board must hold legislative hearings, separately or jointly, on any proposed landmark designation or acquisition. Notice of any hearing is to be provided in accordance with G.S. 160D-601.
- The local government must provide written notice of the landmark designation or acquisition to the owners and occupants of the designated or acquired landmark within a reasonable time.
- A copy of the designation or acquisition must be filed with the register of deeds, the municipal clerk (if applicable), and the building inspector. Additionally, landmark designations shall be clearly indicated on local government–maintained tax maps.
- The preservation commission must provide notice to the county tax supervisor of any designation or acquisition or amendment to a designation or acquisition.

C. Charter School Land Use Approvals

When a charter school is first chartered, there may be deadlines to begin operations or to commence the term of its charter. Section 2 of S.L. 2022-75 (H.B. 911) amends G.S. 115C-218.5 to allow the charter school to extend such deadlines if the school is seeking land use or development approvals or challenging the denial of land use or development approvals.

D. Chapter 160D Technical Corrections

In 2019, the General Assembly adopted a comprehensive rewrite of the enabling legislation for local planning and zoning in North Carolina, codified as G.S. Chapter 160D. As with any major legislative undertaking, this rewrite needed technical corrections and cleanup. During the 2022 legislative session, technical corrections for Chapter 160D were adopted as S.L. 2022-62 (S.B. 768). The changes are clerical in nature—correcting cross-reference citations and updating phrasing and word choice.

E. Zoning Consistency

G.S. 160D-706 addresses conflicts between Chapter 160D regulations and other development regulations. This section, which has long been included in the zoning statutes, provides that when a zoning regulation and any other state or local regulation both address yard size, height of structures, or maximum lot coverage, the stricter of the two regulations applies.

In 2021, S.L. 2021-168 amended G.S. 160D-706 to add the phrase, "Unless otherwise prohibited by G.S. 160A-174(b) with respect to cities." That statute, G.S. 160A-174(b), provides that a local ordinance may not infringe on constitutional liberties or 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 or contravention of state or federal law.

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This year, S.L. 2022-11 (S.B. 372) sought to amend G.S. 160D-706 to make clear that the statute's limitations apply equally to counties. S.L. 2022-11 purported to resolve this matter but altered the statutory language incorrectly. S.L. 2022-62 (S.B. 768) further amended G.S. 160D-706 to accurately make the intended amendment.

F. High Point Delegated Rezoning Power

Following the trend of other Triad communities, the City of High Point now has authority to delegate rezoning decisions to its Planning and Zoning Commission. Section 1 of S.L. 2022-37 (H.B. 263) amends the city charter to allow the city council to delegate "the authority to change the zoning classification of property to the Planning and Zoning Commission with certain rights of appeal and review before the City Council."

IV. Agricultural Uses

The 2022 farm bill, S.L. 2022-55 (S.B. 762), entitled "An Act to Make Various Changes to the Agricultural Laws of This State," makes a number of subtle changes to agricultural land use protections.[1]

A. Building Code Exclusions

Among the other exemptions and exclusions that apply to farming uses and structures, G.S. 143-138(b4) excludes certain "farm buildings" from building code regulations. Section 1 of the 2022 farm bill adds to (or clarifies the inclusion in, depending on one's read of the prior version of the statute) the set of exempt farm buildings any building "used primarily for the storage of agricultural commodities or products or [for the] storage and use of materials for agricultural purposes." Under Section 1, this extended exemption applies whether or not the building is located on the same property where the agricultural commodities or products were produced, as long as "the building is surrounded and adjoined by public ways and yards, as those terms are defined in the 2018 North Carolina Building Code, of not less than 60 feet in width." The owner of any qualifying building must post on that building a placard that is at least 24 inches by 24 inches in size, that has a red background and white reflective stripes and border, and that reads "Ag. Exempt" in white reflective letters not less than 12 inches tall.

Because this language is only added to G.S. 143-138(b4), it presumably applies only to the building code exemption and not to the zoning exemption set out in G.S. 160D-903, the sales tax exemption in G.S. 105-164.13E, or the present use valuation program of G.S. Chapter 105, Article 12.

B. Bona Fide Farm Exemption

On the topic of the bona fide farm zoning exemption in G.S. 160D-903, Section 2 of the 2022 farm bill adds to that exemption any "building or structure that is used solely for storage of cotton, peanuts, or sweet[] potatoes, or any byproduct of those commodities." Buildings used

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1. Those readers interested in agricultural uses more broadly may be interested in other provisions of the farm bill or in S.L. 2022-45 (S.B. 388), which exempts qualifying farmers from certain sales tax liability for operating a zoo and for wildlife management activities.

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for storing these commodities or their byproducts are now shielded from the effect of zoning regulations, even if they do not have the documentation that G.S. 160D-903(a)(1) through (4) considers “sufficient evidence that the property is being used for bona fide farm purposes.”

Section 2 also clarifies that the four documents that can serve as sufficient evidence of bona fide farm use (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.

V. Land Subdivision

A. Fire Apparatus Access

In 2021, the General Assembly modified the State Building Code to relax the requirements relating to fire access and sprinkler requirements for low-density residential developments (S.L. 2021-121 (H.B. 489), Section 6). This year, S.L. 2022-11 (S.B. 372) further amends that language. Under Section 13.(a) of S.L. 2022-11, the language now reads: “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.”

B. Appeals of Subdivision Decisions

The proper procedure for an appeal of a subdivision plat decision has long been unclear. This stemmed from a lack of specificity in the statutes and a variety of approaches at the local level. Depending on the local standards and procedures, a subdivision plat decision could be any of the following: an administrative decision by a staff person or committee, an administrative decision by an appointed or elected board, or a quasi-judicial decision by an appointed or elected board. Appeals of those different decisions arguably should be treated differently, but the statutes were not clear.

S.L. 2022-62 (S.B. 768) amends applicable sections of G.S. Chapter 160D to clarify the proper appeal procedures for subdivision plat decisions. G.S. 160D-1403 now governs such appeals as follows: If the subdivision plat decision is administrative in nature and made by a staff person or staff committee, then the appeal goes to the board of adjustment, the same as appeals of other staff decisions for development approvals. If the subdivision plat decision is administrative in nature and made by an elected or appointed board, the decision goes to superior court for declaratory or equitable relief. Finally, if the subdivision plat decision is quasi-judicial in nature, then the appeal goes to superior court in the nature of certiorari, the same as appeals of other quasi-judicial decisions.

VI. Fees and Exactions

Section 9.(a) of S.L. 2022-11 (S.B. 372) sets new expectations for the local administration of building inspections and the reporting of fees. G.S. 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.”

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Additionally, this same section of the new law sets out a new reporting requirement related to permitting 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.

VII. Local Environmental Regulation

S.L. 2022-43 (H.B. 219, or "the environmental bill") made a number of tweaks to environmental legislation, some of which will be relevant to land development and local ordinances.

A. Stormwater Fund Reversions

Section 1 of S.L. 2022-43 relates specifically to the allocations in last year's budget bill (S.L. 2021-180) for projects receiving direct allocations from the State Fiscal Recovery Fund or the Local Assistance for Stormwater Infrastructure Investments Fund. Any recipient of such allocations must submit a completed Request for Funding form and a project budget "describing a project that is eligible for funding under applicable federal and State law" no later than June 30, 2023. If the grant recipient fails to provide the form or submits a project that is not eligible for funding under state and federal law, the recipient's allocation will revert back to the relevant fund in full. If a recipient submits a project budget that is less than its allocation, the remainder likewise goes back to the fund.

B. Flood Resiliency Blueprint Technical Corrections

Section 2 of S.L. 2022-43 expands the uses that the Department of Environmental Quality (DEQ) can make of funds transferred to it from the State Capital and Infrastructure Fund (SCIF). In addition to removal and disposal of waterway debris from targeted river basins, DEQ can use the funds for other flood mitigation strategies identified in the Flood Resiliency Blueprint. However, stream debris removal and other Resiliency Blueprint projects are no longer exempt from water-quality protection regulation, as Section 2 also repeals the permitting exemption for this work that had been included in last year's budget bill (S.L. 2021-180, Section 40.7(b)). That provision had exempted stream debris removal projects from the requirements of G.S. Chapter 13, Articles 1, 4, and 7; from stormwater or water quality permit requirements under G.S. Chapter 143 Article 21; and from any right of certification related to Section 401 water-quality certifications.

Section 3 of S.L. 2022-43 makes a technical correction to Section 5.9(c) of the budget bill to point to the correct cross-reference for the funding source of the Flood Resiliency Blueprint. The budget bill initially referred to $20M from the State Matching Fund for disaster recovery; it is now corrected to point to the $20M allocated for the Blueprint.

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C. CAMA Notice Requirements

The environmental bill also amends G.S. 113A-110(e) to adjust the notice period for hearings regarding the adoption or amendment of Coastal Area Management Act (CAMA) local land use plans. Under the previous language of G.S. 113A-110(e), when a local government was considering adoption or amendment of its CAMA land use plan, notice had to be given to the public at least thirty days before the date of the hearing on the adoption or amendment. Section 5 of the environmental bill converts that requirement into a mandate that notice be published between ten and twenty-five days in advance of the hearing. While this change has the effect of reducing the notice period, the aim of the law is to align the notice period for hearings on CAMA land use plans with the notice periods for other land use hearings (such as rezonings and variances) in G.S. Chapter 160D.

D. Fast-Track Permitting Study

Those communities for which DEQ handles stormwater permitting may be interested to know that the General Assembly has directed DEQ to study approaches to expediting permits under its express permit and certification review program and under its fast-track program for stormwater management permitting. A report is due to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources by December 31, 2022.

E. Permitting Shot Clock for Onsite Wastewater

Separate from the changes effected by S.L. 2022-43, discussed above, other provisions made changes to local environmental regulations. For example, Section 5 of S.L. 2022-11 (S.B. 372) establishes a permitting shot clock for local health department review of onsite wastewater permitting. For improvement permits and construction authorizations from qualifying soil specialists, the local health department must act within ten days of receiving the application for review and either (1) issue the permit, (2) deny the permit and cite the applicable rules, or (3) identify any additional information needed for an incomplete application. If the health department does not act within this ten-day period, the department must issue the permit or construction authorization. Section 5 also specifies the notice that a contractor must provide to the local health department before starting construction of a wastewater system and upon completing such construction. It also limits liability for the local health department related to these systems.

Additionally, Section 4 of S.L. 2022-11 extends until January 1, 2023, the period during which licensed soil scientists may evaluate, inspect, and approve on-site wastewater systems.

F. Study Construction Stormwater Regulations

Section 7 of S.L. 2022-11 (S.B. 372) calls upon DEQ to study the overlap and redundancy between state and federal requirements for stormwater discharges from construction activities. DEQ must report its findings no later than September 1, 2022.

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VIII. Building and Housing Code Enforcement

In addition to making other changes to building code administration and onsite wastewater permitting, discussed above, S.L. 2022-11 (S.B. 372) requires the N.C. Building Code Council to promulgate new rules for the approval of alternative designs; modifies the classification of electrical contracting licenses; delays implementation of certain wastewater treatment and dispersal rules; updates standards for well grouting certification; amends home inspector licensure; and addresses inspections by Department of Insurance inspectors.

IX. Relevant ABC Legislation

A. Social Districts and Common Area Permits

Over the last few years, the General Assembly has expanded the range of outdoor spaces where one can carry an open alcoholic beverage. In particular, legislation from 2019 and 2021 added two relatively new options for obtaining outdoor-drinking authorization: common area entertainment permits and designated social districts. S.L. 2022-49 (H.B. 211) recodifies, clarifies, and tweaks the rules for both options.[2]

The older of these options is the common-area entertainment permit. These permits, created by S.L. 2019-182, Section 19, allow the property owner (or owners' association) of a multi-tenant commercial or mixed-use development to establish areas on its private property where alcoholic beverages can be carried and consumed in designated common areas of the development.

The new legislation replaces the old rules for common area entertainment permits (found in G.S. 18B-1000(4a) and -1001(21)) with a new G.S. 18B-1001.5. While the concept remains the same, S.L. 2022-49 makes several modifications and clarifications. This legislation

- adds a "policy" subsection to the statute to clarify that the purpose of the permit is to allow open containers to be carried from licensed premises to another area but to otherwise maintain other limitations on the consumption or possession of alcoholic beverages;
- includes wine shop permittees;
- expands the range of businesses that may choose to allow customers to bring alcoholic beverages into their establishments; the previous rule allowed only ABC permittees to choose to accept patrons with open alcoholic beverages, but new G.S. 18B-1001.5(d) allows any business to opt to permit customers to enter its property with open containers;
- requires that open containers include a logo or mark unique to the consumption area (in addition to an identification of the permittee that sold the alcoholic beverage), be made of a material other than glass, and include the statement "Drink Responsibly – Be 21"; and
- defines obligations for customers and for non-permittees who allow customers to bring alcoholic beverages onto their premises.

Social districts were authorized by Section 20 of S.L. 2021-150. This legislation permitted a local government to designate an area of its town or county where open containers of alcoholic beverages may be carried outside of ABC-permitted premises. In many ways, social districts work in parallel to common area entertainment permit areas, and S.L. 2022-49 makes several adjustments to these areas as well.

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2. These changes apply only to common-area entertainment permits and social districts; they do not affect a permittee's ability to apply for an extension of its licensed premises under G.S. 18B-904(h).

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The new legislation removes the social district rules set out in G.S. 18B-904.1 and replaces them with largely similar provisions in a new G.S. 18B-300.1. However, there are a few key changes of note. Specifically, the new law

- clarifies that a local government can create one or more social districts in its jurisdiction;
- adds a "policy" subsection to the social district statute clarifying that the law's intent is to allow open containers to be carried from licensed premises to another area but that it otherwise maintains other limitations on the consumption or possession of alcoholic beverages;
- adds definitions for the terms "customer" and "non-permittee business" that are later used to clarify who has what obligations in a social district;
- includes wine shop permittees;
- removes the requirement that a social district be entirely outdoors;
- allows a designee of the city or county (including a private entity) to establish management and maintenance plans for the social district, though the plans must ultimately be approved by the local governing body;
- provides for submission to the ABC Commission of an amended map if a social district's boundaries change;
- allows non-permittee businesses to opt to allow customers to enter their property with open containers (the local government is to develop or approve uniform signs for those businesses that choose to "participate" in the social district); and
- defines obligations for customers and for non-permittees who allow customers to bring alcoholic beverages onto their premises.

This legislation also answered a couple of sticky questions that had arisen in the process of creating common area entertainment permit areas and social districts. One of the questions was what might happen to someone carrying a closed container through a designated outdoor consumption area. For example, what if I live in an apartment in a mixed-use development, I buy a nice Belgian tripel ale from the bottle shop on the other side of a designated common area, and now I have to walk through the designated area to bring it home? The old rules arguably could have created a situation where bringing such a closed container into a designated outdoor drinking area could be seen as a violation. The new law makes clear that it limits only the carrying of open containers, so that one can carry a closed container in the designated area of a common area entertainment space and in a social district.

Another tricky question was what happens if a social district and a common area entertainment space overlap? A couple of provisions in S.L. 2022-49 address this situation. Section 4 adds a new G.S. 18B-300.2 that allows a local government with a social district and a property owner or owners' association with a common area entertainment permit to enter into a memorandum of understanding that allows open containers to be possessed and consumed across the boundaries of the social district and of the common area entertainment permit area. A new G.S. 18B-300.1(i) also clarifies that businesses located within a social district can participate in the social district even if they are also in a multi-tenant use area that has a common area entertainment permit.

B. Increased Scope of Alcohol Sales

In addition to the changes to alcoholic beverage laws made by S.L. 2022-49, discussed above, S.L. 2022-44 (H.B. 768) makes a number of other changes to these laws that may be of interest to land use law observers. The most pertinent provision is Section 6, which lifts the requirement

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that bars operate as "private bars" and serve alcohol only to their members. Until the passage of this law, in order to operate as a bar only, an establishment had to be private and open only to its members. In practice, this meant that many bars and nightclubs offered "memberships" at the door or collected a nominal cover charge to any patrons who entered. As of July 7, 2022, this formality is no longer required.

One other provision may be of note to a few communities: Section 8 of S.L. 2022-44 allows a distillery to obtain a mixed beverages permit in an area where the sale of mixed beverages has not been approved by a local election. In other words, even if the community does not otherwise allow the sale of mixed beverages, the distillery can nonetheless obtain a license and sell mixed beverages containing its own product.

X. Annexation

A. Relief from Annexation Agreements

Tucked into Section 5, the penultimate section of S.L. 2022-49 (H.B. 211), after the revisions to the rules for common area entertainment permits and social districts, there is "relief for property owners subject to annexation agreements between local governments." This provision offers a new alternative for water and sewer service to property owners in areas subject to annexation agreements.

Section 5 adds new subsections to G.S. 160A-317 and 153A-284. These new subsections state that, if property is subject to an annexation agreement or other interlocal agreement and the city or county denies the property owner's request to connect to water or sewer facilities, the owner can seek water and/or sewer service from "any other unit of local government." In addition, if a court order would prevent the property owner from seeking annexation by a city capable of providing it with water or sewer service, the property owner can petition the court for relief from the effects of that order.

B. Local Legislation Regarding Jurisdiction

In addition to the general bills passed by the General Assembly this session, there were a handful of local bills modifying local government authority in one jurisdiction or another. There were changes to the jurisdictions of Jacksonville and Southern Pines (S.L. 2022-27 (H.B. 1012)); North Wilkesboro (S.L. 2022-28 (H.B. 1026)); Surf City (S.L. 2022-29 (H.B. 1096)); Greensboro (S.L. 2022-33 (H.B. 995)); Beech Mountain and Morganton (S.L. 2022-39 (H.B. 1044)); and Clyde, Locust, Midland, Landis, Kannapolis, and Andrews (S.L. 2022-41 (H.B. 1065)).

Certain changes are particularly notable. For example, Leland's power to annex satellite areas was significantly curtailed. Normally, satellite areas to be annexed must be within three miles of a municipality's main corporate limit. Also, as a rule, most satellite areas must not comprise more than 10 percent of the area within the primary city boundary (though a number of municipalities have been exempted from this 10 percent requirement).

Following the passage of S.L. 2022-26, Leland now may only annex areas within 1.5 miles of the town limits, and Leland has been removed from the list of cities that may have satellite areas that make up more than 10 percent of the primary city area.

In addition, any petition for satellite annexation in Leland must contain a statement from the owners of real property located within the proposed satellite area that the petition is not based on the town's assertion that it will withhold public enterprise service unless annexed.

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XI. City of Lexington and Davidson County

Three local bills altered the balance of authority between the City of Lexington and Davidson County. In particular, the bills removed the Davidson County Airport from the City of Lexington municipal boundaries, exempted the county jail property from the Lexington Unified Development Ordinance, and altered the procedures for municipal annexation in Davidson County.

Airport. S.L. 2022-36 (S.B. 908) removed the Davidson County Airport from the municipal corporate limits of the City of Lexington. Additionally, the bill required the county airport authority to purchase a fire station building and equipment from the city for $2 million.

Jail Exempt from Zoning. S.L. 2022-25 (S.B. 909) exempts a certain property from the City of Lexington's Unified Development Ordinance. That property, located in uptown Lexington, is the site where Davidson County intends to build a county jail. The local act also authorizes one city council member and one city staff-person to serve on the county jail committee specifically for matters related to the jail's façade, exterior, sidewalks, streetscapes, and plantings. They may not participate or vote on building programming.

Annexation. Finally, annexation in Davidson County may have just gotten a bit more complicated. S.L. 2022-24 (S.B. 907) gives the county additional authority over annexations and the rezoning of annexed property by municipalities within its borders.

As a result of this new law, any municipality in Davidson County that intends to adopt an annexation ordinance (unless the annexation is for property to be put to single-family or multifamily residential use) must notify the county board of commissioners of this intent at least ten days in advance of adopting the ordinance. The board, in turn, must hold its own public hearing and can approve or disapprove the annexation.[3]

If the county board of commissioners disapproves of the annexation, the municipality may not move forward with annexing the subject area for thirty-six months. While counties in North Carolina generally have veto authority over extensions of extraterritorial development jurisdiction in areas where they exercise zoning and subdivision authority,[4] this application to the annexation context is unique.

If the board does approve the annexation, any rezoning that includes the annexed area must also be approved by the board. Presumably, this is intended to apply only to the initial zoning of the property, but the language of the bill is not time-specific.

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3. Similar legislation barring any city located primarily within Davidson County from adopting an annexation ordinance unless the board of commissioners approves the annexation in advance was passed in 2012. That legislation remains in effect and is unchanged by this bill.

4. *See* G.S. 160D-202(c).

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